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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 17/325

STIPULATION, DECISION AND ORDER

12
13 COUNTY OF STANISLAUS,

14
15 Respondent.

16
17 **INTRODUCTION**

18 Respondent, County of Stanislaus (the “County”), is located in California’s San Joaquin Valley
19 and has a population of approximately 514,453.

20 The Political Reform Act (the “Act”)¹ prohibits the sending of a mass mailing featuring an
21 elected official at public expense. The County violated the Act by producing and distributing mass
22 mailings, which featured an elected official, at public expense.

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28 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 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2016 and 2017. For this reason, all legal references and discussions of law pertain to the Act’s
4 provisions as they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
8 decreed the Act “should be liberally construed to accomplish its purposes.”³

9 There are many purposes of the Act. One stated purpose is to abolish laws and practices that
10 unfairly favor incumbents so that elections may be conducted more fairly.⁴ Another purpose of the Act
11 is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

12 **Mass Mailing at Public Expense**

13 No newsletter or other mass mailing shall be sent at public expense.⁶ Specifically, a mailing is
14 prohibited if all of the following criteria are met:⁷

- 15 (1) An item sent is delivered, by any means, to the recipient at their residence, place of business, or
16 post office box. The item delivered to the recipient must be a tangible item, such as a written
17 document.
- 18 (2) The item sent features an elected officer affiliated with the agency which produces or sends the
19 mailing. An item “features an elected officer” when it includes, among other things, the elected
20 officer’s photograph or singles out the elected officer by the manner of display of his or her
21 name or office in the layout of the document, such as by headlines, captions, type size, typeface,
22 or type color.⁸ A mailing containing the name, office, photograph, or any other reference to an
23 elected officer who consults or acts in concert with the agency to prepare or send the mailing
24 also fulfills the second criteria.
- 25 (3) Any of the costs of distribution are paid for with public moneys; or costs of design, production,
26 and printing exceeding \$50 are paid with public moneys, and is done with the intent of sending
27 the item other than as permitted by this regulation.
- 28 (4) More than 200 substantially similar items are sent, in a single calendar month, excluding any
item sent in response to an unsolicited request.

26 ² Section 81001, subd. (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subd. (e).

⁵ Section 81002, subd. (f).

⁶ Section 89001.

⁷ Regulation 18901, subd. (a).

⁸ Regulation 18901, subd. (c)(2).

1 **SUMMARY OF THE FACTS**

2 The County produced three advertisements to promote recruitment to the Stanislaus County
3 Sheriff's Department. The cost of creating/producing these advertisements could not be determined.⁹ All
4 three advertisements featured the Sheriff of the County at the time, Adam Christianson ("Christianson").
5 The advertisements included Christianson's picture, name, and title. Throughout 2016 and 2017, the
6 County purchased advertisement space in magazines, including ModestoView, Contentment Health, and
7 Gallo Center of the Arts Magazine. Each of these magazines were mailed to County of Stanislaus
8 residents.

9 The County admitted to using public money to purchase advertisement space, for the
10 advertisements at issue here, in ModestoView as follows:

11

12 Invoice Date	Vendor	Magazine	Cost	Amount Mailed (Approx.)
13 08/01/2016	ModestoView	ModestoView	\$600	33,000
14 09/01/2016	ModestoView	ModestoView	\$600	33,000
15 10/01/2016	ModestoView	ModestoView	\$600	33,000
16 11/01/2016	ModestoView	ModestoView	\$600	33,000
17 12/01/2016	ModestoView	ModestoView	\$600	33,000
18 01/01/2017	ModestoView	ModestoView	\$600	33,000
19 02/01/2017	ModestoView	ModestoView	\$600	33,000
20 03/01/2017	ModestoView	ModestoView	\$600	33,000
21 04/01/2017	ModestoView	ModestoView	\$600	33,000
22 TOTALS:			\$5,400	297,000

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28 ⁹ Due to staffing turnover, the County was unable to find information related to the design of the three advertisements at issue here. The County is not sure whether the advertisements were designed by a third party or in-house staff.

1 The County admitted to using public money to purchase advertisement space, for the
 2 advertisements at issue here, in Contentment Health as follows:

3 Invoice Date	4 Vendor	5 Magazine	6 Cost	7 Amount Mailed (Approx.)
8 06/21/2016	9 Never Boring Design Associates, Inc	10 Contentment Health	11 \$850	12 10,000
13 08/25/2016	14 Never Boring Design Associates, Inc	15 Contentment Health	16 \$850	17 10,000
18 10/28/2016	19 Never Boring Design Associates, Inc	20 Contentment Health	21 \$850	22 10,000
23 12/29/2016	24 Never Boring Design Associates, Inc	25 Contentment Health	26 \$850	27 10,000
28 02/28/2017	Never Boring Design Associates, Inc	Contentment Health	\$850	10,000
04/26/2017	Never Boring Design Associates, Inc	Contentment Health	\$850	10,000
TOTALS:			\$5,100	60,000

13 The County admitted to using public money to purchase advertisement space, for the
 14 advertisements at issue here, in Gallo Center of the Arts Magazine as follows:

15 Invoice Date	16 Vendor	17 Magazine	18 Cost	19 Amount Mailed (Approx.)
20 07/22/2016	21 Never Boring Design Associates, Inc	22 Gallo Center of the Arts Magazine	23 \$950	24 55,000
25 08/23/2016	26 Never Boring Design Associates, Inc	27 Gallo Center of the Arts Magazine	28 \$950	55,000
01/01/2016	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
02/01/2016	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
03/01/2016	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
04/01/2016	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
01/01/2017	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
02/01/2017	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
03/01/2017	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
04/01/2017	Never Boring Design Associates, Inc	Gallo Center of the Arts Magazine	\$950	55,000
TOTALS:			\$8,550	495,000

1 In summary, between June 21, 2016 and April 26, 2017, the County produced three
2 advertisements and purchased advertisement space in 24 issues of three magazines resulting in
3 approximately 852,000 publications for a cost of at least \$19,050.

4 VIOLATIONS

5 **Count 1: Mass Mailing Sent at Public Expense**

6 The County of Stanislaus produced advertisements featuring a public official and spent at least
7 \$5,400 in public money to purchase advertisement space in ModestoView, which was mailed to
8 approximately 297,000 residents between August 1, 2016 and April 1, 2017, in violation of Government
9 Code Section 89001 and Regulation 18901.

10 **Count 2: Mass Mailing Sent at Public Expense**

11 The County of Stanislaus produced advertisements featuring a public official and spent at least
12 \$5,100 in public money to purchase advertisement space in Contentment Health, which was mailed to
13 approximately 60,000 residents between June 21, 2016 and April 26, 2017, in violation of Government
14 Code Section 89001 and Regulation 18901.

15 **Count 3: Mass Mailing Sent at Public Expense**

16 The County of Stanislaus produced advertisements featuring a public official and spent at least
17 \$8,550 in public money to purchase advertisement space in Gallo Center of the Arts Magazine, which
18 was mailed to approximately 495,000 residents between July 22, 2016 and April 1, 2017, in violation of
19 Government Code Section 89001 and Regulation 18901.

20 PROPOSED PENALTY

21 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
22 count. Thus, the maximum penalty that may be imposed here is \$15,000.¹⁰

23 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
24 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
25 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
26 considers the facts and circumstances of the violation in the context of the following factors set forth in
27 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
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¹⁰ Section 83116, subdivision (c).

1 by the specific violation; (2) The level of experience of the violator with the requirements of the
2 Political Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The
3 presence or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was
4 deliberate, negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
5 Commission staff or any other governmental agency in a manner not constituting complete defense
6 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
7 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
8 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
9 full disclosure.¹¹

10 Since the elected official featured in the advertisements at issue here did not seek re-election to
11 Sheriff of the County of Stanislaus when his term ended in 2018, the public harm was somewhat
12 mitigated. Although, the evidence shows a pattern of violations as the County's advertisements have
13 appeared in multiple issues of magazines between 2014 and 2017. The County did not consult with
14 Commission staff or any other governmental agency prior to releasing the advertisements at issue here.
15 There was no evidence to support an intent to conceal, deceive or mislead the public, and the violations
16 appear to be inadvertent, because the advertisements clearly showed they were from the County, and
17 Christianson did not run for Sheriff in 2018. Also, the County has requested training materials from the
18 Commission on the mass mailing at public expense restrictions. The County does not have a prior record
19 of violating the Act.

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

22 *In the Matter of City of Upland*; FPPC Case No. 18/228. On or around February 2018, the city of
23 Upland ("City") prepared a 2-page letter that highlighted the City's achievements from the previous
24 year. The City mailed its water bills with the 2-page letter to residents. The 2-page letter included a
25 photograph of the Mayor along with her name and office. The 2-page letter was prepared in coordination
26 with the Mayor and other City officials. Approximately 14,146 copies of the 2-page letter were mailed
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¹¹ Regulation 18361. 5, subdivision (e).

1 to residents for a total cost of \$2,595.03. On May 21, 2020, the Commission approved a penalty of
2 \$2,000.

3 A higher penalty than that approved in *City of Upland* is recommended. Similar to *City of*
4 *Upland*, the County used public money to pay for tangible items to be sent to constituents which
5 featured a public official. However, the advertisements at issue here appeared in at least 24 different
6 issues of magazines at a cost of at least \$19,050, a higher amount than that at issue in *City of Upland*. In
7 aggravation, the advertisements at issue here appeared in magazines that produced approximately
8 852,000 publications, a higher amount than that at issue in *City of Upland*. Unlike *City of Upland*, the
9 County produced three advertisements that featured a public official. Therefore, a total penalty of \$9,000
10 is recommended; \$3,000 per count.

11 CONCLUSION

12 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
13 Respondent, County of Stanislaus, hereby agree as follows:

- 14 1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate
15 summary of the facts in this matter.
- 16 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
17 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 18 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
19 of reaching a final disposition without the necessity of holding an administrative hearing to
20 determine the liability of Respondents pursuant to Section 83116.
- 21 4. Respondent has consulted with its attorney, Thomas E. Boze, County Counsel for the
22 County of Stanislaus, and understands, and hereby knowingly and voluntarily waives, any and all
23 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
24 18361.9. This includes, but is not limited to the right to appear personally at any administrative
25 hearing held in this matter, to be represented by an attorney at Respondent’s own expense, to
26 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
27 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
28 hearing officer, and to have the matter judicially reviewed.

1 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
2 Respondent agrees to the Commission imposing against them an administrative penalty in the
3 amount of \$9,000. One or more cashier's checks or money orders totaling said amount – to be
4 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
5 payment of the administrative penalty described above, and same shall be held by the State of
6 California until the Commission issues its decision and order regarding this matter.

7 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
8 null and void, and within fifteen business days after the Commission meeting at which the
9 stipulation is rejected, all payments tendered by Respondent in connection with this stipulation
10 shall be reimbursed to Respondent. If this stipulation is not approved by the Commission, and if
11 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
12 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
13 this stipulation.

14 7. The parties to this agreement may execute their respective signature pages separately. A
15 copy of any party's executed signature page, including a hardcopy of a signature page
16 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.

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19 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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23 Dated: _____

_____, on behalf of
County of Stanislaus, Respondent

1 The foregoing stipulation of the parties “In the Matter of County of Stanislaus,” FPPC Case No.
2 17/325, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission