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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA  
9

10 In the Matter of:

11 CUPERTINO CHAMBER PAC and  
ANDREW WALTERS,

12 Respondents.  
13

FPPC Case No. 2016-20089

STIPULATION, DECISION AND ORDER

14 **INTRODUCTION**

15 Cupertino Chamber PAC (“Committee”) is a city general purpose committee. At relevant times,  
16 Andrew Walters (“Walters”) served as the treasurer. The Committee and Walters violated the Political  
17 Reform Act (the “Act”)<sup>1</sup> by failing to timely file two 24-hour independent expenditure reports and two 24-  
18 hour contribution reports.  
19

20 **SUMMARY OF THE LAW**

21 The Act and its regulations are amended from time to time. The violations in this case occurred in  
22 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they  
23 existed at that time—unless otherwise noted.  
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27 \_\_\_\_\_  
28 <sup>1</sup> 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 dollars (\$1,000) or more and is made for or against a specific candidate or measure involved in an election  
2 during the 90-day period preceding the date of the election or on the date of the election.<sup>11</sup>

3 For the November 8, 2016 General Election, the 90-day reporting period started on August 10,  
4 2016. Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for  
5 a statement shall be extended to the next regular business day.<sup>12</sup>

### 6 **Joint and Several Liability**

7 Every committee must have a treasurer.<sup>13</sup> Under the Act, it is the duty of the treasurer of a  
8 controlled committee to ensure that the committee complies with all the requirements of the Act concerning  
9 the receipt, expenditure, and reporting of funds.<sup>14</sup> The treasurer may be held jointly and severally liable,  
10 along with the committee, for violations committed by the committee.<sup>15</sup>

### 11 **SUMMARY OF THE FACTS**

12 The Committee has been a general purpose committee since 2007 and is sponsored by the Cupertino  
13 Chamber of Commerce. During the November 8, 2016 General Election, the Committee was responsible  
14 for producing three mass mailings in the last nine days before the election. Specifically, the Committee  
15 distributed mailings on October 31, 2016, November 1, 2016, and November 3, 2016 and spent  
16 approximately \$34,921. The three mailings each featured communications advocating for the support or  
17 opposition of candidates, city measures, and a county measure.

18 The three mailings advocated opposing the candidacy of Steven Scharf, a candidate running for  
19 Cupertino City Council. The three mailings advocated opposing the candidacy of Liang Chao, a candidate  
20 running for Cupertino Union School District. The first mailer also advocated supporting Measure B, a  
21 county measure to authorize a countywide sales tax in Santa Clara County for transportation needs. Steven  
22 Scharf and Liang Chao were successful candidates. Measure B passed.

23 This financial activity was reported by the Committee as independent expenditures on a 24-hour  
24 independent expenditure report. The report was faxed to the City of Cupertino on Friday, November 4,  
25 2016 at 7:44pm, as the City Clerk at the time did not yet accept electronic filings in 2016. The City Clerk,  
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27 <sup>11</sup> Section 82036.5.

<sup>12</sup> Regulation 18116, subdivision (a).

<sup>13</sup> 84100.

<sup>14</sup> Sections 81004, 84100, 84213, and Regulation 18427.

as per internal policy for receiving documents after business hours, marked the report as filed on the next business day, Monday, November 7, 2016.

Date of IE	Pro Rata Share/ Amount	In support of (S)/ In opposition of (O)	Due	Filed by Fax
Mailer 1	\$2,393	City Council candidate, Steven Scharf (O)	11/1/16	11/4/16
10/31/16	\$2,393	Cupertino Unified School District candidate, Liang Chao (O)		
Total:	\$2,393	County Measure B (S)		
	\$7,179			
Mailers 2	\$1,921	City Council candidate, Steven Scharf (O)	11/2/16	11/4/16
11/1/16	\$1,921	Cupertino Unified School District candidate, Liang Chao (O)		
Total:				
	3,842			
Mailer 3	\$1,903	City Council candidate, Steven Scharf (O)	11/4/16	11/4/16
11/3/16	\$1,903	Cupertino Unified School District candidate, Liang Chao (O)		
Total:				
	\$3,806			

The same three mailings also advocated opposing city Measure C and supporting city Measure D. This activity was reported as nonmonetary contributions to the primarily formed committee, No on C and Yes on D – Cupertino Neighbors, Educators, and the Cupertino Chamber of Commerce for the Sensible and Sustainable Revitalization of Vallco, with major funding by Sand Hill Property Company and Vallco Property Owner LLC. Measure C and Measure D were competing measures and related to development standards and the disposition of the Vallco Shopping District, owned by the Sand Hill Property Company. Both measures failed.

This activity was reported by the Committee as a non-monetary contribution on a 24-hour contribution report. The report was faxed to the City of Cupertino on Friday, November 4, 2016 at 7:44pm. The City Clerk, as per their internal policy for receiving documents after business hours, marked the report as filed on the next business day, Monday, November 7, 2016.

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Date of Non-Mon	Pro Rata Share/ Amount	In support of (S)/ In opposition of (O)	Due	Filed by Fax
Mailer 1 10/31/16	\$4,787	City Measure C (O) City Measure D (S)  Non-Mon to No on C and Yes on D (ID #1383796)	11/1/16	11/4/16
Mailer 2 11/1/16	\$7,687	City Measure C (O) City Measure D (S)  Non-Mon to No on C and Yes on D (ID #1383796)	11/2/16	11/4/16
Mailer 3 11/3/16	\$7,614	City Measure C (O) City Measure D (S)  Non-Mon to No on C and Yes on D (ID #1383796)	11/4/16	11/4/16

The Committee filed 24-hour reports prior to the election. As the Committee's only reportable activity for 2016 occurred in the last 16-days prior to the election, no pre-election statements were required for the November 8, 2016 General Election. As a result, the Committee's activity was not disclosed to the public until the day before the election, including the fact that the Sand Hill Property Company contributed \$25,000 after the mailers were ordered and distributed and that this amount constituted about 94% of the Committee's contributions in 2016. The Committee therefore sent the mailers without needing to disclose on the mailers that the developer had provided substantial funding for the mailers.

### VIOLATIONS

#### **Count 1: Failure to Timely File 24-Hour Independent Expenditure Reports**

The Committee and Walters failed to timely file two 24-hour independent expenditure reports to disclose independent expenditures totaling approximately \$4,787 due November 1, 2016 and \$7,687 due November 2, 2016 in violation of Section 84204.

#### **Count 2: Failure to Timely File 24-Hour Contribution Reports**

The Committee and Walters failed to timely file two 24-hour contribution reports to disclose contributions totaling approximately \$7,179 due November 1, 2016 and \$3,842 due November 2, 2016 in violation of Section 84203.

1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per count.  
3 Thus, the maximum penalty that may be imposed is \$10,000.<sup>16</sup>

4 In determining the appropriate penalty for a particular violation of the Act, the Commission  
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission  
6 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention  
7 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)  
8 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were  
9 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>17</sup>

10 Failure to timely file 24-hour contribution and independent expenditure reports can cause serious  
11 harm, as it deprives the public of timely disclosure of the Committee’s actions before an election. It is  
12 particularly egregious when the disclosure is required during the last 16-days before the election, as it is  
13 the only means of disclosure regarding late, potentially impactful advocacy just before votes are cast. The  
14 Committee sent out advertisements without having the cash on hand to pay for them and the interested  
15 party, Sand Hill Property Company, paid for a portion of the advertisements when it was too late to change  
16 the disclosure on the mailings. In mitigation, the Committee and Walters, have no prior enforcement history  
17 and Sand Hill Property Company was properly reported as a contributor on the 24-hour reports that were  
18 filed by fax on November 4, 2016. The required campaign statements were filed prior to the election.  
19 However, the Committee failed to include the required phrase “Paid for by” and did not include the exact  
20 name of the committee listed on the statement of organization on two of the three mailers. The return  
21 address for the mailers did list “Cupertino Chamber PAC” or “Cupertino Chamber of Commerce PAC.”  
22 This is not being pursued as a separate charge in consideration for this stipulated agreement but is  
23 considered an aggravating factor.

24 Additionally, the Commission considers penalties in prior cases with comparable violations. A  
25 recent similar case respect to Counts 1 and 2 is: *In the Matter of Tracy Firefighters Association PAC, Eric*  
26 *Oliveri, Carlos Hampton, Scott Byers, and Justin Lagasa*, FPPC Case No. 16/757. The respondents were  
27

28 <sup>16</sup> See Section 83116, subd. (c).

<sup>17</sup> Regulation 18361.5, subd. (d).

1 a sponsored city general purpose committee and failed to timely file four 24-hour contribution reports for  
2 six late contributions totaling \$11,914. On December 19, 2019, the Commission imposed a penalty of  
3 \$2,500.

4 Here, the Committee failed to timely file two 24-hour contribution reports disclosing a total of  
5 \$12,474 and two 24-hour independent expenditures reports disclosing a total of \$11,021. In mitigation, the  
6 two late filed reports were filed prior to the election, albeit after regular business hours on Friday. However,  
7 the untimely disclosure led to limited public notice that the mailers were supported by Sand Hill, a  
8 developer that would be impacted by the passing or failing of Measures C or D. Therefore, a penalty of  
9 \$2,500 for Counts 1 and 2 is justified.

10 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant  
11 facts, a penalty of \$5,000 is recommended against the Committee and Walters.

## 12 CONCLUSION

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
14 Respondent Cupertino Chamber PAC and Andrew Walters, hereby agree as follows:

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

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

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

22 4. Respondents have consulted with their attorney, Jim Sutton of the Sutton Law Firm, and  
23 understand, and hereby knowingly and voluntarily waive, all procedural rights set forth in Sections  
24 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the  
25 right to appear personally at any administrative hearing held in this matter, to be represented by an attorney  
26 at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the  
28 hearing as a hearing officer, and to have the matter judicially reviewed.

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

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

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

16       Dated: \_\_\_\_\_

\_\_\_\_\_  
Galena West, Chief of Enforcement  
Fair Political Practices Commission

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20       Dated: \_\_\_\_\_

\_\_\_\_\_  
Andrew Walters,  
Individually and on behalf of the Cupertino Chamber  
PAC

