

1 GARY S. WINUK
Chief of Enforcement
2 GALENA WEST
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 11/944
13)
14) STIPULATION, DECISION and
ALBERTO O. TORRICO, ALBERTO) ORDER
15 TORRICO FOR ATTORNEY GENERAL 2010)
COMMITTEE, AND JAMES R. SANTOS,)
16)
Respondents.)
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19 Complainant the Fair Political Practices Commission and Respondents Alberto O. Torrico,
20 Alberto Torrico for Attorney General 2010 committee, and James R. Santos agree that this Stipulation
21 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
22 scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
24 matter and to reach a final disposition without the necessity of holding an administrative hearing to
25 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
28 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed Respondents Alberto O. Torrico, Alberto Torrico for Attorney
5 General 2010 committee, and James R. Santos violated the Political Reform Act by failing to timely
6 report required subvendor information for expenditures, in violation of Sections 84211, subdivision (k),
7 and 84303 of the Government Code (1 count). The count is described in Exhibit 1, which is attached
8 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
9 summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
12 of One Thousand Dollars (\$1,000). A cashier's check from Respondents in said amount, made payable
13 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
14 administrative penalty, to be held by the State of California until the Commission issues its decision and
15 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
16 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
17 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
18 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
19 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
20 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
21 disqualified because of prior consideration of this Stipulation.

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Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

Alberto O. Torrico, Respondent,
Individually and on behalf of
Alberto Torrico for Attorney General 2010 Committee

Dated: _____

James R. Santos, Respondent,
Individually and on behalf of
Alberto Torrico for Attorney General 2010 Committee

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Alberto O. Torrico, Alberto Torrico for Attorney General 2010 committee, and James R. Santos,” FPPC No. 11/944, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Alberto O. Torrico was an unsuccessful candidate for Attorney General in the June 8, 2010 Statewide Primary Election and Alberto Torrico for Attorney General 2010 (“Respondent Committee”) was his candidate-controlled recipient committee. At all time relevant, Respondent James R. Santos (“Respondent Santos”) served as treasurer of Respondent Committee. This case arose from a Franchise Tax Board (“FTB”) audit of Respondent Committee for the period January 1, 2009 – June 30, 2010. During the period covered by the audit, Respondent Committee reported receiving contributions of \$1,815,596 and making expenditures of \$1,735,933.

As a candidate-controlled recipient committee under the Political Reform Act¹ (the “Act”), Respondents have a duty to timely file campaign statements and reports and disclose particular information on those reports and statements. However, Respondents failed to timely report required subvendor information.

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: Respondents Alberto O. Torrico, Alberto Torrico for Attorney General 2010 committee, and James R. Santos failed to timely report required subvendor information on three campaign statements for the reporting periods ending March 17, 2010, May 22, 2010, and June 30, 2010, for expenditures totaling approximately \$465,531, in violation of Sections 84211, subdivision (k), and 84303 of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Duty to Disclose Expenditures on Campaign Statements

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. Section 84211, subdivision

¹The Political Reform 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.

(b), requires committees to disclose the total amount of expenditures made during the period covered by the campaign statement. In addition, for each person to whom the committee makes an expenditure of \$100 or more during the period covered by the campaign statement, a committee must disclose information that includes the payee's name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure is made. (Section 84211, subs. (i) and (k).) "Expenditure" includes any individual payment or accrued expense (i.e., an unpaid bill). (Sections 82025, 84211, subd. (k)(6).) Further, an expenditure is "made" on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. (Section 82025.)

Duty to Report Subvendor Payments

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than overhead and normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of, or for the benefit of any candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. Regulation 18431, subdivision (a), provides specific types of expenditures that must be reported pursuant to Section 84303, including expenditures for design of campaign literature or advertising and printed campaign literature, as well as expenditures to printers of mass mailings and providers of advertising time or space. Regulation 18431, subdivision (c), requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k), for the committee's direct expenditures.² This information reported by the candidate or committee is commonly referred to as "subvendor information."

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006; Regulation 18316.6.)

SUMMARY OF THE FACTS

Respondent Torrico was a candidate for Attorney General in the June 8, 2010 Statewide Primary Election. Respondent Committee was his candidate-controlled recipient committee. For all times relevant, Respondent Santos served as treasurer of Respondent Committee.

² Specifically, the following information must be provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subd. (k)(1)-(4) and (6).)

COUNT 1
Failure to Report Subvendor Information for Payments Made

In addition to requiring committees to report direct expenditures they make, the Act also requires committees to report expenditures made by an agent or independent contractor (such as a campaign worker, advertising agency, or campaign management firm) on behalf of the committee. (Sections 84211(k)(6) and 84303 and Regulation 18431.) Respondents had a duty to report on their campaign statements subvendor information for payments of \$500 or more made by an agent to a subvendor on Respondent Committee's behalf for campaign products or services, as if the expenditures were made directly by the committee.

Respondents failed to timely report required subvendor information on three campaign statements for the reporting periods ending March 17, 2010, May 22, 2010, and June 30, 2010, for expenditures totaling approximately \$465,531. According to Respondent's campaign statements and records, subvendor information for expenditures made that should have been reported during the reporting periods included expenditures made to internet and cable companies for media advertisement.

By failing to timely report required subvendor information for expenditures of \$500 or more, Respondents violated Sections 84211, subdivision (k) and 84303.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The public harm involved when subvendor information is not disclosed is that the public is deprived of important information such as name of subvendors, amount of subvendor expenditures, and description of products and services they provided to the campaign.

Similar cases regarding missing subvendor expenditure information recently approved by the Commission include penalties of \$2,250 each. The Commission approved a \$2,250 penalty amount for failing to report subvendor information for \$297,182 of expenditures for six reporting periods. (*In the Matter of Zack Scrivner, Scrivner for Supervisor 2010, and Shawn Kelly*, FPPC No. 10/1099 – approved December 13, 2012). In addition, *In the Matter of Shannon Grove, Shannon Grove for Assembly 2010, and Karen Cain*, FPPC No. 10/1098, which the Commission approved December 13, 2012, Respondents failed to timely report subvendor information for

payments totaling approximately \$229,374 for two pre-election reporting periods, which comprised approximately 44% of reported expenditures for the committee and the Commission issued a fine of \$2,250. In both cases, the parties amended to disclose the information when contacted by the Commission and cooperated with the investigation.

The amount of subvendor expenditures that were not timely reported was significant, over \$465,000, comprising approximately 27% of the expenditures made by Respondent Committee during audit period. Respondent Santos contends that the failure to report the subvendor information was inadvertent and stated that he was experiencing severe health issues during the preelection periods when a large percentage of the subvendor information was not timely disclosed. Once Respondent Santos realized his error, he amended the statements before being contacted by the Franchise Tax Board. After the audit performed by the Franchise Tax Board, Respondent Santos voluntarily filed a second amendment to disclose additional subvendor information, as determined by the audit.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$1,000 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Neither Respondent Santos nor Respondent Torrico has any history of violating the Act even though each has been in the political realm for over 30 years and 12 years, respectively, so no pattern of violating the Act is present in this case.

PROPOSED PENALTY

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$1,000.