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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

10 In the Matter of:

11
12 CUPERTINO RESIDENTS FOR
SENSIBLE ZONING ACTION
13 COMMITTEE; YES ON C FOR
CITIZENS, NO ON D FOR DEVELOPER
14 – COMMITTEE SUPPORTING
CUPERTINO CITIZENS’ SENSIBLE
15 GROWTH INITIATIVE; XIAOWEN
WANG; AND XIANGCHEN XU,

16 Respondents.

FPPC Case No. 2016/20077

STIPULATION, DECISION AND ORDER

17
18 **INTRODUCTION**

19 Respondent committee, Cupertino Residents for Sensible Zoning Action Committee (“CRSZ – Gen
20 Purpose Committee”) was a general purpose committee formed in the city of Cupertino and was active in
21 2015, 2016, and part of 2017. Respondent committee, Yes on C for Citizens and No on D for Developer –
22 Committee Supporting Cupertino Citizens’ Sensible Growth Initiative (“CCSGI – Primarily Formed
23 Committee”) was a primarily formed ballot measure committee formed to support and oppose local City
24 of Cupertino ballot measures voted on during the November 8, 2016 General Election. At all relevant
25 times, Respondent Xiaowen Wang (“Wang”) was named as the treasurer and Respondent Xiangchen Xu
26 (“Xu”) was named as the principal officer for both respondent committees. CRSZ – Gen Purpose
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1 Committee, CCSGI – Primarily Formed Committee, Wang, and Xu violated the Political Reform Act¹
2 (“Act”) by failing to timely file pre-election campaign statements and by failing to maintain campaign
3 records.

4 **SUMMARY OF THE LAW**

5 All statutory references and discussions of law pertain to the Act’s provisions as they existed at the
6 time of the violations.

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

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

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

16 **Mandatory Filing of Campaign Statements**

17 At the core of the Act’s campaign reporting system is the requirement that committees file
18 campaign statements and reports for certain reporting periods, by certain deadlines, and including certain
19 information.⁷ The Act requires a city general purpose committee to file pre-election campaign statements
20 prior to elections if it makes contributions or independent expenditures totaling five hundred dollars (\$500)
21 or more in connection with a city election in the committee’s jurisdiction during the period covered by the
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24 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
25 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
26 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
27 are to this source.

28 ² Section 81001, subdivision (h).

³ Section 81003.

⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Sections 84200, *et seq.*

1 pre-election statements.⁸ In connection with the 2016 General Election held on November 8, 2016, the first
2 pre-election campaign statement was due by September 29, 2016 and covered the period from July 1, 2016
3 through September 24, 2016 and the second pre-election campaign statement was due by October 27, 2016
4 and covered the period from September 25, 2016 through October 22, 2016.

5 **Recordkeeping Requirements**

6 Treasurers and principal officers have a duty to maintain detailed accounts, records, bills, and
7 receipts necessary to prepare campaign statements and establish campaign statements were properly filed.⁹
8 This duty includes maintenance of detailed information and original source documentation for a period of
9 four years following the date the campaign statement to which they relate is filed.¹⁰ Examples of original
10 source documentation that must be maintained include copies of bills, receipts, and invoices for
11 expenditures of \$25 or more.¹¹

12 **Treasurer and Principal Liability**

13 Under the Act, it is the duty of the treasurer and principal officer of a committee to ensure that the
14 committee complies with all the requirements of the Act concerning the receipt, expenditure, and reporting
15 of funds.¹² The principal officer and treasurer may be held jointly and severally liable, along with the
16 committee, for violations committed by the committee.¹³

17 **SUMMARY OF THE FACTS**

18 A group of Cupertino locals organized the general purpose committee, CRSZ – Gen Purpose
19 Committee, for the purpose of “engaging residents and our city government to balance growth and quality
20 of life for residents of Cupertino.” This committee filed a statement of organization, indicating that the
21 committee qualified on or around March 17, 2015. For the life of the committee, the CRSZ – Gen Purpose
22 Committee reported \$35,499 in contributions and \$31,477 in expenditures.

23 One of the efforts of the CRSZ – Gen Purpose Committee was to qualify a ballot measure to be
24 voted upon by the voters of City of Cupertino. This measure was designated as Measure C, an initiative
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26 ⁸ Section 84200.5, subdivision (e).

27 ⁹ Section 84104.

¹⁰ Regulation 18401.

¹¹ Regulation 18401, subdivision (a)(4).

¹² Sections 81004, 84100, 84104, 84213, and Regulation 18427.

¹³ Sections 83116.5 and 91006.

1 that established clear citywide standards for development and disposition of the Vallco Shopping District
2 and would require voters to approve subsequent changes to development ordinances if passed. This
3 measure was voted upon during the November 8, 2016 General Election. An opposing measure was also
4 considered on the same ballot, Measure D and largely concerned the redevelopment of the Vallco Shopping
5 District. Both measures failed. The organizers behind CRSZ – Gen Purpose Committee also opened a
6 primarily formed ballot measure committee, CCSGI – Primarily Formed Committee, which qualified as a
7 committee on or around December 22, 2015 and was formed to support Measure C and oppose Measure
8 D. For the life of the committee, the CCSGI – Primarily Formed Committee reported \$99,593 in
9 contributions and \$99,114 in expenditures.

10 Failure to File Campaign Statements – CRSZ – Gen Purpose Committee

11 The CRSZ – Gen Purpose Committee’s activity triggered a duty to timely file pre-election
12 campaign statements with respect to the November 8, 2016 General Election. Specifically, the CRSZ –
13 Gen Purpose Committee made a \$1,098 contribution to the CCSGI – Primarily Formed Committee in the
14 form of yard signs in support of Measure C. As a result, the CRSZ – Gen Purpose Committee was required
15 to timely file a campaign statement for the reporting period of July 1, 2016 through September 24, 2016
16 by the deadline of September 29, 2016 and to timely file a campaign statement for the reporting period of
17 September 25, 2016 through October 22, 2016 by the deadline of October 27, 2016. Instead, the CRSZ –
18 Gen Purpose Committee filed a semiannual statement covering the period July 1, 2016 through December
19 31, 2016 on January 31, 2017. The total activity that was not timely disclosed over the two pre-election
20 reporting periods included \$9,991 in contributions and \$3,842 in expenditures.

21 Failure to Maintain Adequate Records to Substantiate Reporting – Both Respondent Committees

22 Both committees, having been run by the same treasurer and consisting of a loosely organized
23 coalition of volunteers empowered to make expenditures on behalf of the committees, failed to maintain
24 the required records necessary to properly file campaign statements or to substantiate the reporting. The
25 two committees produced numerous documents to support the reporting, including some copies of
26 advertisements showing proper disclosure, bank statements, some records regarding expenditures, some
27 receipts and invoices, and other proofs of payment. However, for both CRSZ – Gen Purpose Committee
28 and CCSGI – Primarily Formed Committee, the treasurer could not produce complete records necessary

1 to fully substantiate the reporting. Such absent records included copies of all canceled checks issued by the
2 committees; source documents for committee expenditures, including receipts and invoices for
3 reimbursements of volunteer agents, and proofs of all advertisements distributed by or at the behest of the
4 committees. The failure to keep complete records impeded the ability of the Enforcement Division to fully
5 reconcile the campaign reporting with the records or to determine if other violations occurred, such as
6 advertisement disclosure or timely reporting of all committee activity.

7 **VIOLATIONS**

8 ***As to the General Purpose Committee, Cupertino Residents for Sensible Zoning Action Committee:***

9 Count 1: Failure to Timely File Pre-election Campaign Statements

10 The CRSZ – Gen Purpose Committee, Wang, and Xu failed to timely file a pre-election campaign
11 statement for the reporting period July 1, 2016 through September 24, 2016 by the deadline of September
12 29, 2016 and a pre-election campaign statement for the reporting period of September 25, 2016 through
13 October 22, 2016 by the deadline of October 27, 2016, in violation of Government Code section 84200.5.

14 Count 2: Failure to Maintain Campaign Records

15 The CRSZ – Gen Purpose Committee, Wang, and Xu failed to maintain adequate source
16 documentation and records sufficient to substantiate the reporting for the reporting periods occurring
17 between March 6, 2015 through December 11, 2017, in violation of Government Code section 84104 and
18 Regulation 18401.

19 ***As to the Primarily Formed Committee, Yes on C for Citizens, No on D for Developer – Committee***

20 ***Supporting Cupertino Citizens for Sensible Growth Initiative:***

21 Count 3: Failure to Maintain Campaign Records

22 The CCSGI – Primarily Formed Committee, Wang, and Xu failed to maintain adequate source
23 documentation and records sufficient to substantiate the reporting for the reporting periods occurring
24 between December 22, 2015 through December 27, 2016, in violation of Government Code section 84104
25 and Regulation 18401.

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28 **PROPOSED PENALTY**

1 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
2 count.¹⁴ Thus, the maximum penalty that may be imposed here is \$15,000.

3 In determining the appropriate penalty for a particular violation of the Act, the Commission
4 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
5 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
6 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
7 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
8 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁵

9 The two committees, Wang, and Xu have no prior record of violations of the Act. The respondents
10 stated, and Enforcement confirmed, that they sought out information from the Fair Political Practices
11 Commission's informal email advice regarding the requirements of the Act. Specifically, they asked about
12 whether their general purpose city committee was considered a nonprofit; foreign contributions for local
13 elections; returning contributions; and at which point they would stop being considered a general purpose
14 committee. The violations appear to be negligent, as opposed to inadvertent or deliberate. The violations
15 do not appear to be made with the intent to conceal, deceive, or mislead. In general, the respondents appear
16 to have made a good faith effort to comply with the law, including filing campaign statements, reporting
17 the vast majority of the committee's activity prior to the election, and including disclosures on most
18 advertisements. The errors appear to be the result of a lack of organization amongst volunteers and a lack
19 of familiarity with the Act.

20 The Commission also considers comparable cases. With respect to Count 1, *In the Matter of*
21 *Citizens for Kain – Assembly '14, Palmer Kain, Jay Mosley, and Marc Baylen*, FPPC Case No. 16/467.
22 (The Commission approved a stipulation in this matter on October 17, 2019). The respondents failed to
23 timely file two pre-election campaign statements until after the pertinent election. The amount that was
24 untimely reported was approximately \$5,550 in contributions and \$4,212 in expenditures. The Commission
25 imposed a penalty of \$2,000 for this count. Here, the CRSZ – Gen Purpose Committee's reported
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¹⁴ Section 83116, subdivision (c).

¹⁵ Regulation 18361.5, subdivision (d).

1 contributions were approximately \$9,991 and reported expenditures were approximately \$3,842 for the
2 same period. Therefore, a penalty of \$2,000 is recommended.

3 With respect to Counts 2 and 3: *In the Matter of Citizens for Kain – Assembly '14, Palmer Kain,*
4 *Jay Mosley, and Marc Baylen*, FPPC Case No. 16/467. (The Commission approved a stipulation in this
5 matter on October 17, 2019). The respondents failed to maintain adequate documentation to support the
6 reporting for \$9,856 in contributions and \$13,782 in expenditures and inhibited the investigation of
7 potential violations, including cash contributions and determining the political, legislative, or
8 governmental purpose of some expenditures. The Commission imposed a penalty of \$1,500.

9 For Count 2 against the CRSZ – Gen Purpose Committee, the failure to maintain adequate
10 documentation inhibited the investigation of advertisement disclosures, whether all contributions and
11 expenditures were timely reported, and whether all 24-hour contribution reports were filed. The total
12 reported activity over the life of the committee was approximately \$35,499 in contributions and \$31,477
13 in expenditures. The records regarding the contributions were largely complete, however, the records
14 regarding expenditures lacked source documentation and other supporting records. In aggravation but not
15 being charged here, the CRSZ – Gen Purpose Committee failed to timely file two 24-hour contribution
16 reports, disclosing about \$2,165 late but prior to the election. Given the length of time and the size of the
17 committee, a penalty of \$2,000 is recommended.

18 For Count 3, against the CCSGI – Primarily Formed Committee, the failure to maintain adequate
19 documentation inhibited the investigation of advertisement disclosures, whether all contributions and
20 expenditures were timely reported, and whether all 24-hour contribution reports were filed. The total
21 reported activity over the life of the committee was approximately \$99,593 in contributions and \$99,114
22 in expenditures. Given the length of time and the size of the committee, a higher penalty is justified. The
23 records regarding the contributions were largely complete, however, the records regarding expenditures
24 lacked source documentation and other supporting records. In aggravation but not being charged here, the
25 Primarily Formed Committee failed to timely file two 24-hour contribution reports, disclosing about
26 \$2,165 late, but before the relevant election. Therefore, a penalty of \$2,500 is recommended.

27 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
28 total penalty of \$6,500 is recommended. This penalty breaks down as follows:

1 As to CRSZ – Gen Purpose Committee and Wang \$2,000 for Count 1 and \$2,000 for Count 2.

2 As to CCSGI – Primarily Formed Committee, Wang and Xu \$2,500 for Count 3.

3 **CONCLUSION**

4 Respondents Cupertino Residents for Sensible Zoning Action Committee; Yes On C for Citizens,
5 No On D for Developer – Committee Supporting Cupertino Citizens’ Sensible Growth Initiative; Xiaowen
6 Wang; And Xiangchen Xu, hereby agree as follows:

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

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

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

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

21 5. Respondents agree to the issuance of the decision and order set forth below. Also,
22 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
23 \$6,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
24 California—is/are submitted with this stipulation as full payment of the administrative penalty described
25 above, and same shall be held by the State of California until the Commission issues its decision and order
26 regarding this matter.

27 6. If the Commission declines to approve this stipulation—then this stipulation shall become
28 null and void, and within fifteen business days after the Commission meeting at which the stipulation is

1 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
2 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
3 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
4 shall be disqualified because of prior consideration of this Stipulation.

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

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10 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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14 Dated: _____

Xiaowen Wang, Treasurer
Individually and on behalf of Cupertino Residents for
Sensible Zoning Action Committee and
Yes on C for Citizens, No on D for Developer – Committee
Supporting Cupertino Citizens' Sensible Growth Initiative

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19 Dated: _____

Xiangchen Xu, Principal Officer
Individually and on behalf of Cupertino Residents for
Sensible Zoning Action Committee and
Yes on C for Citizens, No on D for Developer – Committee
Supporting Cupertino Citizens' Sensible Growth Initiative

1 The foregoing stipulation of the parties “In the Matter of Cupertino Residents for Sensible Zoning
2 Action Committee; Yes On C for Citizens, No On D for Developer – Committee Supporting Cupertino
3 Citizens’ Sensible Growth Initiative; Xiaowen Wang; And Xiangchen Xu,” FPPC Case No. 2016/20077
4 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
5 execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission