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6 Attorneys for Plaintiff

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY SACRAMENTO

10  
11 FAIR POLITICAL PRACTICES COMMISSION, ) Case No.  
a state agency, )  
12 Plaintiff, ) COMPLAINT FOR CIVIL  
13 v. ) PENALTIES UNDER THE  
POLITICAL REFORM ACT OF 1974,  
14 AS AMENDED )  
15 SAN FRANCISCANS AGAINST THE BLANK ) (Government Code §§ 91001(b) and  
CHECK — NO ON MEASURE D COMMITTEE ) 91004)  
16 SPONSORED BY PG&E, JAMES R. SUTTON, ) UNLIMITED CIVIL ACTION  
and PG&E CORPORATION, )  
17 Defendants. )

18  
19 Plaintiff FAIR POLITICAL PRACTICES COMMISSION, a state agency, alleges as follows:

20 1. Plaintiff brings this action in the public interest to enforce the provisions of the Political  
21 Reform Act of 1974. (Government Code sections 81000 through 91014.)

22 **JURISDICTION AND VENUE**

23 2. This court has original jurisdiction over this matter. As the first and second causes of  
24 action in this matter occurred in connection with campaign statements and reports that should have been  
25 filed by Defendant PG&E with the Office of the California Secretary of State, located in the County of  
26 Sacramento, and the third cause of action is factually related to the other two, the County of Sacramento  
27 is the proper venue for this action, pursuant to Code of Civil Procedure section 393.

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1 **PARTIES**

2 **PLAINTIFF FAIR POLITICAL PRACTICES COMMISSION**

3 3. Plaintiff Fair Political Practices Commission (the “Commission”) is a state agency  
4 created by the Political Reform Act of 1974 (the “Act”). Plaintiff Commission has primary  
5 responsibility for the impartial, effective administration and implementation of the Act. (Gov. Code §  
6 83111.) Pursuant to Government Code section 91001, subdivision (b), Plaintiff Commission is the civil  
7 prosecutor for matters involving state committees and state election campaigns, and is authorized to  
8 maintain this action under Government Code sections 91001, subdivision (b), 91004, 91005, and  
9 91005.5. Additionally, the Commission may act as the civil prosecutor with respect to a local ballot  
10 measure committee pursuant to Government Code section 91001, subdivision (b) upon written  
11 authorization from the district attorney. The Commission has received written authorization from the  
12 District Attorney for the City and County of San Francisco to bring and resolve this civil action against  
13 Defendants San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by  
14 PG&E and Sutton by letter dated July 29, 2003.

15 **DEFENDANT PG&E CORPORATION**

16 4. Defendant PG&E Corporation and its affiliated entities and subsidiaries (the “PG&E  
17 Corporation”) was, at all times relevant to this matter, a committee as defined in Government Code  
18 section 82013, subdivision (c). This type of committee is commonly referred to as a “major donor”  
19 committee.

20 **DEFENDANT SAN FRANCISCANS AGAINST THE BLANK CHECK — NO ON MEASURE D**  
21 **COMMITTEE SPONSORED BY PG&E**

22 5. Defendant San Franciscans Against the Blank Check — No On Measure D Committee  
23 Sponsored by PG&E (the “Blank Check Committee”) was, at all times relevant to this matter, a recipient  
24 committee as defined in Government Code section 82013, subdivision (a). Defendant Blank Check  
25 Committee was also a primarily formed committee, as defined in section 82013, subdivision (a), as it  
26 was formed primarily to oppose Proposition D on the November 5, 2002 general election ballot for the  
27 City and County of San Francisco.

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1 DEFENDANT JAMES R. SUTTON

2 6. At all times relevant to this matter, Defendant James R. Sutton (“Sutton”) was a partner  
3 in the law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP (“Nielsen Merksamer”), and  
4 served as the treasurer of Defendant Blank Check Committee.

5 **CAMPAIGN REPORTING REQUIREMENTS**

6 7. An express purpose of the Act, as set forth in Government Code section 81002,  
7 subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are  
8 fully and truthfully disclosed to the public, so that voters may be better informed, and so that improper  
9 practices will be inhibited.

10 8. In furtherance of this purpose of disclosure, the Act sets forth a comprehensive campaign  
11 reporting system, designed to disclose to the public, in a timely manner, the election activities of  
12 California political candidates and committees. (Gov. Code § 84200 et seq.)

13 **CIVIL LIABILITY**

14 9. Government Code section 91004 provides that any person who intentionally or  
15 negligently violates any of the reporting requirements of the Act shall be liable in a civil action for an  
16 amount up to the amount(s) not properly reported. Persons that violate Government Code sections  
17 84203 and 84605 are liable in a civil action pursuant to Government Code section 91004.

18 10. Pursuant to Government Code sections 81004, subdivision (b) and 84100, as  
19 implemented by title 2, California Code of Regulations, section 18427, subdivision (a), it is the duty of  
20 a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act  
21 concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s  
22 treasurer may be held jointly and severally liable, along with the committee, for any reporting  
23 violations committed by the committee. (Gov. Code § 91006.)

24 **FIRST CAUSE OF ACTION**

25 (TWO VIOLATIONS – FAILURE TO TIMELY DISCLOSE LATE CONTRIBUTIONS)

26 11. Plaintiff re-alleges, and incorporates herein, paragraphs 1 through 10, as though set forth  
27 at length.

1           12. Pursuant to Government Code section 84203, when a major donor committee makes a  
2 late contribution, the committee must file a late contribution report with the Office of the Secretary of  
3 State, disclosing the contribution within 24 hours.

4           13. Government Code section 82036 defines a “late contribution” as a contribution  
5 aggregating \$1,000 or more that is made before an election, but after the closing date of the last pre-  
6 election campaign statement that is required to be filed.

7           14. Under Government Code sections 82036 and 84200.7, the late contribution period prior  
8 to an election is the last 16 days before the election.

9           15. The late contribution reporting period for the City and County of San Francisco  
10 November 5, 2002 general election was October 21, 2002 through November 5, 2002.

11 FAILURE BY DEFENDANT PG&E CORPORATION TO TIMELY DISCLOSE A LATE  
12 CONTRIBUTION IN A LATE CONTRUBTION REPORT BY OCTOBER 24, 2002

13           16. On October 23, 2002, Defendant PG&E Corporation made a \$500,000 late contribution  
14 to Defendant Blank Check Committee, to oppose Proposition D in the November 5, 2002 general  
15 election.

16           17. After making the late contribution, Defendant PG&E Corporation had a duty to file a late  
17 contribution report disclosing the October 23, 2002 late contribution no later than October 24, 2002.

18           18. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen  
19 Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and Nielsen  
20 Merksamer failed to file a late contribution report disclosing the October 23, 2002 contribution by the  
21 October 24, 2002 due date.

22           19. By negligently failing to file a late contribution report disclosing the \$500,000 late  
23 contribution by the October 24, 2002 due date, Defendant PG&E Corporation violated Government  
24 Code section 84203.

25 //  
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1 FAILURE BY DEFENDANT PG&E CORPORATION TO TIMELY DISCLOSE A LATE  
2 CONTRIBUTION IN A LATE CONTRUBTION REPORT BY OCTOBER 26, 2002

3 20. On October 25, 2002, Defendant PG&E Corporation made a \$300,000 late contribution  
4 to Defendant Blank Check Committee, to oppose Proposition D in the November 5, 2002 general  
5 election.

6 21. After making the late contribution, Defendant PG&E Corporation had a duty to file a late  
7 contribution report disclosing the October 25, 2002 late contribution no later than October 26, 2002.

8 22. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen  
9 Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and Nielsen  
10 Merksamer failed to file a late contribution report disclosing the October 25, 2002 contribution by the  
11 October 26, 2002 due date.

12 23. By negligently failing to file a late contribution report disclosing the \$300,000 late  
13 contribution by the October 26, 2002 due date, Defendant PG&E Corporation violated Government  
14 Code section 84203.

15 **SECOND CAUSE OF ACTION**

16 (TWO VIOLATIONS - FAILURE TO TIMELY FILE REPORTS ELECTRONICALLY)

17 24. Plaintiff re-alleges, and incorporates herein, paragraphs 1 through 10, 11 through 17, and  
18 20 through 21, as though set forth at length.

19 25. Government Code section 84605, subdivision (a) requires any major donor committee,  
20 that makes contributions totaling fifty thousand dollars (\$50,000) or more in a calendar year, to file its  
21 campaign statements and reports online or electronically with the Secretary of State, beginning July 1,  
22 2000.

23 26. In 2002, Defendant PG&E Corporation made contributions in excess of fifty thousand  
24 dollars, and thereafter had a duty to file its campaign statements electronically with the Office of the  
25 Secretary of State, in addition to filing the statements in a paper format.

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1 FAILURE BY DEFENDANT PG&E CORPORATION TO ELECTRONICALLY FILE A LATE  
2 CONTRIBUTION REPORT BY OCTOBER 24, 2002

3 27. As described in the First Cause of Action, at paragraphs 12 through 17, Defendant PG&E  
4 Corporation had a duty to disclose its \$500,000 late contribution, made on October 23, 2002, to  
5 Defendant Blank Check Committee, in a properly filed late contribution report, by October 24, 2002.

6 28. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen  
7 Merksamer to prepare and timely electronically file any late contribution reports that were due, but  
8 Sutton and Nielsen Merksamer failed to electronically file a late contribution report disclosing its  
9 \$500,000 late contribution, made on October 23, 2002, to Defendant Blank Check Committee, in a  
10 properly filed late contribution report, by the October 24, 2002 due date.

11 29. By negligently failing to electronically file a late contribution report by October 24, 2002,  
12 disclosing the \$500,000 late contribution made on October 23, 2002, Defendant PG&E Corporation  
13 violated Government Code section 84605, subdivision (a).

14 FAILURE BY DEFENDANT PG&E CORPORATION TO ELECTRONICALLY FILE A LATE  
15 CONTRIBUTION REPORT BY OCTOBER 26, 2002

16 30. As described in the First Cause of Action, at paragraphs 12 through 15 and 20 through  
17 21, Defendant PG&E Corporation had a duty to disclose its \$300,000 late contribution, made on October  
18 25, 2002, to Defendant Blank Check Committee, in a properly filed late contribution report, by October  
19 26, 2002.

20 31. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen  
21 Merksamer to prepare and timely electronically file any late contribution reports that were due, but  
22 Sutton and Nielsen Merksamer failed to electronically file a late contribution report disclosing its  
23 \$300,000 late contribution, made on October 25, 2002, to Defendant Blank Check Committee, in a  
24 properly filed late contribution report, by the October 26, 2002 due date.

25 32. By negligently failing to electronically file a late contribution report by October 26, 2002,  
26 disclosing the \$300,000 late contribution made on October 25, 2002, Defendant PG&E Corporation  
27 violated Government Code section 84605, subdivision (a).

1 **THIRD CAUSE OF ACTION**

2 (TWO VIOLATIONS – FAILURE TO TIMELY DISCLOSE LATE CONTRIBUTIONS)

3 33. Plaintiff re-alleges, and incorporates herein, paragraphs 1 through 10, as though set forth  
4 at length.

5 34. Pursuant to Government Code section 84203, subdivision (a), when a recipient  
6 committee receives a late contribution, the committee must file a late contribution report disclosing the  
7 contribution within 24 hours.

8 35. Government Code section 82036 defines a “late contribution” as a contribution  
9 aggregating \$1,000 or more that is received before an election, but after the closing date of the last pre-  
10 election campaign statement that is required to be filed.

11 36. Under Government Code sections 82036 and 84200.7, the late contribution period prior  
12 to an election is the last 16 days before the election.

13 37. The late contribution reporting period for the City and County of San Francisco  
14 November 5, 2002 general election was October 21, 2002 through November 5, 2002.

15 38. When a recipient committee is formed or existing primarily to support or oppose a single  
16 measure to be voted on in one city, section 84215, subdivision (e) requires that the committee’s  
17 campaign statements shall be filed with the clerk of the city.

18 **FAILURE BY DEFENDANTS BLANK CHECK COMMITTEE AND SUTTON TO TIMELY**  
19 **DISCLOSE A LATE CONTRIBUTION IN A LATE CONTRIBUTION REPORT BY**  
20 **OCTOBER 24, 2002**

21 39. On October 23, 2002, Defendant Blank Check Committee received a \$500,000 late  
22 contribution from Defendant PG&E Corporation to oppose Proposition D in the November 5, 2002  
23 general election.

24 40. After receiving the late contribution, Defendants Blank Check Committee and Sutton had  
25 a duty to file a late contribution report with the city clerk of the City and County of San Francisco  
26 disclosing the October 23, 2002 late contribution no later than October 24, 2002.

27 41. Defendant Blank Check Committee expressly relied on Defendant Sutton and staff at  
28 Nielsen Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and

1 Nielsen Merksamer failed to file a late contribution report disclosing the October 23, 2002 late  
2 contribution by the October 24, 2002 due date.

3 42. By negligently failing to file a late contribution report disclosing the \$500,000 late  
4 contribution by the October 24, 2002 due date, Defendants Blank Check Committee and Sutton violated  
5 Government Code section 84203.

6 FAILURE BY DEFENDANTS BLANK CHECK COMMITTEE AND SUTTON TO TIMELY  
7 DISCLOSE A LATE CONTRIBUTION IN A LATE CONTRIBUTION REPORT BY  
8 OCTOBER 26, 2002

9 43. On October 25, 2002, Defendant Blank Check Committee received a \$300,000 late  
10 contribution from Defendant PG&E Corporation to oppose Proposition D in the November 5, 2002  
11 general election.

12 44. After receiving the late contribution, Defendants Blank Check Committee and Sutton had  
13 a duty to file a late contribution report with the city clerk of the City and County of San Francisco  
14 disclosing the October 25, 2002 late contribution no later than October 26, 2002.

15 45. Defendant Blank Check Committee expressly relied on Defendant Sutton and staff at  
16 Nielsen Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and  
17 Nielsen Merksamer failed to file a late contribution report disclosing the October 25, 2002 late  
18 contribution by the October 26, 2002 due date.

19 46. By negligently failing to file a late contribution report disclosing the \$300,000 late  
20 contribution by the October 26, 2002 due date, Defendants Blank Check Committee and Sutton violated  
21 Government Code section 84203.

22  
23 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

24 1. With respect to the first and second causes of action, for statutory penalties against  
25 Defendant PG& E Corporation, payable to the “General Fund of the State of California,” according to  
26 proof, in an amount up to the amount not properly reported, as permitted by Government Code section  
27 91004.



1           2.       With respect to the third cause of action, for statutory penalties against Defendant San  
2 Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E and  
3 Defendant Sutton, both jointly and severally, payable to the “General Fund of the State of California,”  
4 according to proof, in an amount up to the amount not properly reported, as permitted by Government  
5 Code section 91004.

6           3.       For such other and further relief as the Court may deem proper.

7  
8 Dated: May 10, 2004

FAIR POLITICAL PRACTICES COMMISSIO

9 STEVEN BENITO RUSSO  
10 Chief of Enforcement  
11 WILLIAM J. LENKEIT  
12 Commission Counsel

13 By:

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15 William J. Lenkeit  
16 Attorney for Plaintiff  
17 Fair Political Practices Commission  
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6 Attorneys for Plaintiff

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY SACRAMENTO  
10

11  
12 FAIR POLITICAL PRACTICES COMMISSION, ) Case No.  
a state agency, )  
13 Plaintiff, ) STIPULATION FOR ENTRY OF  
14 v. ) JUDGMENT  
15 ) (IN FAVOR OF PLAINTIFF AGAINST  
SAN FRANCISCANS AGAINST THE BLANK ) DEFENDANTS)  
16 CHECK — NO ON MEASURE D COMMITTEE )  
17 SPONSORED BY PG&E, JAMES R. SUTTON, )  
and PG&E CORPORATION, )  
18 Defendants. )

19 Plaintiff Fair Political Practices Commission, a state agency, by its attorneys, and Defendants  
20 San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E  
21 (sometimes referred to as the “Committee”), James R. Sutton (“Sutton”), and PG&E Corporation and its  
22 affiliated entities and subsidiaries (“PG&E Corporation”), by their attorneys, enter into this stipulation to  
23 resolve all factual and legal issues pertaining to the complaint for civil penalties filed herewith.

24 It is stipulated by and between the parties as follows:

25 The complaint on file in this action was properly filed and served on Defendants PG&E  
26 Corporation, San Franciscans Against the Blank Check – No On Measure D Committee Sponsored by  
27 PG&E, and Sutton.  
28

1 Pursuant to stipulation of the parties herein, jurisdiction of the subject matter and of the parties to  
2 this action and venue are properly in Sacramento Superior Court. The complaint states two causes of  
3 action against Defendant PG&E Corporation and one cause of action against Defendants  
4 San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E and  
5 Sutton, and any defects in the complaint are expressly waived. Additional but related claims against  
6 San Franciscans Against the Blank Check – No On Measure D Committee Sponsored by PG&E and  
7 Sutton have been resolved by the San Francisco Ethics Commission which conducted a joint  
8 investigation of these matters with Plaintiff. Together, the action contemplated by this stipulation and  
9 the resolution between the Committee, Sutton, and the San Francisco Ethics Commission constitute a  
10 final civil and administrative settlement of the matters stated herein and shall resolve all existing and  
11 potential claims against all Defendants and the law firm of Nielsen, Merksamer, Parrinello, Mueller  
12 & Naylor, LLP (“Nielsen Merksamer”) pertaining to or arising out of the course of conduct described in  
13 the complaint, and including all claims pertaining to the reporting of contributions made by Defendant  
14 PG&E Corporation to Defendant San Franciscans Against the Blank Check – No On Measure D  
15 Committee Sponsored by PG&E, and to reach a final disposition with respect to Defendants, without the  
16 necessity of holding a civil trial to determine their liability.

17 Defendants PG&E Corporation, San Franciscans Against the Blank Check — No On Measure D  
18 Committee Sponsored by PG&E, and Sutton understand, and hereby knowingly and voluntarily waive,  
19 any and all procedural rights that they could have exercised if this stipulation had not been entered into,  
20 including, but not limited to, their right to civil discovery, to appear personally at any civil trial held in  
21 this matter, to confront and cross-examine witnesses, and to have the trial presided over by an impartial  
22 judge, and heard and decided by a jury.

### 23 **ENTRY OF JUDGMENT**

24 For the violations of the Political Reform Act admitted herein, Plaintiff Fair Political Practices  
25 Commission and Defendants PG&E Corporation, San Franciscans Against the Blank Check — No On  
26 Measure D Committee Sponsored by PG&E, and Sutton stipulate that a final judgment be issued and  
27 entered in the form of the order attached hereto and made a part hereof as Exhibit “A,” in favor of  
28 Plaintiff Fair Political Practices Commission and against Defendants PG&E Corporation, San

1 Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E, and Sutton,  
2 for a total monetary penalty of one hundred forty thousand dollars (\$140,000). Payment of this amount  
3 shall be made by cashier’s check, payable to the “General Fund of the State of California.” Seventy  
4 thousand dollars (\$70,000) shall be paid upon the execution of this stipulation, and the remaining  
5 seventy thousand dollars (\$70,000) shall be paid within six months of the execution of this stipulation.  
6 The parties shall each bear their own attorneys fees and costs.

7 This stipulation is part of a global settlement reached in conjunction with the San Francisco  
8 Ethics Commission. As part of the settlement, Defendants Committee and Sutton have agreed to pay a  
9 monetary penalty of \$100,000 to the City and County of San Francisco.

10 Defendant Sutton was a partner of the law firm of Nielsen Merksamer at all relevant times. As  
11 explained below, Defendants PG&E Corporation and the Committee expressly and reasonably relied on  
12 Defendant Sutton and staff at Nielsen Merksamer to prepare and timely file the reports at issue here  
13 which Nielsen Merksamer staff and Sutton did not do. Defendant Sutton and Nielsen Merksamer are  
14 therefore taking full responsibility for the violations described herein as well as the monetary penalties  
15 imposed by both Plaintiff and the San Francisco Ethics Commission.

16 The final judgment may be signed by any judge of the Superior Court of the State of California,  
17 for the County of Sacramento and entered by any clerk upon application of any party without notice.

18 **STIPULATED STATEMENT OF LAW AND FACTS**

19 1. **THE PARTIES AND BACKGROUND INFORMATION**

20 Plaintiff Fair Political Practices Commission (the “Commission”) is a state agency created by the  
21 Political Reform Act of 1974 (the “Act”). (Gov. Code §§ 81000 - 91014.) The Commission has primary  
22 responsibility for the impartial, effective administration and implementation of the Act. (Gov. Code  
23 § 83111.) Pursuant to Government Code section 91001, subdivision (b), the Commission is the civil  
24 prosecutor for matters involving state committees, and is authorized to maintain this action against  
25 Defendant PG& E Corporation under Government Code sections 91001, subdivision (b), 91004, 91005,  
26 and 91005.5. Additionally, the Commission may act as the civil prosecutor with respect to a local ballot  
27 measure committee pursuant to Government Code section 91001, subdivision (b) upon written  
28 authorization from the district attorney. The Commission has received written authorization from the

1 District Attorney for the City and County of San Francisco to bring and resolve this civil action against  
2 Defendants San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by  
3 PG&E and Sutton by letter dated July 29, 2003. As the Commission is acting as the civil prosecutor  
4 concerning this matter, the judgment herein precludes any other agency, organization, entity, or person  
5 from obtaining any further judgment with respect to the matters described in this action, as provided by  
6 Government Code section 91008.

7 Defendant PG&E Corporation was, at all times relevant to this matter, a committee as defined in  
8 Government Code section 82013, subdivision (c). This type of committee is commonly referred to as a  
9 “major donor” committee. Defendant San Franciscans Against the Blank Check — No On Measure D  
10 Committee Sponsored by PG&E was, at all times relevant to this matter, a recipient committee as  
11 defined in Government Code section 82013, subdivision (a). Defendant Sutton was, at all times relevant  
12 to this matter, the treasurer of Defendant San Franciscans Against the Blank Check — No On Measure D  
13 Committee Sponsored by PG&E, and Nielsen Merksamer and Sutton at all times relevant represented  
14 PG&E Corporation and the Committee.

15 2. SUMMARY OF THE CAMPAIGN REPORTING LAWS

16 An express purpose of the Act, as set forth in Government Code section 81002, subdivision (a),  
17 is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully  
18 disclosed to the public, so that voters may be better informed, and so that improper practices will be  
19 inhibited. In furtherance of this purpose of disclosure, the Act sets forth a comprehensive campaign  
20 reporting system. (Gov. Code § 84200 et seq.)

21 One feature of this system is Government Code section 84203, subdivision (a). That statute  
22 requires a committee that makes or receives a contribution of \$1,000 or more during the last 16 days  
23 before an election, to file a late contribution report within 24 hours of making or receiving the  
24 contribution. Additionally, Government Code section 84605 requires a major donor committee to file a  
25 late contribution report online or electronically if it makes contributions of fifty thousand dollars  
26 (\$50,000) or more in a calendar year. Government Code section 82036 defines a “late contribution” as a  
27 contribution aggregating \$1,000 or more that is received before an election, but after the closing date of  
28 the last pre-election statement. Government Code section 82015, subdivision (a) defines a

1 “contribution,” in pertinent part, as a payment except to the extent that full and adequate consideration is  
2 received, unless it is clear from the surrounding circumstances that it is not made for political purposes.  
3 Pursuant to Government Code sections 84200.7 and 84200.8, the late contribution reporting period is the  
4 last 16 days before an election.

5 3. CIVIL LIABILITY PROVISIONS

6 Under Government Code section 91004, any person who intentionally or negligently violates any  
7 of the reporting requirements of the Act shall be liable in a civil action in an amount up to the amount  
8 not properly reported. Persons that violate Government Code section 84203 are liable in a civil action  
9 pursuant to Government Code section 91004.

10 Pursuant to Government Code sections 81004, subdivision (b) and 84100, and California Code  
11 of Regulations, title 2, section 18427, subdivision (c), it is the duty of a committee’s treasurer to ensure  
12 that the committee complies with all of the requirements of the Act concerning the receipt and  
13 expenditure of funds, and the reporting of such funds. A committee’s treasurer may be held jointly and  
14 severally liable, along with the committee, for any reporting violations committed by the committee.  
15 (Gov. Code §§ 83116.5, 91006.)

16 4. SUMMARY OF THE FACTS

17 Defendant PG&E Corporation

18 As a major donor committee, Defendant PG&E Corporation had a duty to comply with the  
19 campaign reporting provisions of the Act, including the duty to file late contribution reports as required  
20 by Government Code section 84203, subdivision (a) and the duty to electronically file late contribution  
21 reports as required by Government Code section 84605, subdivision(a). In this matter, the late  
22 contribution reporting period for the November 5, 2002 general election was October 20, 2002, through  
23 November 4, 2002.

24 At all times relevant, Defendant PG&E Corporation was represented by Nielsen Merksamer and  
25 Defendant Sutton was a partner of the law firm, worked on PG&E Corporation matters, and served as  
26 the treasurer for Defendant Committee. As discussed below, Nielsen Merksamer and Defendant Sutton  
27 were responsible for preparing and filing all late contribution reports for both Defendant PG&E  
28 Corporation and Defendant Committee.

1 Defendant PG&E Corporation made two late contributions to Defendant San Franciscans  
2 Against the Blank Check — No On Measure D Committee Sponsored by PG&E, a ballot measure  
3 committee opposed to Proposition D in the November 5, 2002 general election. The first late  
4 contribution was made on October 23, 2002, in the amount of \$500,000. The second late contribution  
5 was made on October 25, 2002, in the amount of \$300,000.

6 After making the two late contributions, Defendant PG&E Corporation had a duty to file a late  
7 contribution report disclosing the October 23, 2002 late contribution no later than October 24, 2002, and  
8 a duty to file a late contribution report for the October 25, 2002 late contribution no later than October  
9 26, 2002. Additionally, Defendant PG&E Corporation had a duty to electronically file late contribution  
10 reports disclosing the October 23, 2002 late contribution no later than October 24, 2002, and the October  
11 25, 2002 late contribution no later than October 26, 2002. Defendant PG&E Corporation did not file  
12 either the first late contribution report by the October 24, 2002 due date or the second late contribution  
13 report by the October 26, 2002 due date. Additionally, Defendant PG&E Corporation did not  
14 electronically file either the first late contribution report by the October 24, 2002 due date or the second  
15 late contribution report by the October 26, 2002 due date. By failing to file late contribution reports and  
16 electronic late contribution reports by the respective October 24, 2002 and October 26, 2002 due dates,  
17 Defendant PG&E Corporation violated Government Code sections 84203, subdivision (a) and  
18 Government Code section 84605, subdivision (a).

19 An exhaustive and joint investigation by Plaintiff and the San Francisco Ethics Commission  
20 found that Defendant PG&E Corporation sent the two checks to Defendant Sutton at Nielsen  
21 Merksamer, confirmed their receipt, and, pursuant to its express agreement with Nielsen Merksamer,  
22 fully expected all applicable reports to be timely filed. Neither Defendant PG&E Corporation nor  
23 Defendant Committee was aware that the necessary reports were not timely filed. The investigation  
24 further found that the reporting errors by Nielsen Merksamer staff and Defendant Sutton, acting as the  
25 agents of Defendant PG&E Corporation, were made during the busiest days of the campaign cycle. At  
26 the conclusion of this joint investigation it was determined that the failure to timely file the reports was  
27 negligent and not intentional.  
28

1 Nielsen Merksamer and Defendant Sutton discovered the errors several weeks after the  
2 November 2002 election and immediately notified Defendants PG&E Corporation and Committee.  
3 Thereafter, Defendants immediately, voluntarily, and publicly disclosed both contributions and filed  
4 amended campaign reports. Nielsen Merksamer and Defendant Sutton immediately took full  
5 responsibility for the mistakes, and Defendants and Nielsen Merksamer have fully cooperated with this  
6 investigation.

7 Defendants San Franciscans Against the Blank Check — No On Measure D Committee  
8 Sponsored By PG&E and Sutton

9 As a recipient committee, Defendant San Franciscans Against the Blank Check — No On  
10 Measure D Committee Sponsored by PG&E and its treasurer, Defendant Sutton, had a duty to comply  
11 with the campaign reporting provisions of the Act, including the duty to file late contribution reports as  
12 required by Government Code section 84203, subdivision (a). In this matter, the late contribution  
13 reporting period for the November 5, 2002 general election was October 20, 2002, through November 4,  
14 2002.

15 Defendant San Franciscans Against the Blank Check — No On Measure D Committee Sponsored  
16 by PG&E and its treasurer, Defendant Sutton, received two late contributions from Defendant PG&E  
17 Corporation, in the November 5, 2002 general election. The first late contribution was received on  
18 October 23, 2002, in the amount of \$500,000. The second late contribution was received on October 25,  
19 2002, in the amount of \$300,000.

20 After receiving the two late contributions, Defendant San Franciscans Against the Blank Check  
21 — No On Measure D Committee Sponsored by PG&E and its treasurer, Defendant Sutton, had a duty to  
22 file a late contribution report for the October 23, 2002 late contribution no later than October 24, 2002,  
23 and a duty to file a late contribution report for the October 25, 2002 late contribution no later than  
24 October 26, 2002. Defendants did not file either the first late contribution report by the October 24,  
25 2002 due date or the second late contribution report by the October 26, 2002 due date. By failing to file  
26 late contribution reports by the October 24, 2002 and October 26, 2002 respective due dates, Defendant  
27 San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E and its  
28 treasurer, Defendant Sutton violated Government Code sections 84203.



1 As discussed above in greater detail, after fully investigating this matter, Plaintiff Fair Political  
2 Practices Commission and the San Francisco Ethics Commission concluded that the failure to timely  
3 report the two contributions was negligent and not intentional.

4 **CONCLUSION**

5 Judgment shall be entered in favor of Plaintiff Fair Political Practices Commission and against  
6 Defendants PG&E Corporation, San Franciscans Against the Blank Check – No On Measure D  
7 Committee Sponsored by PG&E and Sutton, as provided in this stipulation.

8 IT IS SO STIPULATED:

9  
10 Dated: \_\_\_\_\_

\_\_\_\_\_  
11 James R. Sutton, as treasurer of San  
12 Franciscans Against the Blank Check - No  
13 On Measure D Committee Sponsored by  
14 PG&E

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

\_\_\_\_\_  
16 James R. Sutton, on behalf of San  
17 Franciscans Against the Blank Check - No  
18 On Measure D Committee Sponsored by  
19 PG&E

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

\_\_\_\_\_  
21 Thomas A. Willis  
22 Remcho, Johansen & Purcell,  
23 Attorneys for Defendant San Franciscans  
24 Against the Blank Check – No On Measure D  
25 Committee Sponsored by PG&E

26  
27 Dated: \_\_\_\_\_

\_\_\_\_\_  
28 Iathan Annand

1 Defendant PG&E Corporation and its affiliated  
2 entities and subsidiaries

3  
4 Dated: \_\_\_\_\_

5 \_\_\_\_\_  
6 Ethan A. Balogh  
7 Kecker & Van Nest  
8 Attorneys for Defendant PG&E Corporation  
9 and its affiliated entities and subsidiaries

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

11 \_\_\_\_\_  
12 Vigo G. "Chip" Nielsen  
13 Law Offices of Nielsen, Merksamer, Parrinello,  
14 Mueller & Naylor, LLP

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

16 Fair Political Practices Commission, Plaintiff

17 By: \_\_\_\_\_  
18 Mark Krausse, Executive Director

19  
20 Dated: \_\_\_\_\_

21 \_\_\_\_\_  
22 William J. Lenkeit  
23 Attorney for Plaintiff Fair Political Practices  
24 Commission

1 STEVEN BENITO RUSSO, SBN 104858  
Chief of Enforcement  
2 WILLIAM J. LENKEIT, SBN 90394  
Commission Counsel  
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4 Sacramento, CA 95814  
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5 Facsimile: (916) 322-1932

6 Attorneys for Plaintiff

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY SACRAMENTO  
10  
11

12 FAIR POLITICAL PRACTICES COMMISSION,	)	Case No.
a state agency,	)	
13	)	FINAL JUDGMENT PURSUANT TO
Plaintiff,	)	STIPULATION
14	)	
v.	)	(Judgment in favor of Plaintiff, Fair
15	)	Political Practices Commission, Against
16 SAN FRANCISCANS AGAINST THE BLANK	)	Defendants San Franciscans Against The
CHECK — NO ON MEASURE D COMMITTEE	)	Blank Check — No On Measure D
17 SPONSORED BY PG&E, JAMES R. SUTTON,	)	Committee Sponsored By PG&E,
and PG&E CORPORATION,	)	James R. Sutton, and PG&E
18	)	Corporation)
Defendants.	)	UNLIMITED CIVIL ACTION
19	)	

20 Plaintiff Fair Political Practices Commission, a state agency, by its attorneys, and Defendants  
21 San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E,  
22 James R. Sutton, and PG&E Corporation and its affiliated entities and subsidiaries (the “PG&E  
23 Corporation”), having entered into the Stipulation for Entry of Judgment, attached hereto, wherein the  
24 parties stipulated and agreed to the existence of certain facts and conclusions of law, and to the issuance  
25 of this Final Judgment; and  
26 Defendants San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by  
27 PG&E, James R. Sutton, and PG&E Corporation having authorized the Court to enter judgment in this  
28

1 action, pursuant to this stipulation, on request of Plaintiff Fair Political Practices Commission, without  
2 notice to Defendants, and good cause appearing therefore;

3 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED THAT:

4 Defendants San Franciscans Against the Blank Check — No On Measure D Committee  
5 Sponsored by PG&E, James R. Sutton, and PG&E Corporation admit that they violated the Political  
6 Reform Act, as stipulated and agreed to within the attached Stipulation for Entry of Judgment.

7 For these violations, Defendants San Franciscans Against the Blank Check — No On Measure D  
8 Committee Sponsored by PG&E, James R. Sutton, and PG&E Corporation are ordered to pay a  
9 monetary penalty in the amount of one hundred forty thousand dollars (\$140,000). Payment of this  
10 amount shall be made by cashier’s check, payable to the “General Fund of the State of California.”  
11 Seventy thousand dollars (\$70,000) shall be paid upon the execution of the attached Stipulation for  
12 Entry of Judgment, and the remaining seventy thousand dollars (\$70,000) shall be paid within six  
13 months thereafter.

14 The parties shall each bear their own attorney’s fees and costs.

15 The final judgment shall take effect immediately upon entry. The clerk is directed to enter this  
16 Final Judgment forthwith.

17  
18 Dated: \_\_\_\_\_

19  
20 Judge of the Superior Court  
21  
22  
23  
24  
25  
26  
27  
28