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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11 In the Matter of:

12 YES ON Q! OAKLAND NEIGHBORS
13 FOR OUR PARKS AND PEOPLE,
14 SUSAN MONTAUK, AND STACY
15 OWENS,

16 Respondents.

FPPC Case No. 2020/00354

STIPULATION, DECISION AND ORDER

17 **INTRODUCTION**

18 Yes on Q! Oakland Neighbors for our Parks and People (“Committee”) was a primarily formed
19 committee formed to support a local measure that was on the March 3, 2020 ballot. Susan Montauk
20 (“Montauk”) served as the principal officer and Stacy Owens (“Owens”) served as the treasurer. This
21 case arose from a referral from City of Oakland Public Ethics Commission and was opened as a
22 Commission-initiated investigation. The Committee, Montauk, and Owens violated the Political Reform
23 Act¹ (“Act”) by failing to include correct disclosure statements on advertisements.

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

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

7 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
8 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
9 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
10 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
11 “vigorously enforced.”⁶

12 **Statement of Organization**

13 A recipient committee refers to a committee where a person or combination of persons receive
14 contributions totaling two thousand dollars (\$2,000) or more in a calendar year.⁷ A recipient committee
15 must file a statement of organization within 10 days of the committee reaching the \$2,000 threshold.⁸
16 The statement is required to include the name of the committee and in the case of a sponsored committee,
17 the name of the committee shall include the name of its sponsor.⁹ If there is a change to any of the
18 information contained in the statement of organization, an amendment shall be filed within 10 days to
19 reflect the change.¹⁰

20 A primarily formed ballot measure committee means a recipient committee which is formed or
21 exists primarily to support or oppose any of the following: a single candidate; a single measure; a group
22 of specific candidates being voted upon in the same city, county, or multicounty election; or two or more
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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 82013, subdivision (a).

⁸ Section 84101.

⁹ Section 84102, subdivision (a).

¹⁰ Section 84103, subdivision (a).

1 measures being voted upon in the same city, county, multicounty, or state election.¹¹ Within 30 days of
2 the designation of the numerical order of propositions appearing on the ballot, any committee which is
3 primarily formed to support or oppose a ballot measure shall, if supporting the measure, include the
4 statement, “a committee for Proposition ____,” in any reference to the committee required by law.¹²

5 **Sponsored Committee**

6 A sponsored committee means a committee, other than a candidate-controlled committee, that
7 has one or more sponsors. Any person, except a candidate other than an individual, may sponsor a
8 committee. A person sponsors a committee if any of the following apply: 1) The committee receives 80
9 percent or more of its contributions from the person or its members, officers, employees, or
10 shareholders; 2) the person collects contributions for the committee by use of payroll deductions or dues
11 from its members, officers, or employees; 3) the person, alone or in combination with other
12 organizations, provides all or nearly all of the administrative services for the committee; or 4) the
13 person, alone or in combination with other organizations, sets the policies for soliciting contributions
14 and making expenditures of committee funds.

15 Whenever identification of a sponsored committee is required by the Act, the identification shall
16 include the full name of the committee as required in its statement of organization. A sponsored
17 committee shall use only one name in its statement of organization.¹³

18 **Advertisement**

19 The Act generally requires that advertisements paid for by and distributed by committees must
20 include disclosure to allow the public to identify the responsible parties. Advertisement is defined to
21 mean any general or public communication that is authorized and paid for by a committee for the
22 purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure of
23 ballot measures.¹⁴ Advertisements, such as print mailings or flyers that are meant to be individually
24 distributed, paid for by a committee, other than a candidate controlled committee or political party
25 committee, must include the words “Ad paid for by” followed by the name of the committee as it
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27 ¹¹ Section 82047.5.

28 ¹² Section 84107.

¹³ Section 84106

¹⁴ Section 84501, subdivision (a)(1).

1 appears on the most recent Statement of Organization filed pursuant to Section 84101.¹⁵ Any
2 advertisement paid for by a committee, other than a candidate controlled committee or political party
3 committee, must include the words, “committee major funding from,” followed by the names of the top
4 contributors to the committee paying for the advertisement.¹⁶ If fewer than three contributors qualify as
5 top contributors, only those contributors that qualify shall be disclosed pursuant to this section.¹⁷ Top
6 contributor is defined as a person from whom the committee paying for the advertisement has received
7 its three highest cumulative contributions of fifty thousand dollars (\$50,000) or more.¹⁸

8 Disclosures in advertisements shall be updated when a new contributor qualifies as a top
9 contributor or if the order of top contributors changes. For print media advertisement, including
10 nonelectronic billboards, the disclosure shall be updated to reflect the new contributor before placing a
11 new or modified order to additional printing of the advertisement.¹⁹

12 **Format of Advertisement Disclosure**

13 A print advertisement designed to be individually distributed, including, but not limited to, a
14 mailer, flyer, or door hanger, that is paid for by a committee, other than a political party committee or a
15 candidate-controlled committee, shall include the required disclosures for the name of the committee
16 and the top contributors as follows:²⁰ The disclosure area shall have a solid white background and shall
17 be in a printed or drawn box on the bottom of at least one page that is set apart from any other printed
18 matter. All text in the disclosure area shall be in contrasting color and centered horizontally in the
19 disclosure area. The text shall be in an Arial equivalent type with a type size of at least 10-point. The top
20 of the disclosure area shall include the name of the committee and the top contributors, if applicable.
21 The text of the disclosure shall be underlined if there are any top contributors. The top contributors shall
22 each be disclosed on a separate horizontal line separate from any other text, in descending order,
23 beginning with the top contributor who made the largest cumulative contributions on the first line. The
24 name of each top contributors shall be centered horizontally in the disclosure are and shall not be

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26 ¹⁵ Section 84502, subdivision (a)(1).

27 ¹⁶ Section 84503.

28 ¹⁷ *Id.*

¹⁸ Section 84501, subdivision (c)(1).

¹⁹ Section 84509.

²⁰ Section 84504.2.

1 underlined. The names of the top contributors shall not be printed in a type that is condensed to be
2 narrower than a normal condensed Arial equivalent type.

3 For an advertisement that is 20 square inches or less, the advertisement need only disclose the
4 single top contributor.²¹

5 A print advertisement that is larger than those designed to be individually distributed, including,
6 not limited to, a yard sign or billboard, shall include disclosures in a printed or drawn box with a solid
7 white background on the bottom of the advertisement that is set apart from any other printed matter.
8 Each line of the written disclosures shall be in a contrasting color in Arial equivalent type no less than 5
9 percent of the height of the advertisement, and shall not be condensed to be narrower than a normal non-
10 condensed Arial equivalent type. The text may be adjusted so it does not appear on separate horizontal
11 lines, with the top contributors separated by a comma.²²

12 **Joint and Several Liability**

13 Any person who has a filing or reporting obligation under the Act may be found liable for
14 violating any provision of the Act, or who purposely or negligently cause any person to violate any
15 provision of the Act, or who aids and abets any other person in the violation of any provision of the
16 Act.²³ If two or more persons are responsible for any violation, they shall be held jointly and severally
17 liable.²⁴

18 Every committee must have a treasurer.²⁵ Committees must also identify a principal officer.²⁶
19 This individual is primarily responsible for approving the political activities of the committee, including,
20 but not limited to, authorizing the content of communications, authorizing expenditures, including
21 contributions, on behalf of the committee, and determining the committee's campaign strategy.²⁷ It is the
22 duty of the treasurer and the principal officer to ensure that the committee complies with all the
23 requirements of the Act.²⁸ For campaign reporting/filing obligations, the treasurer and the principal
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25 ²¹ *Id.* at subdivision (a)(7).

26 ²² Section 84504.2, subdivision (b).

27 ²³ Section 83116.5.

28 ²⁴ Sections 83116.5 and 91006.

²⁵ Section 84100.

²⁶ Section 84102, subdivision (c).

²⁷ Section 82047.6.

²⁸ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

1 officer are liable, along with the committee, for violations of the Act.²⁹ For advertising violations, the
2 committee placing the advertisements—and all persons acting in concert with the committee—are
3 liable.³⁰

4 **SUMMARY OF THE FACTS**

5 The Committee formed as a primarily formed ballot measure committee to support Measure Q, a
6 ballot measure that appeared on the March 3, 2020 ballot for the City of Oakland. The measure would
7 authorize the city to levy a parcel tax for 20 years and the funds raised would be used for parks and
8 recreation, homeless services, and water projects. The measure was successful, with approximately 68%
9 of voters approving the measure. The Committee reported that it raised \$213,432 and spent \$224,235 in
10 the calendar year 2020. The Committee has since terminated.

11 The Committee filed an initial Statement of Organization on December 10, 2019, indicating that
12 the Committee, named “Oakland Neighbors for our Parks and People, 2020” was primarily formed to
13 support a “Measure designed to improve Oakland parks and help provide programs, shelters and services
14 for unsheltered Oaklanders living on streets and in parks: TBD.” The Committee later filed an amended
15 Statement of Organization on December 16, 2019 to update the name of the Committee to, “Yes on Q!
16 Oakland Neighbors for our Parks and People.”

17 The Committee received a \$150,000 contribution from Kaiser Permanente (“Kaiser”) on January
18 21, 2020. As the contribution was more than \$50,000, Kaiser qualified as a top contributor to the
19 Committee and this information was required to be disclosed in all subsequent advertisements. Kaiser
20 was the only top contributor for the life of the Committee.

21 In addition to qualifying as a top contributor, Kaiser’s contribution exceeded 80% of all
22 contributions received by the Committee up to that date. Kaiser’s contribution maintained this status until
23 approximately February 24, 2020. Therefore, Kaiser qualified as a sponsor of the Committee and the
24 Committee was required to file an amendment to the Committee’s Statement of Organization required
25 under Section 84101 to disclose Kaiser as the sponsor and to include Kaiser Permanente in the name of
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27 ²⁹ Section 83116.5 and Regulation 18316.6.

28 ³⁰ Section 82047 [“person” includes any group of persons acting in concert] and 84510, subdivision (a) [imposing liability on any “person” who violations an advertising provision of the Act.] See also, Section 84505 [which applies not just to the committee placing the advertisement, but also to any “persons acting in concert with that committee.”]

1 the committee. This name was required to appear on campaign statements and advertisements where
2 disclosure was required until the sponsorship ended. The amendment to the Statement of Organization
3 was due on or by January 31, 2020.

4 In response to the complaint, the Committee was cooperative and filed the amendment on
5 February 24, 2020 to disclose Kaiser as a sponsor. The Committee later filed another amendment to
6 remove Kaiser as the sponsor of the committee on February 27, 2020.

7 The Committee caused two advertisements to be distributed that did not include any reference to
8 Kaiser Permanente as the sponsor or as the top contributor. On or around January 30, 2020, the
9 Committee produced a mass mailing. The disclosure statement read, "Paid by Oakland Neighbors for our
10 Parks and People, 2020" and included the committee address, and the committee identification number.
11 This disclosure failed to include the full name of the committee, "Yes on Q! Oakland Neighbors for our
12 Parks and People" and failed to include the phrase, "committee major funding from Kaiser Permanente."
13 In addition, the first line was required to be underlined, with the top contributor separated by a comma,
14 and the correct preface was "Ad paid for by." On or around February 5, 2020, the Committee caused a
15 newspaper advertisement to be printed. The disclosure statement read, "Paid for by Oakland for our
16 Parks and People, 2020" and included the committee address and the committee identification number.
17 This disclosure failed to include the full name of the committee, "Yes on Q! Oakland Neighbors for our
18 Parks and People," failed to state that the committee was sponsored, and failed to include the phrase,
19 "committee major funding from Kaiser Permanente." In addition, the first line was required to be
20 underlined, with the top contributor separated by a comma, and the correct preface was "Ad paid for by."

21 VIOLATIONS

22 **Count 1: Failure to Include Correct Disclosure Statements on Advertisements**

23 The Committee, Montauk, and Owens distributed a mailer on or around January 31, 2020 and a
24 newspaper advertisement on or around February 5, 2020. These advertisements failed to include the top
25 contributor information in the disclosure statement and exhibited errors in formatting. These errors were
26 in violation of Government Code Sections 84106, 84107, 84502, 84503, and 84504.2.

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1 **PROPOSED PENALTY**

2 This matter consists of one proposed count. The maximum penalty that may be imposed is \$5,000
3 per count.³¹ Therefore, the maximum penalty that may be imposed for the counts charged here is \$5,000.
4 In addition to this authority, the Commission may impose, under Section 84510, an administrative fine
5 up to three times the cost of an advertisement when it finds a violation of Section 84503, the requirement
6 to disclose a top contributor. The Committee spent \$44,646 on two advertisements that were required to
7 disclose a top contributor, a violation of Section 84503. Under Section 84510, the maximum penalty is
8 up to \$133,938. In this case, the Enforcement Division recommends against pursuing a penalty under
9 Section 84510 as there is no evidence to suggest that the omission was deliberate or that there was an
10 intent to conceal the top contributor, and there is evidence that the error was quickly corrected in
11 subsequent advertisements before the election.

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

25 This matter does not qualify for the streamline penalty program. While advertisement violations
26 are part of the streamline program, a committee is ineligible where the top contributor is not listed. Here,
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³¹ See Section 83116, subdivision (c.)

1 the Committee was required to include reference to a top contributor in at least five different
2 advertisements, but the top contributor was only included in three of these ads. In addition to the
3 proposed count, the Committee had other violations that are not being sought as separate counts but
4 instead are considered aggravation to the charged counts. As referenced above, the Committee failed to
5 timely amend the statement of organization to reflect that Kaiser Permanente was a sponsor due to the
6 contribution being at least 80% of the Committee's total contributions. In addition, the Committee caused
7 several advertisements to be distributed but the disclosure statements were not fully compliant under the
8 Act. Errors included: Failure to include the full and correct name of the committee as found on the
9 statement of organization, formatting errors such as failure to set the disclosure in a separate box, failure
10 to underline part of the disclosure statement when the disclosure included a top contributor, and the use
11 of the phrase "Paid by" instead of the required "Ad paid for by." These additional violations qualify for
12 the streamline program and are generally considered to be of lower public harm.

13 With respect to the first factor, the public harm is in the failure to identify the sponsor and the top
14 contributor in two advertisements. The Act promotes disclosure of large contributors to campaigns and
15 requires that these top contributors be referenced in advertisements. The Committee's failure to include
16 this information deprived the public of this disclosure. In mitigation, the Committee was responsive to
17 Enforcement's contacts. In addition, the disclosure statements on the advertisements included additional
18 information that would assist the public in researching more about the Committee, including a link to a
19 website and the Committee's identification number.

20 With respect to the second factor, Susan Montauk has served as the principal officer on at least
21 one committee prior to this action. Stacy Owens is a professional treasurer.

22 With respect to the third factor, the following cases were considered as comparable cases:

23 With respect to Count 1: *Committee in Support of Measure G 2018, and Michelle Perrault*, FPPC
24 No. 18/443 (The Commission approved a stipulation in this matter on October 18, 2019.) The
25 Commission imposed a penalty of \$3,000 for six advertisements that failed to comply with the
26 advertisement disclosure rules in some way. Some did not include any disclosure until the committee was
27 contacted by the Enforcement Division. In other ads, the committee's name on the advertisement did not
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1 match the committee's name on the statement of organization. In addition, the ads had formatting
2 compliance issues.

3 Here, unlike in the comparable case, all advertisements sent by this Committee included a
4 disclosure statement that allowed the viewer to understand the committee responsible for the
5 advertisement even though it was not fully compliant. In aggravation, the Committee here failed to
6 timely amend the statement of organization and had additional advertisement violations, including minor
7 formatting errors and failure to include the full name of the Committee as stated on the statement of
8 organization.

9 With respect to the fourth factor, the Enforcement Division did not find evidence to support a
10 finding that there was intent to conceal, deceive, or mislead. The evidence supports that the Committee
11 quickly made amendments and corrections when alerted to the error. These corrections were made before
12 the election. The Committee timely filed all campaign statements to report the large contribution from
13 Kaiser Permanente. The Committee fully and quickly cooperated with the Enforcement Division to bring
14 the Committee into compliance.

15 With respect to the fifth factor, the Enforcement Division did not find evidence to support a
16 finding that the violations were deliberate. The evidence supports that the violations were most likely
17 negligent. The Respondents demonstrated a willingness to make corrections before the election and
18 improved the disclosure on subsequent advertisements. The Respondents contend that the failure to
19 identify Kaiser as a sponsor was due to the timing of contributions. According to a statement made by the
20 Committee's campaign consultant, the Committee received pledges from additional contributors that
21 would have, if received timely, diluted the impact of Kaiser's contribution at the time of receipt. In total,
22 Kaiser Permanente's sponsorship lasted approximately one month, as the Committee continued to receive
23 contributions from other sources.

24 With respect to the sixth factor, there is no relevant information available for this factor.

25 With respect to the seventh factor, the violations appear to be isolated and limited to a single
26 election. Owens has prior enforcement history in the last five years but for an unrelated violation.
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1 With respect to the eighth factor, the Committee filed an amended statement of organization to
2 include disclosure of Kaiser as a sponsor after receiving information about the complaint from the
3 Enforcement Division.

4 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
5 penalty of \$3,000 is recommended for Count 1.

6 CONCLUSION

7 Complainant, the Enforcement Division of the Fair Political Practices Commission, and Yes on
8 Q! Oakland Neighbors for our Parks and People, Susan Montauk, and Stacy Owens hereby agree as
9 follows:

10 1. Respondents violated the Act as described in the foregoing pages, which are a true and
11 accurate summary of the facts in this matter.

12 2. This stipulation will be submitted for consideration by the Fair Political Practices
13 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

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

17 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
18 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
19 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
20 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
21 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
22 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
23 reviewed.

24 5. Respondents agree to the issuance of the decision and order set forth below. Also,
25 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
26 \$3,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
27 California—is/are submitted with this stipulation as full payment of the administrative penalty described
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1 above, and same shall be held by the State of California until the Commission issues its decision and
2 order regarding this matter.

3 6. If the Commission declines to approve this stipulation—then this stipulation shall become
4 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
5 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
6 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
7 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
8 Director, shall be disqualified because of prior consideration of 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 transmitted via fax
3 or as a PDF email attachment, is as effective and binding as the original.
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5 Dated: _____

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

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8 Dated: _____

Susan Montauk, individually and on behalf of
Yes on Q! Oakland Neighbors for our Parks and People

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11 Dated: _____

Stacy Owens, individually and on behalf of
Yes on Q! Oakland Neighbors for our Parks and People

1 The foregoing stipulation of the parties “Yes on Q! Oakland Neighbors for our Parks and People,
2 Susan Montauk, and Stacy Owens,” FPPC Case No. 2020-00354 is hereby accepted as the final decision
3 and order of the Fair Political Practices Commission, effective upon execution below 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
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