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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 19/872

WE ARE CALIFORNIA, A
SPONSORED COMMITTEE OF
MOBILIZE THE IMMIGRANT VOTE
ACTION FUND and APARNA SHAH,
Respondents.

STIPULATION, DECISION AND ORDER

INTRODUCTION

Respondent, We Are California, A Sponsored Committee of Mobilize the Immigrant Vote Action Fund (ID# 1332307) (the “Committee”), is a state general purpose committee. At all relevant times, Respondent, Aparna Shah (“Shah”), served as the Committee’s treasurer.

The Committee was the subject of a Franchise Tax Board (“FTB”) audit. The FTB audit covered the period of January 1, 2015 through December 31, 2016. During the audit period, the Committee reported \$25,511 in contributions and \$26,036 in expenditures.

The Committee made expenditures for the printing and mailing of a Voter Guide prior to the November 8, 2016 General Election. The Political Reform Act (the “Act”)¹ requires committees and

¹ The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 treasurers to timely file campaign statements and properly report all information regarding expenditures
2 on their campaign statements. The Committee and Shah violated the Act by failing to timely report
3 subvendor information for payments made, including the names of the printing company used to print
4 and mail the Voter Guide.

5 **SUMMARY OF THE LAW**

6 The Act and its regulations are amended from time to time. The violations in this case occurred
7 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
8 they existed at that time.

9 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

10 When enacting the Act, the people of California found and declared that previous laws regulating
11 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
12 decreed the Act “should be liberally construed to accomplish its purposes.³ A central purpose of the Act
13 is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully
14 and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another
15 purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously
16 enforced.”⁵

17 **Reporting Subvendor Payments**

18 A subvendor is a person or company that is hired by a committee’s agent or independent
19 contractor to provide a good or service for the committee. The Act requires committees to report
20 payments of \$500 or more made on its behalf by an agent or independent contractor the same way it
21 would if it were making the payment on its own.⁶ Disclosure of the expenditures made by an agent or
22 independent contractor are required to be made at the same time and in the same manner and detail as
23 required for the committee’s direct expenditures.⁷ Specifically, the following information must be

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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 84303, subdivision (a).

⁷ Regulation 18431, subdivision (c) and Section 84211, subdivision (k).

1 provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each
2 expenditure; and (4) a brief description of the consideration for which each expenditure was made.⁸

3 **Joint and Several Liability of Committee and Treasurer**

4 It is the duty of a committee treasurer to ensure the committee complies with the Act.⁹ A
5 treasurer may be held jointly and severally liable, along with the committee, for violations committed by
6 the committee.¹⁰

7 **Liability for Violations**

8 Any person who violates any provision of the Act, who purposely or negligently causes any
9 other person to violate any provision of the Act, or who aids and abets any other person in the violation
10 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹¹

11 **SUMMARY OF THE FACTS**

12 Prior to the November 8, 2016 General Election, the Committee and Shah reported
13 approximately \$11,552 in accrued expenses to Bus Federation Action Fund for the printing of a Voter
14 Guide. The Voter Guide, distributed on or around October 4, 2016, supported and opposed various state,
15 county, and city ballot measures, and state candidates appearing on the November 8, 2016 election
16 ballot.

17 **Failure to Timely Report Subvendor Information for Expenditures**

18 The Committee and Shah had a duty to report on the Committee's campaign statements
19 subvendor information for expenditures of \$500 or more made or incurred by an agent to a subvendor on
20 the Committee's behalf for campaign services, as if the expenditures were made directly by the
21 Committee. The Committee and Shah failed to report, on the Committee's pre-election campaign
22 statement for the reporting period of July 1, 2016 to October 22, 2016, required subvendor information
23 for expenditures made or incurred totaling approximately \$11,552 for the printing of a Voter Guide.

24 On January 30, 2017, the Committee filed an amendment to the pre-election campaign statement
25 for the reporting period of July 1, 2016 to October 22, 2016, disclosing the subvendor payments actual
26

27 ⁸ Section 84211, subdivision (k)(1)-(4) and (6).

28 ⁹ Sections 81004, 84100, and Regulation 18427.

¹⁰ Sections 83116. 5 and 91006.

¹¹ Sections 83116 and 83116. 5.

1 totals of \$11,083.09. This amounts to approximately 44.87% of the Committee's total expenditures for
2 this reporting period ($\$11,083.09 / \$24,695.26 = 0.4487$).

3 VIOLATION

4 **Count 1: Failure to Timely Report Subvendor Information for Expenditures**

5 The Committee and Shah failed to timely report required subvendor information for expenditures
6 totaling approximately \$11,083.09 for the printing and mailing of a Voter Guide on or around October 4,
7 2016, in violation of Government Code Sections 84211, subdivision (k), and 84303.

8 PROPOSED PENALTY

9 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
10 count. Thus, the maximum penalty that may be imposed here is \$5,000.¹²

11 In determining the appropriate penalty for a particular violation of the Act, the Commission
12 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the
13 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
14 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
15 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
16 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
17 record of violations.¹³

18 The public harm inherent in campaign reporting violations is that the public is deprived of
19 important, time-sensitive information regarding campaign activity. The late-reporting violation here is
20 somewhat mitigated because the Committee did report, prior to the election, the payments made to the
21 vendor for the Voter Guide as accrued expenses. Also, the Committee reported, as independent
22 expenditures, the various state, county, and city ballot measures, and state candidates the Voter Guide
23 supported and opposed.

24 In this case, the evidence supports there was no intent to conceal, deceive or mislead the public
25 as to the Committee's campaign activity. The violation here does not appear to be deliberate as Shah
26 claims an amendment was filed once the actual expense and subvendor totals were available. The
27

28 ¹² Section 83116, subdivision (c).

¹³ Regulation 18361. 5, subdivision (d).

1 Committee and Shah have prior enforcement history for failing to timely file semi-annual campaign
2 statements that reported subvendor information for approximately \$79,388 worth of expenditures (FPPC
3 Case No. 16/189).

4 The Commission considers penalties in prior cases with the same or similar violations and
5 comparable facts.

6 *In the Matter of Consumer Advocates for Safe Food and Water, Sponsored by Food & Water*
7 *Watch and Jesse Mainardi*; FPPC Case No. 16/037. Respondents, a state general purpose committee and
8 its treasurer, failed to timely report subvendor information for its expenditures. The missing subvendor
9 information amounted to approximately 60% of all expenditures made for the pertinent election, or
10 approximately \$304,500. Respondents had no prior history of violating the Act. On August 17, 2017, the
11 Commission approved a penalty of \$2,000.

12 A lesser penalty than that approved in *Consumer Advocates* is recommended. Unlike *Consumer*
13 *Advocates*, the Committee and Shah failed to report subvendor information for only \$11,083.09 worth of
14 expenditures, or approximately 44.87% of the Committee's total expenditures for the reporting period.
15 This amounts to a far less amount than that at issue in *Consumer Advocates*. Therefore, a penalty of
16 \$1,500 is recommended.

17 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
18 in the amount of \$1,500 is justified.

19 CONCLUSION

20 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
21 Respondents, We Are California, a Sponsored Committee of Mobilize the Immigrant Vote Action Fund
22 and Aparna Shah, hereby agree as follows:

- 23 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate
24 summary of the facts in this matter.
- 25 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
26 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.

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1 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
2 of reaching a final disposition without the necessity of holding an administrative hearing to
3 determine the liability of Respondents pursuant to Section 83116.

4 4. Respondents have consulted with their attorneys, S.E. Owens and Company, and
5 understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth
6 in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but
7 is not limited to the right to appear personally at any administrative hearing held in this matter, to
8 be represented by an attorney at Respondents’ own expense, to confront and cross-examine all
9 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an
10 impartial administrative law judge preside over the hearing as a hearing officer, and to have the
11 matter judicially reviewed.

12 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
13 Respondents agree to the Commission imposing against them an administrative penalty in the
14 amount of \$1,500. One or more cashier’s checks or money orders totaling said amount – to be
15 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
16 payment of the administrative penalty described above, and same shall be held by the State of
17 California until the Commission issues its decision and order regarding this matter.

18 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
19 null and void, and within fifteen business days after the Commission meeting at which the
20 stipulation is rejected, all payments tendered by Respondents in connection with this stipulation
21 shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if
22 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
23 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
24 this stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page, including a hardcopy of a signature page
3 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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6 Dated: _____
7 Galena West, Chief of Enforcement
8 Fair Political Practices Commission
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10 Dated: _____
11 Aparna Shah, Respondent
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14 Dated: _____
15 _____, on behalf of We Are
16 California, a Sponsored Committee of Mobilize the
17 Immigrant Vote Action Fund, Respondent

18 The foregoing stipulation of the parties "In the Matter of We Are California, a Sponsored
19 Committee of Mobilize the Immigrant Vote Action Fund and Aparna Shah," FPPC Case No. 19/872, is
20 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
21 upon execution by the Chair.
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23 IT IS SO ORDERED.
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25 Dated: _____
26 Richard C. Miadich, Chair
27 Fair Political Practices Commission
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