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

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 19/781

12 **STIPULATION, DECISION AND ORDER**

13 TUOLUMNE UTILITIES DISTRICT

Date Submitted to Commission: March 2024

14
15 Respondent.

16
17 **INTRODUCTION**

18 Respondent, Tuolumne Utilities District (the “District”) is a water utility district serving nearly
19 44,000 residents in Tuolumne County and makes educational services available to those residents.

20 The Political Reform Act (the “Act”)¹ prohibits the sending of a mass mailing newsletter by a
21 public entity featuring the photographs of elected officials at public expense. The District violated the
22 Act by producing and distributing newsletters that featured elected officials at public expense. This
23 complaint was received anonymously.

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27 ¹ The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections
28 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are
contained in Sections 18104 through 18998 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 2019. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
4 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 newsletter or
14 mailing is prohibited if all the following criteria are met:⁷

- 15
- 16 (1) An item sent is delivered, by any means, to the recipient at their residence, place of business, or
17 post office box. The item delivered to the recipient must be a tangible item, such as a written
document.
 - 18 (2) The item sent features an elected officer affiliated with the agency that 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,
or type color.⁸ A mailing containing the name, office, photograph, or other reference to an
elected officer who consults or acts in concert with the agency to prepare or send the mailing
also fulfills the second criteria.
 - 22 (3) Any of the costs of distribution are paid for with public moneys or the costs of design,
23 production, and printing exceeding \$50 are paid with public moneys, and is done with the intent
of sending the item other than as permitted by this section.
 - 24 (4) More than 200 substantially similar items are sent in a single calendar month, excluding any item
sent in response to an unsolicited request.

25 _____
26 ² Section 81001, subd. (h).

³ Section 81003.

27 ⁴ Section 81002, subd. (e).

⁵ Section 81002, subd. (f).

⁶ Section 89001.

28 ⁷ Section 89002, subd. (a).

⁸ Section 89002, subd. (c)(2).

1 **SUMMARY OF THE FACTS**

2 The District included an issue of its printed newsletter titled “On Tap” (“the newsletter”) with its
3 water bills to residents in Tuolumne County in January and February 2019. The last page of the four-
4 page newsletter, titled “General Manager’s Corner by Edwin R. Pattinson, email:
5 EPattinson@tudwater.com,” included a color photo of the District’s Board of Directors (“the Board”).
6 The text “TUD Board of Directors 2019” was superimposed on the photo. A caption listing the names of
7 five board members was included below the photo.

8 The District confirmed the Board was not consulted with, had prior knowledge of, or consented
9 to the use of the photo in the newsletter. An employee of the District administration coordinated with the
10 printing vendor, as well as the General Manager, Ed Pattinson, regarding including a photo of the Board
11 in the newsletter.

12 The District created, approved, and processed a total of 14,250 copies of the newsletter for a total
13 cost of \$2,198 (production, printing, and postage). No members of the Board were up for re-election in
14 2019, as there was no upcoming election in Tuolumne County in 2019.

15 In summary, the newsletter is considered a mass mailing under the Act, and the newsletter
16 featured photographs of one or more public officials. Therefore, the newsletter was printed and
17 distributed with public money exceeding \$50, in violation of the Act.

18 **VIOLATIONS**

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

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21 Between January 1, 2019 and February 28, 2019, the District produced a newsletter that featured
22 public officials and spent approximately \$2,198 in public money to print and mail this newsletter to
23 14,250 residents in Tuolumne County, in violation of Government Code Sections 89001 and 89002.

24 **PROPOSED PENALTY**

25 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
26 count. Thus, the maximum penalty that may be imposed here is \$5,000.⁹

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⁹Section 83116, subd. (c).

1 The type of violation in this case is not eligible for the Streamline Program.¹⁰

2 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
3 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
4 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
5 considers the facts and circumstances of the violation in the context of the following factors set forth in
6 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
7 by the specific violation; (2) The level of experience of the violator with the requirements of the
8 Political Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The
9 presence or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was
10 deliberate, negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
11 Commission staff or any other governmental agency in a manner not constituting complete defense
12 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
13 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
14 (8) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
15 full disclosure.¹¹

16 The public harm inherent in violations concerning mass mailings sent at public expense is that
17 the mailings may unfairly favor the featured public officials. The violation at issue here is mitigated
18 because none of the Board Members were up for re-election in 2019.

19 There was no evidence to support an intent to conceal, deceive or mislead the public as the
20 newsletter was clearly distributed by the District. The District cooperated with the Enforcement Division
21 throughout its investigation and provided all necessary information and supporting records. The
22 evidence does not show a pattern of violations as there was only one newsletter. The violations here
23 appear to be inadvertent as the District's staff were not aware of the rules concerning the prohibition of
24 mass mailings at public expense which feature an elected official. The District does not have a prior
25 record of violating the Act. There is no evidence the District consulted with Commission staff or any
26 other governmental agency prior to producing the newsletter at issue here.

28 ¹⁰ Regulations 18360.1, subd. (a), and 18360.3, subd. (a).

¹¹ Regulation 18361.5, subdivision (e).

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

3 *In the Matter of Compton Community College District; FPPC 22/975.* On or about October 19,
4 2022, Compton Community College District paid for and distributed a newsletter. The newsletter was
5 sent to over 33,000 district residents and featured photographs, names, and titles of five elected District
6 Board of Trustee members, three of whom were on the ballot in the November 8, 2022 General Election.
7 The total cost of the newsletter was \$36,767. On September 21, 2023, the Commission approved a
8 penalty of \$4,000.

9 A lesser penalty than in *Compton Community College District* is recommended. Like *Compton*
10 *Community College District*, the District mailed over 200 copies of a newsletter at public expense which
11 included the name and office of elected officials, namely the Board of Directors of the District.
12 Specifically here, 14,250 newsletters were mailed to residents, fewer residents than in *Compton*
13 *Community College District*. The total cost here was \$2,198, a substantially less amount than in
14 *Compton Community College District*. Additionally, in mitigation, unlike in *Compton Community*
15 *College District*, none of the board members were up for re-election in 2019.

16 After carefully considering the factors listed in Regulation 18361.5 and the assessed penalties in
17 prior applicable cases, a penalty of \$2,000 is recommended for Count 1, for a total penalty of \$2,000.

18 CONCLUSION

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 Respondent, Tuolumne Utilities District, hereby agree as follows:

- 21 1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate
22 summary of the facts in this matter.
- 23 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
24 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 25 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
26 of reaching a final disposition without the necessity of holding an administrative hearing to
27 determine the liability of Respondents pursuant to Section 83116.

1 4. Respondent has consulted with its attorney, Jesse W. Barton of Gallery and Barton, and
2 understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in
3 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes but is
4 not limited to the right to appear personally at any administrative hearing held in this matter, to
5 be represented by an attorney at Respondent's own expense, to confront and cross-examine all
6 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an
7 impartial administrative law judge preside over the hearing as a hearing officer, and to have the
8 matter judicially reviewed.

9 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
10 Respondent agrees to the Commission imposing against them an administrative penalty in the
11 amount of \$2,000. One or more cashier's checks or money orders totaling said amount – to be
12 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
13 payment of the administrative penalty described above, and same shall be held by the State of
14 California until the Commission issues its decision and order regarding this matter. Payment may
15 also be made via the Commission's online payment portal, with an added 3% processing fee
16 applied at the time of payment by a third-party processor.

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

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

27 8. The stipulation is not effective if one or more signatures are missing, or payment of the
28 proposed penalty has not been made in full.

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9. The party signing on behalf of the Respondent is authorized to enter this stipulation.

Dated: _____
James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
on behalf of
Tuolumne Utilities District
Respondent

1 The foregoing stipulation of the parties “In the Matter of Tuolumne Utilities District,” FPPC
2 Case No.19/781, is hereby accepted as the final decision and order of the Fair Political Practices
3 Commission, 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