

1 Commission's Regulations for Investigations and Enforcement Proceedings with respect to this
2 matter. This includes, but is not limited to, the right to appear personally at any administrative
3 hearing held in this matter, to be represented by an attorney at Respondents' expense, to confront
4 and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the
5 hearing.

6 It is further stipulated and agreed that Respondents committed two violations of the San
7 Francisco Campaign Finance Reform Ordinance, by failing to disclose two late contributions in
8 timely filed late contribution reports (Counts 1-2), in violation of section 1.106 of the San Francisco
9 Campaign and Governmental Conduct Code, as described in Exhibit 1, which is attached hereto and
10 incorporated herein by reference. The parties agree that Exhibit 1 is a true and accurate summary of
11 the facts in this matter.

12 Respondents agree to the issuance of the attached Decision and Order. To resolve all
13 matters related to this complaint within the Ethics Commission's jurisdiction, Respondents agree to
14 file a late contribution report to report the \$500,000 contribution received from PG&E on October
15 23, 2002 (that will amend the pre-election report previously filed in November 2002, in which
16 SFABC reported this contribution), and to pay a monetary fine of one hundred thousand dollars
17 (\$100,000) to the Ethics Commission. Respondents shall pay this monetary fine in two
18 installments. The first payment, in the amount of fifty thousand dollars (\$50,000), shall be made
19 within five (5) business days after the Ethics Commission approves this Stipulation and the
20 Sacramento Superior Court enters final judgment for civil penalties against Respondents in favor of
21 the Fair Political Practices Commission ("FPPC") in the case of the FPPC v. San Franciscans
22 Against the Blank Check – No on D Committee, Pacific Gas & Electric Corporation, and James
23 Sutton. The second payment, in the amount of fifty thousand dollars (\$50,000), shall be made
24 within six (6) months of the first payment. Both payments shall be in the form of a check or money
25 order made payable to the "City and County of San Francisco." The check or money order shall be

1 deposited into the General Fund of the City and County of San Francisco. James Sutton and his
2 former law firm, Nielsen, Merksamer, Parrinello, Mueller & Naylor LLP (“Nielsen Merksamer”)
3 take full responsibility for the violations described herein and the monetary penalties to the Ethics
4 Commission.

5 The parties further agree that this Stipulation is contingent upon **the FPPC filing court**
6 **papers by November 15, 2004 and** the Sacramento Superior Court’s entry of final judgment for
7 civil penalties against Respondents in favor of the FPPC in the case of the Fair Political Practices
8 Commission v. San Franciscans Against the Blank Check – No on D Committee, Pacific Gas &
9 Electric Corporation, and James Sutton. The parties stipulate and agree that in the event the
10 Sacramento Superior Court denies the FPPC’s stipulation for entry of judgment against
11 Respondents as described above, this Stipulation shall become null and void. In that event, nothing
12 in this Stipulation or the FPPC stipulated judgment may be used for any purpose, including in any
13 court or other proceeding relating to this matter, and the parties are free to take positions contrary to
14 those stated herein.

15 Respondents agree that in the event the Ethics Commission refuses to approve this
16 Stipulation, it shall become null and void. In that event, nothing in this Stipulation or the FPPC
17 stipulated judgment may be used for any purpose, including in any court or other proceeding
18 relating to this matter, and the parties are free to take positions contrary to those stated herein.
19 Respondents further stipulate and agree that in the event the Ethics Commission rejects this
20 Stipulation and a full evidentiary hearing before the Ethics Commission becomes necessary, neither
21 any member nor any staff of the Ethics Commission shall be disqualified because of prior
22 consideration of this Stipulation. Respondents, however, reserve their right to seek the
23 disqualification of any member of the Commission for any other reason.

24 This Stipulation reflects the entire agreement between the parties hereto and supersedes any
25 and all prior negotiations, understandings, and agreements with respect to the transactions

1 contemplated herein. This Stipulation may not be amended orally. Any amendment or
2 modification to this Stipulation must be in writing duly executed by all parties.

3 This Stipulation shall be construed under, and interpreted in accordance with, the laws of the
4 State of California. If any provision of the Stipulation is found to be unenforceable, the remaining
5 provisions shall remain valid and enforceable.

6 The parties hereto may sign different copies of this Stipulation, which will be deemed to
7 have the same effect as though all parties had signed the same document.

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10 Dated: _____

John St. Croix
Executive Director
San Francisco Ethics Commission

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13 Dated: _____

Thomas A. Willis
Remcho, Johansen & Purcell
Attorneys for San Franciscans Against the Blank
Check – No on D Committee

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17 Dated: _____

James R. Sutton
Treasurer for San Franciscans Against the Blank
Check – No on D Committee

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DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of" Ethics Complaint No. 49-021130, including the attached exhibit, is hereby accepted as the final decision and order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson and approval of the Fair Political Practices Commission stipulated judgment by a Sacramento Superior Court judge.

IT IS SO ORDERED.

Dated: _____

Michael L. Garcia, Chairperson
San Francisco Ethics Commission

1 EXHIBIT 1

2 INTRODUCTION

3 Respondent San Franciscans Against the Blank Check – No on D Committee (“SFABC”)
4 was a ballot measure committee sponsored by Pacific Gas & Electric Corporation and its affiliates
5 and subsidiaries (together “PG&E”). Respondent SFABC was primarily formed to oppose
6 Proposition D, a public power initiative on the November 5, 2002 local ballot. Nielsen, Merksamer,
7 Parrinello, Mueller & Naylor, LLP (“Nielsen Merksamer”) were the attorneys for both SFABC and
8 PG&E at all relevant times. Nielsen Merksamer’s former partner, Respondent James R. Sutton
9 (“Sutton”), served as SFABC’s professional treasurer and the attorney assigned to work with
10 SFABC and PG&E for political law compliance.

11 SFABC voluntarily filed campaign reports on November 27, 2002, which showed that it
12 failed to timely report the receipt of two contributions, in the amount of \$500,000 and \$300,000, as
13 required by the Political Reform Act and the San Francisco Campaign and Governmental Conduct
14 Code. This complaint was initiated on November 29, 2002 when Ethics Commission staff
15 reviewed those campaign reports. Subsequently, on November 30, 2002, the Ethics Commission
16 received a formal complaint from Charles M. Marsteller against Respondent SFABC for failing to
17 disclose the above contributions.

18 The Ethics Commission, pursuant to the San Francisco Charter, referred the complaint to the
19 City Attorney and the District Attorney. Both the City Attorney and District Attorney declined to
20 investigate the matter. The Ethics Commission conducted a joint investigation of this matter with
21 the California Fair Political Practices Commission (“FPPC”).

22 SUMMARY OF THE LAW

23 Section 1.106 of the San Francisco Campaign and Governmental Conduct Code and section
24 84203 of the California Government Code require every committee to file a late contribution report
25 within twenty-four hours of making or receiving a late contribution. A “late contribution” is a

1 contribution aggregating \$1,000 or more that is received before an election, but after the closing
2 date of the last pre-election statement. S.F. C&GC Code § 1.106; Cal. Gov't Code § 82036. A
3 "contribution" is defined as a payment, including loans, except to the extent that full and adequate
4 consideration is received, unless it is clear from the surrounding circumstances that it is not made
5 for political purposes. S.F. C&GC Code § 1.104 (e); Cal. Gov't Code §82015 (a). The late
6 contribution reporting period is the last sixteen days before an election. S.F. C&GC Code § 1.106;
7 Cal. Gov't Code §§ 82036 and 84200.7.

8 Any person who intentionally or negligently violates any provisions of the San Francisco
9 Campaign Finance Reform Ordinance is liable in an administrative proceeding before the Ethics
10 Commission for an amount up to \$5,000 for each violation, or three times the amount not reported,
11 whichever is greater. S.F. C&CGC Code § 1.170 (c); San Francisco Charter §§ 15.100-15.108 and
12 C3.699-10-C3.699-16.

13 It is the duty of a committee's treasurer to ensure that the committee complies with all of the
14 requirements of the Campaign Finance Reform Ordinance and the Political Reform Act concerning
15 the receipt and expenditure of funds, and the reporting of such funds. S.F. C&GC Code
16 § 1.106; Cal. Gov't Code §§ 81004(b) and 84100; 2 CCR § 18427(a). A committee's treasurer may
17 be held jointly and severally liable, along with the committee, for any reporting violations
18 committed by the committee. S.F. C&GC Code §§ 1.106 and 1.170(f); Cal. Gov't Code § 91006.

19 SUMMARY OF FACTS

20 Respondent SFABC, as a recipient ballot measure committee, and Respondent Sutton, as
21 treasurer of SFABC, had a duty to comply with the campaign reporting provisions of the the San
22 Francisco Campaign Finance Reform Ordinance and the Political Reform Act, including the duty to
23 file late contribution reports as required by San Francisco Campaign and Governmental Conduct
24 Code section 1.106 and California Government Code section 84203, subdivision (a). In this matter,
25 the late contribution reporting period for the November 5, 2002 general election was October 20,

1 2002 through November 4, 2002. The joint investigation by the FPPC and the Ethics Commission
2 found that PG&E sent the two checks to Sutton at Nielsen Merksamer, confirmed their receipt, and,
3 pursuant to its express agreement with Nielsen Merksamer, fully expected all applicable reports to
4 be timely filed. Neither SFABC nor PG&E was aware that the necessary reports were not timely
5 filed. The investigation further found that, as a result of negligence by Nielsen Merksamer staff and
6 Sutton during very busy days of the campaign cycle, the reports were not timely filed. At the
7 conclusion of the joint investigation, it was determined that Sutton's and Nielsen Merksamer's
8 failure to timely file the reports was not intentional.

9 Nielsen Merksamer and Sutton discovered the errors several weeks after the
10 November 2002 election and immediately notified PG&E and SFABC. Thereafter, Respondents
11 and PG&E immediately and voluntarily disclosed both contributions and filed campaign reports.
12 Nielsen Merksamer and Sutton immediately took full responsibility for the mistakes.

13 COUNT 1

14 On October 23, 2002, Respondent SFABC received a late contribution from PG&E in the
15 amount of \$500,000. After receiving the \$500,000 late contribution from PG&E, Respondents had
16 a duty to file a late contribution report no later than October 24, 2002. Respondents did not file a
17 late contribution report disclosing the late contribution by this deadline. Respondents did,
18 however, report this contribution on an amended pre-election report on November 27, 2002.

19 COUNT 2

20 On October 25, 2002, Respondent SFABC received a second late contribution from PG&E
21 in the amount of \$300,000. Thereafter, Respondents had a duty to file a late contribution report
22 disclosing the \$300,000 late contribution no later than October 26, 2002. Respondents did not file
23 the late contribution report until November 27, which was 32 days late.

1 APPLICATION OF LAW

2 By failing to disclose the \$500,000 and \$300,000 contributions from PG&E in timely filed
3 late contribution reports, Respondents violated San Francisco Campaign and Governmental
4 Conduct Code section 1.106 and California Government Code section 84203, subdivision (a).

5 FACTORS IN MITIGATION

6 Respondents notified the Ethics Commission as soon as it discovered the filing errors, and
7 Respondents were cooperative with the investigation conducted by both the Ethics Commission and
8 the FPPC. After a thorough investigation, neither Ethics Commission nor FPPC investigators
9 discovered any evidence to suggest that the failure to file the late contribution reports in a timely
10 manner was intentional.

11 FACTORS IN AGGRAVATION

12 The total amount of late contributions not reported timely was substantial. The failure to
13 report the contributions in a timely manner deprived the voters of important information regarding
14 SFABC and PG&E's activity prior to the election, thereby eroding public confidence in the
15 electoral process.

16 CONCLUSION

17 For the foregoing reasons, the Ethics Commission has agreed to settle all matters related to
18 this complaint within its jurisdiction, by accepting a monetary fine of \$100,000 from Respondents
19 to resolve the allegations of Ethics Commission Complaint No. 49-021130.