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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 SCOTT KWONG FOR SAN MARINO
CITY COUNCIL 2015 and SCOTT
13 KWONG,

14 Respondents.

FPPC Case No. 2016-760

STIPULATION, DECISION, AND ORDER

15
16 INTRODUCTION

17 Scott Kwong (“Kwong”) was an unsuccessful candidate for San Marino City Council in the
18 November 3, 2015 General Election. Scott Kwong for San Marino City Council 2015 (the “Committee”)
19 was his controlled committee. Kwong served as the treasurer of the Committee from December 11, 2014
20 to its termination on or around December 31, 2015. The Committee and Kwong violated the Political
21 Reform Act (the “Act”)¹ by failing to timely file 24-hour contribution reports and by failing to timely report
22 a payment for a mailer.

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28 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
Government Code, unless otherwise indicated. 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 Title 2,
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. All legal references and discussions of
3 law are intended to be citations to statutes and regulations as they existed at the time of the violations.

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

5 When enacting the Political Reform Act, the people of California found and declared that previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³ One purpose
8 of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are
9 fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Along
10 these lines, the Act includes a comprehensive campaign reporting system.⁵

11 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
12 “vigorously enforced.”⁶

13 **Duty to Timely File 24-Hour Contribution Reports**

14 Under the Act, a late contribution is a contribution from a single source that a candidate or candidate
15 controlled committee receives, including a loan, totaling \$1,000 or more in the 90 days before the date of
16 the election.⁷ A candidate or controlled committee that receives a late monetary contribution shall report
17 this contribution on a 24-hour contribution report within of receipt. In 2015, the 90-day reporting period
18 for local candidates August 5, 2015 – November 2, 2015.⁸

19 **Duty to Timely Report Expenditures**

20 Under the Act, committees and candidates are required timely and accurately report the names,
21 address, and amount of expenditure of each payee that receives a cumulative of \$100 or more during the
22 reporting period.⁹

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24 ² Section 81001, subdivision (h).

25 ³ Section 81003.

26 ⁴ Section 81002, subdivision (a).

27 ⁵ Sections 84200, *et seq.*

28 ⁶ Section 81002, subdivision (f).

⁷ Former Section 84203. In 2016, the definition of late contribution was changed to include contributions that are received on the day of the election.

⁸ Fair Political Practices Commission, *When to File Campaign Statements: State and Local Filing Schedules*, <https://tinyurl.com/y5vg3kk6>.

⁹ Section 84211, subdivision (k).

1 **Candidate and Treasurer Liability**

2 Under the Act, it is the duty of the candidate and treasurer of a controlled committee to ensure that
3 the committee complies with all the requirements of the Act concerning the receipt, expenditure, and
4 reporting of funds.¹⁰ The candidate and treasurer may be held jointly and severally liable, along with the
5 committee, for violations committed by the committee.¹¹

6 **SUMMARY OF THE FACTS**

7 On November 3, 2015, Kwong finished last among candidates for the San Marino City Council
8 after receiving approximately 8% of the votes.¹² The Committee qualified on or around December 14,
9 2014. The campaign records reflect that Kwong loaned the Committee \$24,300 and only received one
10 additional contribution of \$200 from the 49th Assembly District Republican Central Committee.

11 24-Hour Contribution Reports

12 The Committee and Kwong were required to report \$16,800 on nine 24 hour reports prior to the
13 election. Kwong did not file any 24-hour reports, but of \$16,800 required to be report on 24-hour reports -
14 \$12,300 was reported on pre-election campaign statements that were filed prior to the election.

Contributor	Date Received /aggregated	Amount	Due	Reported Prior to Election
Kwong	August 6, 2015	\$1,000	August 7, 2015	Yes, on pre-election, but not on 497
Kwong	August 25, 2015	\$1,500	August 26, 2015	Yes, on pre-election, but not on 497
Kwong	September 3, 2015	\$1,000	September 4, 2015	Yes, on pre-election, but not on 497
Kwong	September 30, 2015	\$2,000	October 1, 2015	Yes, on pre-election, but not on 497
Kwong	October 6, 2015	\$5,000 (aggregated)	October 7, 2015	Yes, on pre-election, but not on 497
Kwong	October 9, 2015	\$1,600	October 12, 2015	Yes, on pre-election, but not on 497
Kwong	October 23, 2015	\$2,000	October 26, 2015 ¹³	Reported on semi-annual, but not due until after election.

26 ¹⁰ Sections 81004, 84100 84213, and Regulation 18427.

27 ¹¹ Sections 83116.5 and 91006.

28 ¹² Smart voter, *Council Member; City of San Marino Voter Information*, <https://tinyurl.com/y357218n>.

¹³ Regulation 18116 states, "...whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day."

Contributor	Date Received /aggregated	Amount	Due	Reported Prior to Election
Kwong	October 28, 2015	\$1,000 (aggregation of a \$300 loan received on October 26, 2015 and a loan of \$700 received on October 28, 2015)	October 29, 2015	Reported on semi-annual, but not due until after election.
Kwong	November 2, 2015	\$1,500	November 4, 2015	Reported on semi-annual, but not due until after election.
	Total:	\$16,600 (\$12,100 reported on pre-election statements prior to election.		

Reporting of Campaign Expenditures

The Committee and Kwong failed to timely report two payments totaling approximately \$648 to John Wong (“Wong”) for mailers that was paid during the pre-election period ending October 17, 2015. These payments were reported on the Committee’s semi-annual campaign statement ending December 31, 2015, but the evidence shows this was the incorrect reporting period, and that it was erroneously reported as an expenditure for campaign consulting.¹⁴

Kwong produced photos of the carbon copies of the checks made out to Wong, which showed that he wrote the checks on or around October 9, 2015,¹⁵ and described the payments in the memo section of the check as being a reimbursement for supplies.¹⁶ Kwong admitted to the Enforcement Division that these checks were to reimburse Wong for a mailer he had sent out on behalf of the Chinese American Citizens Alliance – Greater San Gabriel Valley Lodge (CACAA). Kwong contends that he did not find out about the mailer until a friend made him aware of its existence, and called Wong to let him know that he would be reimbursing him because he had not intended to have anyone help him with his campaign. Kwong also

¹⁴ The semi-annual statement was not due until after the election, and this payment was not disclosed anywhere else.

¹⁵ The checks posted on October 28, 2015.

¹⁶ Wong’s payments for the mailers were for postage and supplies at Costco.

1 alleged he was unsure of how to reimburse Wong or report it, which is why it is coded as a payment for
2 campaign consulting on his semi-annual campaign statement.

3 The Committee and Kwong also committed the following reporting violations: failed to report a
4 payment of \$963 made to Kwong on the pre-election statement ending on October 17, 2015, incorrectly
5 reported an expenditure of \$545 to Complete Printing twice – once on the statement ending on October 17,
6 2015 and once on the statement ending December 31, 2015¹⁷, and incorrectly reported that Kwong was
7 reimbursed \$487.47 on the statement ending December 31, 2015 - instead of the \$331 reflected in the
8 Committee's campaign records.

9 VIOLATIONS

10 Count 1: Failure to Timely File 24-Hour Contribution Reports

11 The Committee and Kwong failed to timely file six 24-hour contribution reports totaling \$12,100,
12 due on or around August 6, 2015, September 4, 2015, October 1, 2015, October 7, 2015, and October 12,
13 2015, in violation of Government Code Section 84203.

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

15 The Committee and Kwong failed to timely file three 24-hour contribution reports totaling \$4,500,
16 due on or around October 26, 2015, October 29, 2015, and November 3, 2015 in violation of Government
17 Code Section 84203.

18 Count 3: Failure to Timely Report an Expenditure

19 The Committee and Kwong failed to report a payment of \$963 made to Kwong on the pre-election
20 statement ending on October 17, 2015.

21 The Committee and Kwong failed to timely report two expenditures totaling approximately \$648
22 to Wong on the pre-election ending on October 17, 2015. The Committee and Kwong incorrectly reported
23 an expenditure of \$545 to Complete Printing twice – once on the statement ending on October 17, 2015
24 and once on the statement ending December 31, 2015 statement covering the reporting period ending on
25 October 17, 2015.

26 The Committee and Kwong incorrectly reported that Kwong was reimbursed approximately
27 \$486.57 on the campaign statement ending December 31, 2015 - instead of the \$331 (over reported by
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¹⁷ This expenditure was correctly reported on the campaign statement ending October 22, 2015.

1 \$155.57) reflected in the Committee's campaign records.

2 In this way, the Committee and Kwong violated of Government Code Section 84211.

3 **PROPOSED PENALTY**

4 This matter consists of three counts. The maximum penalty that may be imposed is \$15,000.¹⁸

5 In determining the appropriate penalty for a particular violation of the Act, the Commission
6 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
7 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
8 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
9 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
10 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁹

11 In this case, the facts suggest that the failure to timely file the 24-hour late contribution reports was
12 negligent, as opposed to intentional or with an intent to conceal because the all of them were timely reported
13 on the appropriate semi-annual campaign statement with approximately 72% being reported prior to the
14 election. The Committee and Kwong have not previously been penalized by the Enforcement Division.

15 A recent case approved by the Commission on February 21, 2019 regarding a failure to timely file
16 24-hour contributions was *In the Matter of Committee for Yes on Measure B, Sunder Ramani, and Mary*
17 *Alvord*, FPPC No. 16/20101. In Counts 2 and 3, the Commission approved a penalty of \$2,000 per count
18 against the Committee, Ramani, and Alvord for failing to timely file a 24-hour contribution report for eight
19 different late contributions, amounting to \$94,000, received during the reporting period of July 1, 2016 to
20 September 24, 2016; and seven different late contributions, amounting to \$32,500, received during the
21 reporting period of September 25, 2016 to October 22, 2016. These contributions were all timely reported
22 on pre-election statements filed before the election. In Count 4, the Commission approved a penalty of
23 \$2,500 against the Committee Ramani, and Alvord for failing to timely file a 24-hour contribution report
24 for five different late contributions, amounting to \$24,000, received during the reporting period of October
25 23, 2016 to December 2016. The contributions in Count 4 were timely reported on the appropriate semi-
26 annual campaign statement, but it was not due until after the election. Therefore, the five contributions,

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¹⁸ Section 83116, subdivision (c).

¹⁹ Regulation 18361.5, subdivision (d).

1 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
2 respondents the Committee and Kwong hereby agree as follows:

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

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

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

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

17 5. Respondents agree to the issuance of the decision and order set forth below. Also,
18 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
19 \$5,000. One or more payments totaling this amount—to be paid to the General Fund of the State of
20 California—is/are submitted with this stipulation as full payment of the administrative penalty described
21 above, and same shall be held by the State of California until the Commission issues its decision and order
22 regarding this matter.

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

