

1 ANGELA J. BRERETON
Chief of Enforcement
2 BRIDGETTE CASTILLO
Senior Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 324-8787
5 Bcastillo@fppc.ca.gov

6 Attorneys for Complainant

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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 TOM HSIEH AND SAN FRANCISCANS
FOR A LIVABLE CITY, LED BY
13 NATIVE SON TOM A. HSIEH,
OPPOSING 13 CANDIDATES FOR
14 SFDCCC, PROUDLY SUPPORTED BY
SF ASSOCIATION OF REALTORS AND
15 ITS SMALL BUSINESS OWNER
MEMBERS,

16 Respondents.

FPPC Case No. 16/16795

STIPULATION, DECISION AND ORDER

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18 **INTRODUCTION**

19 Respondent Tom Hsieh was an incumbent member of the San Francisco Democratic County
20 Central Committee (“SFDCCC”) and was a successful candidate in the June 7, 2016 Primary Election
21 for SFDCCC in District 19. Hsieh’s controlled committee in connection with this election was Tom
22 Hsieh for San Francisco Democratic County Central Committee 2016 (“SFDCCC Committee”). In
23 addition, Hsieh controlled a primarily formed committee Respondent “San Franciscans for a Livable
24 City, Led by Native Son Tom A. Hsieh, Opposing 13 candidates for SFDCCC, Proudly Supported by
25 SF Association of Realtors and its Small Business Owner Members” (“Livable City Committee”). Hsieh
26 was named the Principal Officer of the Livable City Committee.
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1 The Political Reform Act (the “Act”)¹ requires all campaign contributions and expenditures to
2 be made from one designated campaign bank account, thus prohibiting a candidate from controlling a
3 primarily formed committee to support and oppose other candidates while the candidate has an open
4 candidate controlled committee for their own candidacy. Respondents Hsieh and the Livable City
5 Committee violated the Act by using a bank account for each controlled committee in violation of
6 Government Code section 85201.

7 **SUMMARY OF THE LAW**

8 All legal references and discussions of the law refer to the Act’s provisions as they existed at the
9 time of the violations.

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

11 When enacting the Political Reform Act, the people of the state of California found and declared
12 that previous laws regulating political practices suffered from inadequate enforcement by state and local
13 authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

14 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
15 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
16 practices are inhibited.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be
17 “vigorously enforced.”⁵

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¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory
references are to this code. The regulations of the Fair Political Practice Commission are contained in Sections 18110
through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

27 ² § 81001, subd. (h).

³ § 81003.

28 ⁴ § 81002, subd. (a).

⁵ § 81002, subd. (f).

1 Prohibition Against Candidate Controlled Primarily Formed Committees to Support or Oppose Other
2 Candidates

3 Under the one committee/one bank account provisions, the Act prohibits a candidate or
4 officeholder who controls a committee for his or her election or office from controlling a primarily
5 formed committee that makes contributions or independent expenditures to support or oppose other
6 candidates.⁶

7 Joint and Several Liability of Candidate, Principal Officer and Committee

8 Every committee must have a treasurer.⁷ It is the duty of a committee's treasurer to ensure that the
9 committee complies with all of the requirements of the Act concerning the receipt and expenditure of
10 funds and the reporting of such funds.⁸ A committee's treasurer and principal officer may be held jointly
11 and severally liable with the candidate and the committee for violations committed by the committee.⁹

12 **SUMMARY OF THE FACTS**

13 Hsieh was an incumbent member of the SFDCCC and was a successful candidate in the June 7,
14 2016 Primary Election for SFDCCC in District 19. Hsieh's controlled committee in connection with this
15 election was the SFDCCC Committee. In addition, Hsieh controlled the Livable City Committee, a
16 primarily formed committee supporting and opposing other candidates in the SFDCCC Primary Election,
17 including in District 19 in which he was a candidate. Hsieh was named the Principal Officer of the
18 Livable City Committee.

19 Hsieh is a political consultant. His business name is Hsieh & Associates. According to Hsieh,
20 there were 10 seats to be filled in the primary election for SFDCCC, and dozens of candidates for those
21 seats, many of whom had little name recognition. Hsieh stated he wanted to assist some of the less
22 known candidates and did not consider his candidacy, as he was well known and expected to win the
23 election. Consistent with this, the campaign materials prepared by the Livable City Committee did not
24 mentioned Hsieh's candidacy, although it did list his involvement by name in all campaign
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27 ⁶ Section 85201, and Reg. 18521.

⁷ § 84100.

⁸ § 84104 and Reg. 18427, subd. (a).

⁹ §§ 83116.5 and 91006.

1 communications so as to provide relevant information to the voters. In this matter, Hsieh controlled his
2 SFDCCC Committee as well as the primarily formed Livable City Committee supporting and opposing
3 candidates in the same election. Each committee had an open bank account at the same time, in violation
4 of the one bank account rule.

5 The Livable City Committee filed campaign statements with the San Francisco Ethics
6 Commission, as required. The Livable City Committee and Hsieh sent 4 mailers about one week prior to
7 the election, supporting and opposing candidates running in the SFDCCC, including in District 19. The
8 mailers made no reference to Hsieh's candidacy. The Livable City Committee spent about \$70,000,
9 primarily on the mailers and has since terminated.

10 **VIOLATION**

11 **Count 1**

12 *One Bank Account Rule Violation*

13 Hsieh controlled the Livable City Committee, a primarily formed committee to support and
14 oppose candidates in the same election as himself, at the same time he controlled the Tom Hsieh for San
15 Francisco Democratic County Central Committee 2016, in connection with the same election. The
16 Livable City Committee spent about \$70,000, primarily on mailers which included District 19 in which
17 he was a candidate. The Livable City Committee and Hsieh impermissibly used a separate campaign
18 bank account from the SFDCCC Committee, which was Hsieh's election committee, in violation of
19 Government Code Section 85201.

20 **PROPOSED PENALTY**

21 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
22 count.¹⁰ Thus, the maximum penalty that may be imposed is \$5,000.¹¹

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
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28 ¹⁰ Section 83116, subdivision (c).

¹¹ Section 83116, subd. (c).

1 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
2 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
3 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
4 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
5 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
6 staff or any other governmental agency in a manner not constituting complete defense under Government
7 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
8 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
9 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.¹²

10 This case does not qualify for the Streamline Program since 100% of the contributions and
11 expenditures for the Livable City Committee went through a separate bank account.

12 When considering the public harm factor, the Act requires that all contributions and expenditures
13 must go through one bank account, with the financial activity disclosed on campaign statements to
14 provide transparency in campaign activity and to easily monitor contribution limits. By using two
15 different bank accounts, it is difficult to track proper reporting and contribution limit violations. Local
16 contribution limits were not applicable in this matter.

17 In this matter, there was no evidence of an intent to conceal, deceive or mislead the public as to
18 Hsieh's involvement with the Livable City Committee, as his name was in the name of the Livable City
19 Committee and disclosed on the mailers sent. When considering if the violation was deliberate, negligent
20 or inadvertent, the Livable City Committee maintained proper records, allowing for review of the
21 financial activity of both committees he controlled. However, Hsieh has experience with the Act as a
22 political consultant and an incumbent member of the SFDCCC. Hsieh, through his attorney, did reach out
23 to Commission staff for guidance, although the guidance was sought after the violation occurred.
24 Additionally, Hsieh, the SFDCCC Committee and the Livable City Committee have no prior
25 enforcement history.

26 The Commission considers penalties in prior cases involving similar violations. *In the Matter of*

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¹² Regulation 18361.5, subdivision (e).

1 *Rossana Mitchell-Arrieta for Chino Hills City Council 2016, Rossana Mitchell-Arrieta, and Frank*
2 *Arrieta; FPPC No. 17/462*, approved by the Commission in December 2020. Rossana Mitchell-Arrieta
3 was an unsuccessful candidate for Chino Hills City Council in the November 8, 2016 General Election.
4 Rossana Mitchell-Arrieta for Chino Hills City Council 2016 was her candidate-controlled committee.
5 Frank Arrieta was the Committee's treasurer. The Committee, Mitchell-Arrieta, and Arrieta failed to pay
6 expenditures from the designated campaign bank account and failed to maintain adequate source
7 documentation for contributions and expenditures. The one bank account violation was approved by the
8 Commission for \$4,000.

9 In the *Mitchell-Arrieta* case, the Committee made a total of \$41,257 in expenditures with 63% of
10 those expenditures made from a bank account other than the Committee bank account. Further, in the
11 *Mitchell-Arrieta* case, Respondents failed to timely report campaign expenditures and failed to maintain
12 adequate records. The difference between the *Mitchell-Arrieta* case and this case is that Hsieh and the
13 Livable City Committee reported the campaign expenditures timely and maintained all records. Also,
14 Hsieh identified his involvement with the Livable City Committee in the name, on all disclaimers
15 appearing on campaign materials and did not promote his own candidacy in any campaign mailers. Hsieh
16 contends he only became involved in the Livable City Committee in order to prepare campaign materials
17 for other candidates and did not become involved with the Livable City Committee to promote his own
18 campaign.. Further, the Livable City Committee supported and opposed candidates in the same race as
19 Hsieh, providing a benefit to his campaign even if his candidacy was not referenced in the campaign
20 materials produced.

21 As such, a penalty in the amount of \$3,500 is recommended.

22 **CONCLUSION**

23 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
24 Respondents Tom Hsieh and San Franciscans for a Livable City, Led by Native Son Tom A. Hsieh,
25 Opposing 13 candidates for SFDCCC, Proudly Supported by SF Association of Realtors and its Small
26 Business Owner Members hereby agree as follows:

27 1. Respondents violated the Act as described in the foregoing pages, which is a true and
28 accurate summary of the facts in this matter.

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

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

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

14 5. Respondents agree to the issuance of the decision and order set forth below. Also,
15 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
16 \$3,500, as noted above. One or more payments totaling this amount—to be paid to the General Fund of
17 the State of California—is/are submitted with this stipulation as full payment of the administrative
18 penalty described above, and they will be held by the State of California until the Commission issues its
19 decision and order regarding this matter.

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

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

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Dated: _____

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

Dated: _____

Tom Hsieh, individually and on behalf of San
Franciscans for a Livable City, Led by Native Son Tom
A. Hsieh, Opposing 13 candidates for SFDCCC,
Proudly Supported by SF Association of Realtors and
its Small Business Owner Members, Respondents

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The foregoing stipulation of the parties “In the Matter of Tom Hsieh and San Franciscans for a Livable City, Led by Native Son Tom A. Hsieh, Opposing 13 candidates for SFDCCC, Proudly Supported by SF Association of Realtors and its Small Business Owner Members,” FPPC Case No. 16/16795, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission