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7  
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **OF THE STATE OF CALIFORNIA**

10  
11 In the Matter of:

OAH No. 2011050957

FPPC No. 09/773

12  
13 CHRIS NORBY, NORBY FOR  
14 SUPERVISOR, and BETTY PRESLEY,

**OPENING BRIEF OF THE ENFORCEMENT  
DIVISION OF THE FAIR POLITICAL  
PRACTICES COMMISSION RE: PROPOSED  
DECISION OF ADMINISTRATIVE LAW  
JUDGE RALPH DASH**

15  
16 Respondents.

17 **I. INTRODUCTION**

18 On December 8, 2011, Administrative Law Judge (“ALJ”) Ralph Dash (of the Los Angeles  
19 Office of Administrative Hearings) presided over the hearing of this matter.

20 Luisa Menchaca, Senior Commission Counsel, and Milad Dalju, Commission Counsel,  
21 represented Complainant.

22 Attorney Darryl Wold represented Respondents Chris Norby, Norby for Supervisor, and Betty  
23 Presley.

24 On February 14, 2012, the ALJ issued a proposed decision in favor of the Respondents.

25 On February 22, 2012, the Legal Division of the Fair Political Practices Commission  
26 (“Commission” or “FPPC”), caused a copy of the proposed decision to be served on the Enforcement  
27 Division and Respondents. (The proposed decision is attached hereto as Exhibit A.)

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1 Pursuant to California Code of Regulations, title 2, section 18361.9, the Enforcement Division  
2 submits this opening brief to set forth its position with respect to the proposed decision of the ALJ.  
3 Based upon the evidence introduced at the hearing, the Enforcement Division does not take issue with the  
4 proposed decision to the extent that it exonerates the committee and the committee treasurer. However,  
5 to the extent that the proposed decision exonerates the candidate for his personal use of campaign funds,  
6 the Enforcement Division respectfully recommends that the Commission reject the proposed decision and  
7 decide the case on the record for the reasons discussed below.

8 Accordingly, since it appears to the Enforcement Division that Respondent Chris Norby, alone,  
9 was responsible for the personal use violation in this case, Respondents Norby for Supervisor and Betty  
10 Presley (the committee treasurer) are hereby dismissed, and the remainder of this brief addresses the  
11 proposed decision of the ALJ only insofar as it concerns Respondent Chris Norby.

## 12 II. DISCUSSION

### 13 A. Summary of the Case

14 Currently, Respondent Chris Norby is a member of the California State Assembly for the 72<sup>nd</sup>  
15 district, but in 2007, at the time of the events giving rise to this case, he was a member of the Orange  
16 County Board of Supervisors. Respondent Norby for Supervisor was his controlled committee, and  
17 Respondent Betty Presley was the committee treasurer.

18 At the administrative hearing of this matter, Respondents were charged with the following  
19 violation of the Political Reform Act (the "Act"):<sup>1</sup>

20 COUNT 1: On or about August 14, 2007, Respondents Chris Norby, Norby for  
21 Supervisor, and Betty Presley, used campaign funds for purposes not  
22 directly related to political, legislative or governmental purposes where  
there was a substantial personal benefit to Respondent Chris Norby, in  
violation of Sections 89511.5, 89512, and 89513, subdivision (a).

23 The following facts were established at the hearing.

24 On August 1, 2007, Respondent Norby separated from his third wife and paid \$340, in advance,  
25 for one week of lodging at the Fullerton A Inn in Fullerton, California. Relative to this incident, a

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27 <sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the  
28 Government Code, unless otherwise indicated. The regulations of the Commission are contained in Sections 18110 through  
18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California  
Code of Regulations, unless otherwise indicated.

1 reporter for the Los Angeles Times later would quote Respondent Norby as saying, "Ever heard of the  
2 term the doghouse?"

3 On February 11, 2008, Respondents filed a semi-annual campaign statement for the period  
4 covering July 1 through December 31, 2007. The statement reflected that Respondent Norby was  
5 reimbursed \$340 for his stay at the Fullerton A Inn with campaign funds from his controlled committee,  
6 Norby for Supervisor. Schedule G of the campaign statement described the expense as: "1 Week Stay in  
7 Motel – Study Homeless & Motel Families."<sup>2</sup>

8 On March 7, 2008 (25 days after Respondent Norby's lodging reimbursement became a matter of  
9 public record), Tami Abdollah, the above-mentioned reporter for the Los Angeles Times, interviewed  
10 Respondent Norby about the relationship between his marital problems and his expense for lodging at the  
11 Fullerton A Inn.

12 The next day, Ms. Abdollah's article was published in the Los Angeles Times. The article is set  
13 forth in its entirety, as follows:

14 **O.C. supervisor reimburses campaign for 'study' expense**

15 *Chris Norby had said his personal stay at a hotel was for research on the homeless. He*  
16 *admits the error.*

17 **March 08, 2008** | Tami Abdollah | Times Staff Writer

18 Orange County Supervisor Chris Norby acknowledged Friday that he spent campaign  
19 funds to pay for a one-week stay at a Fullerton hotel last August because of marital  
20 problems, an expense he labeled a "study of homeless and motel families" on financial  
21 disclosure forms.

22 "I'm surprised it was on the campaign [account]; it should not have been," Norby said.  
23 "And I'm going to reimburse the campaign because I was there for personal stay."

24 Rumors have abounded about the colorful supervisor of the 4th District for the last several  
25 months as his marriage to his third wife, Marsha, came to an end. He spent a few days  
26 sleeping in his office, then one well-remarked-upon episode in a park, before checking  
27 into the Fullerton A Inn. He paid \$340 for the room at the bed and breakfast, according to  
28 his disclosure forms.

"Ever heard of the term the doghouse?" Norby said. "I mean, sometimes people need to  
reassess and look at things a different way. So that was a resident motel; they charge by  
the week."

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<sup>2</sup> Schedule E reflects that Respondent Norby was paid \$361.48 for office expenses. This included the lodging  
expense in the amount of \$340 (which is identified in Schedule G) as well as miscellaneous expenses in the amount of \$21.48.

1 He stayed from Aug. 1 to Aug. 7. On Aug. 6, Norby, whose personal life had already  
2 generated a fair amount of gossip, took a rest on a bed of grass in front of the Old Orange  
3 County Courthouse in Santa Ana and was roused by deputies. Rumors circulated that he  
4 had spent the night in a park because he had no place else to go.

5 Marsha Norby, who said she never told her husband to leave, expressed surprise Friday at  
6 his use of campaign funds for the hotel stay. "For as much as I've been through, he's not  
7 one to mismanage funds and do something inappropriate," she said.  
8 About an hour after he talked to The Times, Norby delivered a check to his treasurer,  
9 Betty Presley, to reimburse the campaign.

10 "It was a mistake, but it was hardly a junket to Paris," he said.

11 "But it was personal, and the campaign should not have been involved in it.

12 "I take full responsibility for this snafu, and [the campaign] has been reimbursed," Norby  
13 said. "People make mistakes and these things happen, and it's been taken care of."

14 But local government watchdog Shirley Grindle said Norby's misuse of campaign funds  
15 showed "incredibly poor judgment."

16 "He even tried to cover this up by claiming it was studying homeless people," Grindle  
17 said. "I mean it's only \$340; he should have never tried this."

18 Norby said that though the use of the funds was "mostly personal" he had also learned a  
19 lot about the homeless and motel families during his "informal study."

20 Norby has been a supervisor for five years and will finish his term in 2010. Previously, he  
21 was on the Fullerton City Council for 18 years.

22 Of his fellow supervisors, only Janet Nguyen could be reached for comment late Friday.

23 "This is the first time I've heard of this," she said. "I'm glad that he's decided to return the  
24 funds, but that's between him and his campaign treasurer."

25 This is not the first time Norby has run into trouble for violating campaign laws. In the  
26 fall of 2005 he and his campaign's then-treasurer, Michael DiCostanzo, were fined  
27 \$10,000 for violating four counts of the government code.

28 His most recent disclosure forms for the last half of 2007, however, were still missing  
information. His treasurer, Presley, said the "oversight" would be fixed and an amended  
disclosure filed.

Consistent with the article, on March 7, 2008, after Respondent Norby's interview was over, he  
set up a meeting with his treasurer and reimbursed his committee in the amount of \$340 for the lodging  
expense.

Also consistent with the article, on March 18, 2008, Respondents filed an amended semi-annual  
campaign statement (for the period covering July 1 through December 31, 2007) to remove the homeless  
study reference from Schedule G.

1           Additionally, on May 23, 2008, Respondents filed a preelection campaign statement for the  
2 period covering January 1 through May 17, 2008, which reported that as of March 7, 2008, Respondent  
3 Norby had refunded the lodging expense in the amount of \$340 to his committee.

4           At the administrative hearing, Respondent Norby contended that his lodging expense had nothing  
5 to do with his marital difficulties, and he could have stayed at home.<sup>3</sup> However, this is disingenuous. In  
6 the Los Angeles Times article, Respondent Norby refers to the term the “doghouse.” Also, he and Mrs.  
7 Norby did in fact get divorced, and their Marital Settlement Agreement reflected that they separated on  
8 the same day that he checked into the Fullerton A Inn (August 1, 2007). Additionally, it is beyond  
9 dispute that Respondent Norby was undergoing an “unfortunate personal situation” at the time. (See  
10 Respondents’ Brief for Administrative Hearing, relevant excerpt attached hereto as Exhibit B, p. 7, l. 14.)  
11 Also, Respondent Norby admitted at the hearing that his living situation was “indeterminate.”

12           Another thing Respondent Norby asserted at the hearing was that when he paid for *one week* of  
13 lodging at the Fullerton A Inn, the lodging expense was for a homeless study.<sup>4</sup> However, during the *week*  
14 of the alleged homeless study, Respondent Norby spent only *three nights* at the inn. Also, that same  
15 week, while he allegedly was studying homeless people in Fullerton, he spent \$74.68 at a restaurant at  
16 the Wilshire Grand Hotel in Los Angeles called Seoul Jung and \$136.35 at a restaurant known as  
17 Memphis at the Santora in Santa Ana.

18           Additionally, it does not appear from the record that Respondent Norby or his staff did anything  
19 to prepare for the alleged homeless study. For example, no documentary evidence was introduced to  
20 reflect that any background information was compiled on the issue of homelessness in preparation for the  
21 alleged study. In fact, no staff memos or other documents of any kind were introduced to show that  
22 Respondent Norby did any preparation whatsoever for his alleged study. Plus, it does not appear from  
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24           <sup>3</sup> In this regard, he relied upon the portion of the Los Angeles Times article where Marsha Norby, his third wife at the  
25 time, was described as saying that she never told him to leave. Also, he testified that she was gone for part of that week on a  
26 four-day trip, but the beginning and ending dates of that trip are not clear from the record.

27           <sup>4</sup> In support of this contention, Respondent Norby relied upon a written request for reimbursement that he gave to his  
28 campaign treasurer during or shortly after his stay at the Fullerton A Inn. The request included a receipt from the Fullerton A  
Inn for \$340 with a handwritten note that stated: “\$340 cash out-of-pocket re-imbusement. Fullerton Inn. 1-week stay to  
study homeless/motel residents & children in 4<sup>th</sup> District.” (He was reimbursed by his committee on approximately August  
14, 2012.) Also, Respondent Norby relied upon the portion of the Los Angeles Times article that stated: “Norby said that  
though the use of the funds was ‘mostly personal’ he had also learned a lot about the homeless and motel families during his  
‘informal study.’”

1 the record that any government officials were interviewed formally in connection with the alleged  
2 homeless study, as one would expect from a policymaker who is motivated enough by a policy issue to  
3 do field research. Along these lines, the record does not show that Respondent Norby interviewed any  
4 county housing officials to learn where he should stay to best evaluate county homeless programs or  
5 identify the full range of housing available to the homeless, such as shelters and other options.

6 Also, the day after Respondent Norby was interviewed by the Los Angeles Times reporter, the  
7 above-described article was published. The article stated (with emphasis added): “*Orange County*  
8 *Supervisor Chris Norby acknowledged Friday that he spent campaign funds to pay for a one-week stay at*  
9 *a Fullerton hotel last August because of marital problems*, an expense he labeled a ‘study of homeless  
10 and motel families’ on financial disclosure forms.” Also, the article went on to quote Respondent Norby  
11 as saying:

- 12 ➤ “I’m surprised it was on the campaign; it should not have been.”
- 13 ➤ “And I’m going to reimburse the campaign because I was there for personal stay.”
- 14 ➤ “It was a mistake, but it was hardly a junket to Paris.”
- 15 ➤ “But it was personal, and the campaign should not have been involved in it.”
- 16 ➤ “I take full responsibility for this snafu, and [the campaign] has been reimbursed.”
- 17 ➤ “People make mistakes and these things happen, and it’s been taken care of.”

18 All of these admissions explain why Respondent Norby contacted his treasurer to refund the  
19 lodging expense to his committee shortly after he was interviewed by the reporter for the Los Angeles  
20 Times. Also, these admissions explain why he subsequently filed an amended semi-annual campaign  
21 statement (for the period covering July 1 through December 31, 2007) to remove the homeless study  
22 reference from Schedule G, and why he filed a preelection campaign statement for the period covering  
23 January 1 through May 17, 2008, which reported that as of March 7, 2008, Respondent Norby had  
24 refunded the lodging expense in the amount of \$340 to his committee.

25 Additionally, at the hearing, Respondent Norby contended that he did not need to stay at the  
26 Fullerton A Inn during the first week of August 2007 because one of his ex-wives, Charlotte Chai, had

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1 made her home available to him.<sup>5</sup> Respondent Norby and Ms. Chai divorced in approximately 2001, but  
2 they have joint custody of a son, Alexander Norby. Evidence was introduced that in August 2007, Ms.  
3 Chai and her son were on vacation in China. Respondent Norby had driven them to the airport—where  
4 she gave her house key and garage door opener to Respondent Norby for house-sitting purposes. (Ex. A,  
5 p. 6.) Respondent Norby testified that during the week of his alleged homeless study, he spent only three  
6 nights at the Fullerton A Inn, and the rest of the nights he spent at Ms. Chai’s house because it was more  
7 comfortable.

8 However, the record is devoid of an important fact. It never was established that Ms. Chai’s  
9 home was available to Respondent Norby *at the time* he checked into the Fullerton A Inn on August 1,  
10 2007, which is when he paid in advance for one week. The most likely sequence of events is that  
11 Respondent Norby did not drive Ms. Chai to the airport and receive her house key *until some time after*  
12 he checked in at the inn and paid in advance. This would be consistent with Respondent Norby’s  
13 testimony that he spent only three nights at the inn, and the rest of the nights he slept at Ms. Chai’s house  
14 because it was a much nicer place to stay.

15 On this subject, Respondent Norby testified as follows, “I, I, I think I, I drove them to the airport  
16 ...the first day that I checked in. It was either that, I think it was that day, and so when I got back from  
17 the airport...well it, this was a long, long time ago, but I did stay there a couple of those nights I know at  
18 least.” Also, on this subject, Ms. Chai testified by telephone that she was traveling for the entire month  
19 of August 2007, but when she was questioned about what specific dates Respondent Norby would have  
20 stayed at her house, she testified that it was four years ago and she could barely remember. No plane  
21 ticket, passport, or the like ever was offered into evidence to clear up this issue.

22 Something else Respondent Norby asserted at the hearing was that if he needed to stay at a hotel,  
23 he could have afforded a much nicer place to stay than the Fullerton A Inn.<sup>6</sup> However, it is clear from the  
24 record that he had every reason to be frugal. He was about to get a divorce. He already had two ex-  
25 wives (and a son to support). By his own testimony, his living situation was “indeterminate.” He had no  
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27 <sup>5</sup> This was part of Respondent Norby’s argument that the only reason he checked into the inn was to conduct a  
homeless study—not because he needed a place to stay.

28 <sup>6</sup> Again, this was part of Respondent Norby’s argument that the only reason he stayed at the inn was to conduct a  
homeless study.

1 idea how long he would be in the “doghouse,” and an expensive hotel would become even more  
2 expensive with each passing day. Also, he testified that prior to becoming a county supervisor, his main  
3 source of income was from his job as a public high school history/government teacher.<sup>7</sup>

4 Another thing Respondent Norby contended at the hearing was that he typed up almost five pages  
5 of notes regarding his homeless study. However, when questioned, it came out that he actually did not  
6 type up these notes until after he was “found out” and interviewed by the reporter for the Los Angeles  
7 Times—more than seven months after his alleged homeless study at the Fullerton A Inn. Although  
8 Respondent Norby claimed that his typed notes were based on handwritten notes that he took previously  
9 (and personal observations), no such handwritten notes were offered into evidence at the hearing.<sup>8</sup>

10 Also, at the hearing, Respondent Norby testified that he published a story about his alleged  
11 homeless study in Norby Notes, an email newsletter that he sends to his constituents. At first, he stated  
12 that Norby Notes was published every couple of weeks, but later, he stated that it was published monthly  
13 (and at one point he said sporadically). Regardless of how frequently Norby Notes was published, the  
14 story about his alleged homeless study was not published until April 15, 2008—*well after* he was “found  
15 out” and interviewed by the reporter for the Los Angeles Times and *more than eight months after* his  
16 alleged homeless study at the inn.<sup>9</sup>

17 Additionally, at the hearing, Respondent Norby testified that he gave his above-described  
18 typewritten notes to a local newspaper, the Fullerton Observer, and the paper published a story about his  
19 alleged homeless study in mid-May 2008—which also was well after he was interviewed by the reporter  
20 for the Los Angeles Times. (Also, as stated above, the notes that he gave to the Fullerton Observer were  
21 not typed up until after his interview with the Los Angeles Times.)

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23 <sup>7</sup> Additionally, in the Los Angeles Times article, Respondent Norby’s third wife was quoted as saying (with emphasis  
24 added): “For as much as I’ve been through, *he’s not one to mismanage funds* and do something inappropriate.” These are the  
25 words of someone whose husband is very careful with money, which further explains why Respondent Norby did not stay at a  
26 more expensive hotel. Also, in this case, frugality explains Respondent Norby’s motive in running his personal lodging  
27 expenses through his campaign.

28 <sup>8</sup> Considering that Respondent Norby’s nearly five pages of typewritten notes were created in response to being  
“found out” by the reporter for the Los Angeles Times, it is highly unlikely that Respondent Norby would have thrown out or  
otherwise destroyed any underlying handwritten notes that might have helped corroborate his alleged homeless study. The  
Enforcement Division respectfully submits that the handwritten notes never existed because the homeless study was a sham.

<sup>9</sup> Also, the story in Norby Notes refers to Respondent Norby spending the night in a local homeless shelter, but  
according to the story, Respondent Norby did not spend the night there until the month *after* he was “found out” by the Los  
Angeles Times, which was approximately *eight months after* his stay at the Fullerton A Inn.



1 Respondent Norby admitted at the hearing that after his alleged homeless study, he did not make  
2 any recommendations to further pursue the issue of homelessness in his jurisdiction. Rather, he talked  
3 about “internalizing” the study experience, which affected his perception, which in turn affected his  
4 actions as a county supervisor. However, no specific examples were provided at the hearing, and from  
5 the record, it is clear that nothing was typed up or published about his alleged homeless study until after  
6 he was interviewed by the Los Angeles Times—at which point he became very concerned about political  
7 embarrassment.

8 In rendering his proposed decision, the ALJ admitted the article from the Los Angeles Times into  
9 evidence, but gave it little weight because—as he put it—the reporter had an agenda. The ALJ chose to  
10 believe the testimony of Respondent Norby over the Los Angeles Times article even though, as the ALJ  
11 put it, “Norby did ‘not remember’ *if* he told the reporter that he ‘was there [at the motel] for personal  
12 stay’ as the article quoted him as saying.” (Ex. A, p. 9. Emphasis added.)

13 Primarily, the ALJ gave little weight to the Los Angeles Times article because he did a drive-by  
14 inspection of the Fullerton A Inn and determined that the reporter’s characterization of the inn as a “bed  
15 and breakfast” was unfair. (Ex. A, pp. 6 and 11.) However, this fails to take into account that in the very  
16 next paragraph after referring to the inn as a “bed and breakfast,” the reporter used a quote from  
17 Respondent Norby to describe the inn as a “resident motel” that charged “by the week.”

18 Also, the ALJ’s proposed decision was based upon testimony of Respondent Norby and Ms. Chai  
19 to the effect that Respondent Norby had access to Ms. Chai’s house if he needed a place to stay.  
20 However, as stated above, Respondent Norby and Ms. Chai could not remember exact dates, and it was

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1 not established that Ms. Chai's home was available to Respondent Norby *at the time* that he checked in at  
2 the Fullerton A Inn (and paid in advance for one week).<sup>10</sup>

3 In closing, the ALJ determined that: (a) Respondent Norby could have stayed either at his own  
4 home or at Ms. Chai's house; (b) the Fullerton A Inn was not a nice place to stay; and (c) conducting a  
5 homeless study was the only reasonable conclusion as to why Respondent Norby would have stayed  
6 there. Accordingly, the ALJ's proposed decision found that Respondent Norby's stay at the inn was for a  
7 governmental purpose and not for his personal benefit. No personal use violation was found. (See Ex.  
8 A, pp. 12-13.)

9 **B. Enforcement Division's Position**

10 Regulation 18361.9 requires the Enforcement Division to submit this opening brief but does not  
11 mandate its contents. Rather, subdivision (b)(1) of that regulation provides that the Enforcement  
12 Division *may* address the following matters in its opening brief:

13 **1. Whether the facts stated in the proposed decision are consistent with the evidence**  
14 **presented.**

15 The Enforcement Division takes issue with the proposed decision's summary of the  
16 facts/evidence, as follows:

17 **a. Respondent Norby testified that his stay at the inn had nothing to do with his**  
18 **marital problems, and he could have stayed at home. The proposed decision**  
19 **should have included a finding that this was not true.**

20 At the administrative hearing, Respondent Norby contended that his lodging expense had nothing  
21 to do with his marital difficulties, and he could have stayed at home. However, this is disingenuous. In  
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23 <sup>10</sup> Additionally, to the extent that Ms. Chai attempted to help Respondent Norby with her testimony, the ALJ failed to  
24 take her clear bias into account. She had a close personal relationship with Respondent Norby. She testified that she remained  
25 on good terms with him because they shared custody of their son, and Respondent Norby house-sat for her every summer  
26 since their divorce in 2001. She was so biased in favor of Respondent Norby that at one point during her testimony, the ALJ  
27 had to ask her the same question ten different times in ten different ways because she was reluctant to say anything remotely  
28 unfavorable about Respondent Norby. (The questioning pertained to the condition in which Respondent Norby left her  
bathtub, and after being asked ten times by the ALJ, she finally admitted something about the cleanliness of the bathtub not  
being up to her standards, which is how she knew that he stayed at her house some time during the month of August 2007.)  
Since she testified by telephone, the ALJ was not able to observe her demeanor, and since the record of the hearing was by  
way of audio recording, the ALJ was in no better position to judge Ms. Chai's credibility/bias than would be anyone in the  
Legal Division that the Commission might delegate to review the record for the purpose of rendering the final decision in this  
case.

1 the Los Angeles Times article, Respondent Norby refers to the term the “doghouse.” Also, he and Mrs.  
2 Norby did in fact get divorced, and their Marital Settlement Agreement reflected that they separated on  
3 the same day that he checked into the Fullerton A Inn (August 1, 2007, which is when he paid in advance  
4 for one week). Additionally, it is beyond dispute that Respondent Norby was undergoing an “unfortunate  
5 personal situation” at the time. (See Respondents’ Brief for Administrative Hearing, relevant excerpt  
6 attached hereto as Exhibit B, p. 7, l. 14.) Also, Respondent Norby admitted at the hearing that his living  
7 situation was “indeterminate.” It simply no longer was feasible for him to stay in his marital home—  
8 which is consistent with what he told the Los Angeles Times—and his subsequent, self-serving testimony  
9 to the contrary shows a lack of credibility.

10 **b. The proposed decision should have included a finding that Respondent**  
11 **Norby’s stay at the Fullerton A Inn was not directly related to a homeless**  
12 **study.**

13 Another thing Respondent Norby asserted at the hearing was that when he paid for *one week* of  
14 lodging at the Fullerton A Inn, the lodging expense was for a homeless study. However, during the *week*  
15 of the alleged homeless study, Respondent Norby spent only *three nights* at the inn. Also, that same  
16 week, while he allegedly was studying homeless people in Fullerton, he spent \$74.68 at a restaurant at  
17 the Wilshire Grand Hotel in Los Angeles called Seoul Jung and \$136.35 at a restaurant known as  
18 Memphis at the Santora in Santa Ana. Stated another way, he barely spent any time at the Fullerton A  
19 Inn because he was busy elsewhere and dining at expensive restaurants in other cities.

20 Additionally, the day after Respondent Norby was interviewed by the Los Angeles Times  
21 reporter, the above-described article was published. The article stated (with emphasis added): “*Orange*  
22 *County Supervisor Chris Norby acknowledged Friday that he spent campaign funds to pay for a one-*  
23 *week stay at a Fullerton hotel last August because of marital problems, an expense he labeled a ‘study of*  
24 *homeless and motel families’ on financial disclosure forms.”* Also, the article went on to quote  
25 Respondent Norby as saying:

- 26 ➤ “I’m surprised it was on the campaign; it should not have been.”  
27 ➤ “And I’m going to reimburse the campaign because I was there for personal stay.”  
28 ➤ “It was a mistake, but it was hardly a junket to Paris.”



1 Respondent Norby did not drive Ms. Chai to the airport and receive her house key *until some time after*  
2 he checked in at the inn and paid in advance. This would be consistent with Respondent Norby’s  
3 testimony that he spent only three nights at the inn, and the rest of the nights he slept at Ms. Chai’s house  
4 because it was a much nicer place to stay.

5 On this subject, Respondent Norby testified as follows, “I, I, I think I, I drove them to the airport  
6 ...the first day that I checked in. It was either that, I think it was that day, and so when I got back from  
7 the airport...well it, this was a long, long time ago, but I did stay there a couple of those nights I know at  
8 least.” Also, on this subject, Ms. Chai testified by telephone that she was traveling for the entire month  
9 of August 2007, but when she was questioned about what specific dates Respondent Norby would have  
10 stayed at her house, she testified that it was four years ago and she could barely remember. No plane  
11 ticket, passport, or the like ever was offered into evidence to clear up this issue. Such a failure to produce  
12 stronger evidence should not be dismissed lightly. If such evidence existed, defense counsel would have  
13 jumped at the opportunity to introduce it at the hearing.

14 **d. The proposed decision should have included certain background information**  
15 **relative to Respondent Norby’s claim that he could have afforded a nicer**  
16 **hotel.**

17 Something else Respondent Norby asserted at the hearing was that if he needed to stay at a hotel,  
18 he could have afforded a much nicer place to stay than the Fullerton A Inn. However, it is clear from the  
19 record that he had every reason to be frugal. He was about to get a divorce. He already had two ex-  
20 wives (and a son to support). By his own testimony, his living situation was “indeterminate.” He had no  
21 idea how long he would be in the “doghouse,” and an expensive hotel would become even more  
22 expensive with each passing day. Also, he testified that prior to becoming a county supervisor, his main  
23 source of income was from his job as a public high school history/government teacher.

24 Additionally, in the Los Angeles Times article, Respondent Norby’s third wife was quoted as  
25 saying (with emphasis added): “For as much as I’ve been through, *he’s not one to mismanage funds* and  
26 do something inappropriate.” These are the words of someone whose husband is very careful or “tight”  
27 with money, which further explains why Respondent Norby did not stay at a more expensive hotel. Also,

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1 in this case, frugality explains Respondent Norby’s motive in running his personal lodging expenses  
2 through his campaign.

3           **e.     The proposed decision should have included a finding that Respondent**  
4                   **Norby’s alleged homeless study was a sham and that the article in the Los**  
5                   **Angeles Times triggered a series of attempts by Respondent Norby to make**  
6                   **the study retroactively appear legitimate.**

7           It does not appear from the record that Respondent Norby or his staff did anything to prepare for  
8 the alleged homeless study. For example, no documentary evidence was introduced to reflect that any  
9 background information was compiled on the issue of homelessness in preparation for the alleged study.  
10 In fact, no staff memos or other documents of any kind were introduced to show that Respondent Norby  
11 did any preparation whatsoever for his alleged study. Also, it does not appear from the record that any  
12 government officials were interviewed formally in connection with the alleged homeless study, as one  
13 would expect from a policymaker who is motivated enough by a policy issue to do field research. Along  
14 these lines, the record does not show that Respondent Norby interviewed any county housing officials to  
15 learn where he should stay to best evaluate county homeless programs or identify the full range of  
16 housing available to the homeless, such as shelters and other options.

17           Additionally, Respondent Norby contended at the hearing that he typed up almost five pages of  
18 notes regarding his homeless study. However, when questioned, it came out that he actually did not type  
19 up these notes until after he was “caught” and interviewed by the reporter for the Los Angeles Times—  
20 more than seven months after his alleged homeless study at the Fullerton A Inn. Although Respondent  
21 Norby claimed that his typed notes were based on handwritten notes that he took previously (and  
22 personal observations), no such handwritten notes were offered into evidence at the hearing.

23           Considering that Respondent Norby’s nearly five pages of typewritten notes were created in  
24 response to being “caught” by the reporter for the Los Angeles Times, it is highly unlikely that  
25 Respondent Norby would have thrown out or otherwise destroyed any underlying handwritten notes that  
26 might have helped corroborate his alleged homeless study. The Enforcement Division respectfully  
27 submits that the handwritten notes never existed because the homeless study was a sham.

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1 Also, at the hearing, Respondent Norby testified that he published a story about his alleged  
2 homeless study in Norby Notes, an email newsletter that he sends to his constituents. At first, he stated  
3 that Norby Notes was published every couple of weeks, but later, he stated that it was published monthly  
4 (and at one point he said sporadically). Regardless of how frequently Norby Notes was published, the  
5 story about his alleged homeless study was not published until April 15, 2008—*well after* he was  
6 “caught” and interviewed by the reporter for the Los Angeles Times and *more than eight months after* his  
7 alleged homeless study at the inn. Plus, the story in Norby Notes refers to Respondent Norby spending  
8 the night in a local homeless shelter, but according to the story, Respondent Norby did not spend the  
9 night there until the month *after* he was “caught” by the Los Angeles Times.

10 Additionally, at the hearing, Respondent Norby testified that he gave his above-described  
11 typewritten notes to a local newspaper, the Fullerton Observer, and the paper published a story about his  
12 alleged homeless study in mid-May 2008—which also was well after he was interviewed by the reporter  
13 for the Los Angeles Times. (Also, as stated above, the notes that he gave to the Fullerton Observer were  
14 not typed up until after his interview with the Los Angeles Times.)

15 All of these facts point to the inescapable conclusion that after Respondent Norby was “caught”  
16 by the reporter for the Los Angeles Times, he immediately undertook steps to make his alleged  
17 homeless study retroactively appear legitimate.

18 Even more telling is that Respondent Norby admitted at the hearing that after his alleged  
19 homeless study, he did not make any recommendations to further pursue the issue of homelessness in his  
20 jurisdiction. Rather, he talked about “internalizing” the study experience, which affected his perception,  
21 which in turn affected his actions as a county supervisor. No specific examples were provided at the  
22 hearing, and from the record, *it is clear that nothing was typed up or published about his alleged*  
23 *homeless study until after he was “caught” by the Los Angeles Times.*

24 Under these circumstances, the most reasonable explanation for Respondent Norby’s conduct is  
25 that his alleged homeless study was a sham, and when he was caught, he tried to make it look legitimate  
26 by typing up notes to be published in his email newsletter and the local paper.

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1           **2.     Whether the proposed decision contains an accurate statement and/or application of**  
2           **the law.**

3           The proposed decision correctly found that Respondent Norby’s lodging expense conferred a  
4 “substantial personal benefit” because it was more than \$200 and it was a direct personal benefit.  
5 (Section 89511, subd. (b)(3).) Also, the proposed decision correctly stated that since the expense  
6 conferred a substantial personal benefit, it was required to be “directly related to a political, legislative, or  
7 governmental purpose.” (Section 89512.)

8           However, the Enforcement Division takes issue with the proposed decision’s  
9 statement/application of the law in other regards, as follows:

10           **a.     The proposed decision should have more specifically stated how and why the**  
11           **Los Angeles Times article was admissible.**

12           The proposed decision properly stated that administrative hearsay may be used to support or  
13 explain other evidence, but may not, by itself, support a finding. Also, the proposed decision correctly  
14 stated that administrative hearsay, coupled with circumstantial evidence, may be sufficient to support a  
15 finding of fact. (See Ex. A, p. 10.)

16           Additionally, the proposed decision properly admitted the Los Angeles Times article into  
17 evidence, in its entirety, as administrative hearsay. (Ex. A, p. 4, fn. 4.) However, no explanation was  
18 provided as to the significance of the article insofar as it supplemented and explained nearly all of the  
19 circumstantial and direct evidence relied upon by the Enforcement Division in this case.

20           As discussed at great length hereinabove, the article supplements and explains other evidence to  
21 the effect that Respondent Norby checked into the Fullerton A Inn at the same time that his marriage  
22 ended. Also, in the article, Respondent Norby admitted to the personal use violation that is the subject of  
23 this action. This admission supplements and explains his conduct in immediately contacting his  
24 treasurer, refunding his committee, amending campaign statements, and typing up notes for publication  
25 in an attempt to retroactively make his alleged homeless study appear legitimate. All of these factors  
26 should have been considered and discussed in the proposed decision.

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1           **b.       The proposed decision arbitrarily applied rules regarding the credibility of**  
2           **witnesses without consideration of obvious problems with the defense**  
3           **testimony.**

4           Instead of elaborating upon the significance and relevance of the Los Angeles Times article, the  
5 proposed decision improperly downplayed and discounted the article.

6           In rendering the proposed decision, the ALJ admitted the article from the Los Angeles Times into  
7 evidence, but gave it little weight because—as he put it—the reporter had an agenda. The ALJ chose to  
8 believe the testimony of Respondent Norby over the Los Angeles Times article even though, as the ALJ  
9 put it, “Norby did ‘not remember’ *if* he told the reporter that he ‘was there [at the motel] for personal  
10 stay’ as the article quoted him as saying.” (Ex. A, p. 9. Emphasis added.)

11           Primarily, the ALJ gave little weight to the Los Angeles Times article because he did a drive-by  
12 inspection of the Fullerton A Inn and determined that the reporter’s characterization of the inn as a “bed  
13 and breakfast” was unfair. (Ex. A, pp. 6 and 11.) However, this fails to take into account that in the very  
14 next paragraph after referring to the inn as a “bed and breakfast,” the reporter used a quote from  
15 Respondent Norby to describe the inn as a “resident motel” that charged “by the week.”

16           Also, as discussed above, Respondent Norby’s credibility is highly questionable in light of his  
17 claim—in the face of overwhelming evidence to the contrary—that his stay at the inn had nothing to do  
18 with marital problems. However, this obvious credibility issue was not mentioned in the proposed  
19 decision when the ALJ discussed the rules regarding the credibility of witnesses. Rather, the proposed  
20 decision improperly focused on discounting the Los Angeles Times article.

21           **3.       Whether there is additional material evidence that could not, with reasonable**  
22           **diligence, have been discovered and presented at the administrative hearing.**

23           No such evidence is known to exist.

24           **4.       Which of the dispositions provided for in Government Code section 11517 is**  
25           **recommended by the Enforcement Division and why.**

26           Government Code section 11517, subdivision (c)(2), provides that within 100 days of the  
27 Commission’s receipt of the proposed decision, the Commission may do any of the following:

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- 1 • Adopt the proposed decision in its entirety.
- 2 • Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed  
3 decision.
- 4 • Make technical or other minor changes in the proposed decision and adopt it as the decision.  
5 However, action by the Commission in this regard is limited to “a clarifying change or a  
6 change of a similar nature that does not affect the factual or legal basis of the proposed  
7 decision.”
- 8 • Reject the proposed decision and refer the case back to the ALJ to take additional evidence  
9 and prepare a revised, proposed decision.
- 10 • Reject the proposed decision, and decide the case upon the record, including the transcript, or  
11 upon an agreed statement of the parties, with or without taking additional evidence. (By  
12 stipulation of the parties, the Commission may decide the case upon the record without  
13 including the transcript.) If the Commission chooses this option, all of the following  
14 provisions apply:
  - 15 (i) A copy of the record shall be made available to the parties.
  - 16 (ii) The Commission shall not decide the case without affording the parties the  
17 opportunity to present either oral or written argument. If additional oral evidence (as  
18 opposed to argument) is introduced before the Commission, no Commission member  
19 may vote unless the member heard the additional oral evidence, but the Commission  
20 has discretion as to whether or not additional oral evidence will be allowed to be  
21 presented.
  - 22 (iii) The authority of the Commission to decide the case in this regard includes the  
23 authority to decide some or all of the issues in the case.
  - 24 (iv) The Commission must issue its final decision not later than 100 days after rejection  
25 of the proposed decision (subject to an extension of time related to ordering a transcript  
26 of the hearing). If the Commission finds that a further delay is required by special  
27 circumstance, it shall issue an order delaying the decision for no more than 30 days and  
28 specifying the reasons therefor.

1 In this case, the Enforcement Division recommends that the Commission reject the proposed  
2 decision, and decide the case upon the record, including the transcript, either with or without taking  
3 additional evidence.

4 The public harm with respect to personal use violations is that they erode public confidence in our  
5 system of campaign contributions. In fact, *the restrictions on personal use are the only thing separating*  
6 *campaign contributions from bribery*. Without the restrictions on personal use, campaign contributions  
7 could be used for any purpose whatsoever. For this reason, violations involving personal use of  
8 campaign contributions are some of the most serious violations of the Political Reform Act, and it does  
9 not appear that the proposed decision of the ALJ gave this matter the level of consideration that it  
10 deserves.

11 The Commission may request that the Legal Division review the record for the purpose of  
12 drafting a final, written decision to be submitted to the Commission for its consideration. This is the  
13 course of action that the Enforcement Division recommends, and if the Commission agrees, the parties  
14 will have an opportunity to make argument to the Legal Division based upon specific citations to the  
15 record. In such case, the Enforcement Division is prepared to argue in favor of a penalty of at least  
16 \$3,000.

17 **5. Any other issue the Enforcement Division determines to be relevant.**

18 During the course of the hearing, the addresses of Respondent Norby's home, Ms. Chai's home,  
19 and the Fullerton A Inn came into evidence. It is important to note that the location of the Fullerton A  
20 Inn was convenient for Respondent Norby in that it was less than six miles from his marital home and  
21 less than six miles from Ms. Chai's home (with whom Respondent Norby shared custody of his son).  
22 (See Google Maps print-outs attached hereto as Ex. C and submitted pursuant to Regulation 18361.9,  
23 subd. (b)(1)(E), as "Any other issue the Enforcement Division determines to be relevant.")

24 **III. CONCLUSION**

25 For the foregoing reasons, it is respectfully submitted that the Commission should reject the  
26 proposed decision, and decide the case upon the record, including the transcript, either with or without

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1 taking additional evidence. If the Commission agrees, the Enforcement Division is prepared to argue in  
2 favor of a penalty of at least \$3,000.

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Dated: \_\_\_\_\_

FAIR POLITICAL PRACTICES COMMISSION

By: \_\_\_\_\_  
NEAL P. BUCKNELL  
Senior Commission Counsel  
Attorney for Complainant