

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

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 13/177
13)
14 XAVIER CAMPOS, XAVIER CAMPOS FOR)
CITY COUNCIL 2010, and LINDA) STIPULATION, DECISION and
15 DELGADO) ORDER
16 Respondents.)
17

18 Complainant, the Fair Political Practices Commission, and Respondents Xavier Campos, Xavier
19 Campos for City Council 2010, and Linda Delgado agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

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

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents Xavier Campos, Xavier Campos for City
4 Council 2010, and Linda Delgado violated the Political Reform Act by accepting contributions which
5 were not drawn from the bank accounts of the contributors or donors, in violation of Section 84300,
6 subdivision (c) of the Government Code (1 count), by failing to maintain detailed accounts, records,
7 bills, and receipts that were necessary to prepare campaign statements, in violation of Government Code
8 Section 84104 (1 count), and by failing to timely report contributions received during two consecutive
9 reporting periods, in violation of Government Code Section 84211, subdivisions (a), (c), and (d) (1
10 count). These counts are described in Exhibit 1, which is attached hereto and incorporated by reference
11 as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

12 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
13 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
14 of Five Thousand Five Hundred Dollars (\$5,500). A cashier's check from Respondents in said amount,
15 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
16 payment of the administrative penalty, to be held by the State of California until the Commission issues
17 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
18 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
19 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
20 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
21 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
22 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
23 shall be disqualified because of prior consideration of this Stipulation.

24
25
26 Dated: _____
27 Gary S. Winuk, Chief of Enforcement
28 Fair Political Practices Commission

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

Respondent Xavier Campos, individually and
on behalf of Xavier Campos for City Council 2010

Dated: _____

Respondent Linda Delgado, individually and
on behalf of Xavier Campos for City Council 2010

EXHIBIT 1

INTRODUCTION

Respondent Xavier Campos is a member of the San Jose City Council. He was elected on November 2, 2010. At all relevant times, Xavier Campos for City Council 2010 (“Respondent Committee”) was the controlled committee of Xavier Campos. Linda Delgado was the treasurer for the Committee. Respondents violated the Political Reform Act (the “Act”)¹ by failing to comply with recordkeeping requirements and by accepting contributions that were not drawn from the bank accounts of the contributors.

In this matter, Respondents accepted eight contributions, totaling \$1,950, not in the form of a written instrument drawn from the account of the donor, failed to maintain detailed accounts, records, bills, and receipts that were necessary to prepare campaign statements, in support of expenditures made by the committee, a loan received from Xavier Campos, and non-monetary contributions received by the Committee, and failed to report the receipt of 21 contributions.

For the purposes of this stipulation, Respondents’ violations of the Act are stated as follows:

- COUNT 1:** Between approximately December 16, 2009 and November 13, 2010, Respondents Xavier Campos, Xavier Campos for City Council 2010, and Linda Delgado accepted monetary contributions totaling approximately \$1,950 in the form of eight cashier’s checks or money orders for \$100 or more, which were not drawn from the bank accounts of the contributors or donors, in violation of Government Code Section 84300, subdivision (c).
- COUNT 2:** Respondents Xavier Campos, Xavier Campos for City Council 2010, and Linda Delgado, failed to maintain detailed accounts, records, bills, and receipts that were necessary to prepare campaign statements for the reporting periods from January 1, 2009 through December 31, 2010, in violation of Government Code Section 84104.
- COUNT 3:** Respondents Xavier Campos, Xavier Campos for City Council 2010, and Linda Delgado failed to timely report contributions received during two consecutive reporting periods beginning January through October of 2010, totaling approximately \$3,665, in violation of Section 84211, subdivisions (a), (c), and (d), of the Government Code.

¹ The 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 18109 through 18997 of Title 2, California Code of Regulations. All regulatory references are to Title 2, Division 6, of the California Code of Regulations, unless otherwise indicated.

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 provides for the full disclosure of receipts and expenditures in election campaigns through the periodic filing of campaign statements, as provided in Sections 84200 through 84211.

Prohibitions Regarding Campaign Contributions

Section 81002, subdivision (a) provides that “receipts and expenditures in election campaigns shall be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.”

Contributions Not Drawn on the Contributor’s Bank Account

Section 84300, subdivision (c), provides that no contribution of \$100 or more, other than an in-kind contribution, shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or intermediary, as defined in Section 84302.

Duty to Maintain Records

To ensure accurate campaign reporting, Section 84104 imposes a mandatory duty on each candidate, treasurer and elected officer to maintain detailed accounts, records, bills, and receipts that are necessary to prepare campaign statements, and to comply with the campaign reporting provisions of the Act. Under Regulation 18401, this duty includes maintaining detailed information and original source documentation for all contributions and expenditures including loans.

Duty to Disclose Contributions on Campaign Statements

Section 82015 defines a contribution as a payment made for political purposes. Section 84211, subdivision (a), requires committees to disclose the total amount of contributions received during the period covered by the campaign statement. Section 84211, subdivision (c), requires a committee to disclose on each of its campaign statements the total amount of contributions received during the period from persons who had given a cumulative amount of \$100 or more. Additionally, Section 84211, subdivision (d), requires a committee to disclose on each of its campaign statements the total amount of contributions received during the period from persons who had given a cumulative amount of less than \$100. “Cumulative amount” means the amount of contributions received in the calendar year. (Section 82018, subdivision (a).)

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. Under Sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Xavier Campos is a member of the San Jose City Council. He was elected on November 2, 2010. At all relevant times, Xavier Campos for City Council 2010 ("Respondent Committee") was the controlled committee of Xavier Campos. Linda Delgado was the treasurer for the Committee.

Respondents accepted eight contributions, totaling \$1,950, not in the form of written instruments drawn from the accounts of the donors, and failed to maintain detailed accounts, records, bills, and receipts that were necessary to prepare campaign statements. This includes failure to maintain invoices and receipts in support of \$39,576.35 of expenditures made by the committee; and a copy of the contribution check and a loan agreement for the \$10,000 loan received from Xavier Campos; and documentation in support of \$545.81 of non-monetary contributions received by the Committee. Respondent also failed to report the receipt of 21 contributions, totaling \$3,665.

COUNT 1

Accepting Cashier's Checks/Money Orders from Contributors

A cashier's check is similar to a money order in that it is not drawn from the account of the remitter. Rather, the remitter pays the bank to issue a cashier's check, which is guaranteed by the bank, but not drawn from the account of the remitter. (See, e.g., Cal. U. Com. Code, §§ 3103, subdivisions (a)(2), (3), and (11), and 3104, subdivisions (f) and (g).) In the case of a contribution made in the form of a cashier's check or money order, the remitter is referred to as the contributor.

Subject to certain exceptions, which are not applicable in this case, Section 84300, subdivision (c), provides that no contribution of \$100 or more shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or intermediary.

Between approximately December 16, 2009 and November 13, 2010, Respondents Xavier Campos, Xavier Campos for City Council 2010, and Linda Delgado accepted monetary contributions totaling approximately \$1,950 in the form of eight cashier's checks or money orders for \$100 or more, which were not drawn from the bank accounts of the contributors or donors.

The first was a Chase Bank cashier's check or money order, dated December 13, 2009, in the amount of \$250, listing Ernesto Vargas as the remitter. The cashier's check/money order was not drawn from the account of Ernesto Vargas.

The second was a San Jose Credit Union cashier's check or money order, dated December 23, 2009, in the amount of \$250, with no remitter listed. Sandra Diaz was reported as the contributor. The cashier's check/money order was not drawn from the account of Sandra Diaz.

The third was a Western Union cashier's check or money order, dated December 28, 2009, in the amount of \$250, listing Fiesta Night Club as the remitter. The cashier's check/money order was not drawn from the account of Fiesta Night Club.

The fourth was a Cash America cashier's check or money order, dated February 11, 2010, in the amount of \$250, listing The Tompkinson Group as the remitter. The cashier's check/money order was not drawn from the account of The Tompkinson Group.

The fifth was a Bank of America cashier's check or money order, dated May 21, 2010, in the amount of \$250, listing Greenlee's Cinnamon Bread and More as the remitter. The cashier's check/money order was not drawn from the account of Greenlee's Cinnamon Bread and More.

The sixth was a Western Union cashier's check or money order, dated September 9, 2010, in the amount of \$250, listing Leonel Balderrama as the remitter. The cashier's check/money order was not drawn from the account of Leonel Balderrama.

The seventh was made in the form of two Western Union cashier's check or money orders, dated September 9, 2010, in the total amount of \$200, listing Fiesta Night Club as the remitter. The cashier's check/money orders were not drawn from the account of Fiesta Night Club.

The eighth was a Bank of America cashier's check or money order, dated October 13, 2010, in the amount of \$250, listing Sandra Diaz as the remitter. The cashier's check/money order was not drawn from the account of Sandra Diaz.

By accepting cashier's checks/money orders from contributors as described above, Respondents Xavier Campos, Xavier Campos for City Council 2010, and Linda Delgado violated Section 84300, subdivision (c).

COUNT 2

Failure to Maintain Campaign Records

Pursuant to Section 84104 and Regulation 18401, Respondents had a duty to maintain detailed accounts, records, bills and receipts that are necessary to prepare campaign statements, to establish that campaign statements were properly filed and to comply with the campaign

reporting provisions of the Act. Respondents failed to maintain invoices and receipts in support of \$39,576.35 of expenditures made by the committee; and a copy of the contribution check and a loan agreement for the \$10,000 loan received from Xavier Campos; and documentation in support of \$545.81 of non-monetary contributions received by the Committee. Respondents failed to maintain these required records for contributions and expenditures for reporting periods during January 1, 2009 through December 31, 2010.

By failing to maintain required campaign records, Respondents violated Government Code Section 84104.

COUNT 3

Failure to Disclose Contributions on Campaign Statements

Pursuant to Section 84211, subdivision (a), a committee must disclose the total amount of contributions received during the period covered by the campaign statement. Section 84211, subdivision (c), requires a committee to disclose on each of its campaign statements the total amount of contributions received during the period from persons who had given a cumulative amount of \$100 or more. Additionally, Section 84211, subdivision (d), requires a committee to disclose on each of its campaign statements the total amount of contributions received during the period from persons who had given a cumulative amount of less than \$100. “Cumulative amount” means the amount of contributions received in the calendar year. (Section 82018, subdivision (a).)

These contributions were not timely reported campaign statements, the details of which are listed on the chart below.

Date Received	Contributor	Amount
01/13/2010	Cahan, Hope	\$250
02/17/2010	AVBASE San Jose, LLC	\$250
02/17/2010	Pellegrini, Louis	\$250
02/17/2010	Ramos, Luis	\$25
02/17/2010	Charles Pankow Builders, Ltd	\$250
02/17/2010	Strain, Gretchen	\$250
04/27/2010	P.K. Food Corp.	\$250
05/07/2010	Tom Ammiano for Assembly	\$250
05/21/2010	Unknown Contributor	\$100
05/21/2010	Unknown Contributor	\$150
05/21/2010	Sapien, Hermelinda	\$150
05/21/2010	Hennessy, Robert	\$250
05/21/2010	Coto, Joe	\$250
09/22/2010	El Magnus, Inc.	\$250
10/18/2010	Kathleen King	\$250
10/18/2010	ZPD, Inc	\$250
N/A	Calderon, David	\$45
N/A	Calderon, Elizabeth	\$40

N/A	Calderon, Lizette	\$60
N/A	Calderon, Mitchel	\$45
N/A	Sandoval, Renee	\$50
Total		\$3,665

By failing to timely report these contributions, Respondents violated Section 84211, subdivisions (a), (c), and (d), of the Government Code.

CONCLUSION

This matter consists of three counts of violating the Act, which carries a maximum administrative penalty of Fifteen Thousand Dollars (\$15,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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. The Enforcement Division 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; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendments to provide full disclosure.

In mitigation, Respondents have not previously been found to have violated the Act.

A recent stipulation involving the acceptance of contributions in the form of cashier's checks or money orders includes:

In the Matter of Mary Ann Andreas, Andreas for Assembly, Marta Baca, and Phyllis Nelson, FPPC No. 06/77. Respondents accepted monetary contributions totaling approximately \$9,400 in the form of three cashier's checks or money orders for \$100 or more, which were not drawn from the bank accounts of the contributors or donors. The Commission approved settlement of this case on June 10, 2010, and the agreed upon penalty for this violation was \$2,000 per count.

A recent stipulation involving the failure to maintain records includes:

In the Matter of Davis Democratic Club and Elizabeth R. Weir, FPPC No. 08/390. Respondents Davis Democratic Club, a county general purpose committee, and Respondent Elizabeth R. Weir, Treasurer failed to maintain proper records to support the campaign statements filed for multiple reporting periods. The Commission approved settlement of this case on March 15, 2012, and the agreed upon penalty for this violation was \$1,500.

A recent stipulation involving the failure to report required information regarding contributions received includes:

In the Matter of Fernando Vasquez, Vasquez for Downey Council 2010, and Jane Leiderman, Treasurer, FPPC No. 11/057. Respondents failed to report 17 contributions received totaling \$7,696 over two preelection reporting periods for two counts. Respondents filed amended statements disclosing the contributions approximately three months after the election. The Commission approved settlement of this case on March 15, 2012, and the agreed upon penalty for each reporting violation was \$2,000 per count.

PROPOSED PENALTY

After review of the facts of this case, including consideration of the factors of Regulation 18361.5, and the factors discussed above, it is respectfully submitted that imposition of a penalty of Two Thousand Dollars (\$2,000) for Count One, One Thousand Five Hundred Dollars (1,500) for Count Two, and Two Thousand Dollars (\$2,000) for Count Three, for a total penalty of Five Thousand Five Hundred Dollars (\$5,500) is recommended.