

1 GALENA WEST
Acting Enforcement Chief
2 BRIDGETTE CASTILLO
Senior Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 SALUD O. CARBAJAL, SALUD
13 CARBAJAL FOR SUPERVISOR 2012 AND
14 DAVID PERI,

15 Respondents.

FPPC No. 14/851

STIPULATION, DECISION AND ORDER

16
17 **STIPULATION**

18 Complainant Fair Political Practices Commission and Respondents Salud Carbajal for Supervisor
19 2012 (“Committee”), Salud O. Carbajal and David Peri hereby agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 meeting.

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

26 The Committee, Carbajal and Peri understand, and hereby knowingly and voluntarily waive, any
27 and all procedural rights set forth in Government Code sections 83115.5, 11503 and 11523, and in
28 California Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not

1 limited to the right to appear personally at any administrative hearing held in this matter, to be
2 represented by an attorney at their own expense, to confront and cross-examine all witnesses testifying at
3 the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
4 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5 As described in Exhibit 1, it is further stipulated and agreed that the Committee and Carbajal
6 failed to file three late contribution reports, in violation of Section 84203, subdivisions (a) and (b) (3
7 Counts); and the Committee, Carbajal and Peri accepted a contribution in the form of a cashier's check in
8 the amount of \$15,000 not drawn on the account of the donor, in violation of Section 84300, subdivision
9 (c) (1 Count). Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
10 herein, is a true and accurate summary of the facts in this matter.

11 The Committee, Carbajal and Peri agree to the issuance of the Decision and Order, which is
12 attached hereto, and agree to the Commission imposing upon the Committee and Carbajal an
13 administrative penalty in the amount of \$7,500, of which Peri is jointly and severally liable for \$1,500.
14 A cashier's check or money order from the Committee, Carbajal and Peri totaling said amount, made
15 payable to the "General Fund of the State of California," is submitted with this Stipulation as full
16 payment of the administrative penalty and shall be held by the State of California until the Commission
17 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
18 refuses to accept this Stipulation, it will become null and void, and within fifteen (15) business days after
19 the Commission meeting at which the Stipulation is rejected, all payments tendered by the Committee,
20 Carbajal and Peri in connection with this Stipulation must be reimbursed to them. The Committee,
21 Carbajal and Peri further stipulate and agree that in the event the Commission rejects the Stipulation and
22 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
23 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
24 Stipulation.

25
26 Dated: _____

Galena West, Acting Enforcement Chief,
on behalf of the 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: _____

Salud O. Carbajal, individually and on behalf of
Salud Carbajal for Supervisor 2012, Respondents

Dated: _____

David Peri, individually and on behalf of Salud
Carbajal for Supervisor 2012, Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Salud O. Carbajal, Salud Carbajal for Supervisor 2012 and David Peri,” FPPC No. 14/851, 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 Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
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

EXHIBIT 1

INTRODUCTION

Respondent Salud O. Carbajal was a successful candidate for Santa Barbara County Supervisor on June 5, 2012. Respondent Salud Carbajal for Supervisor 2012 (“Committee”) was Carbajal’s candidate controlled committee. Respondent David Peri was the treasurer of the Committee from March 17, 2011, through 2012.

Under the Political Reform Act¹ (“Act”) at the time of the violations, a candidate-controlled committee, candidate and treasurer have a duty to: 1) timely file late contribution reports within 24 hours of receiving a late contribution of \$1,000 or more; and 2) not accept contributions of \$100 or more in the form of a cashier’s check. In this matter, Carbajal and the Committee violated the Act by failing to file three late contribution reports. Additionally, Carbajal, the Committee and Peri violated the Act by accepting a contribution on or about June 30, 2011, in the amount of \$15,000 in the form of a cashier’s check. As the Committee’s treasurer during the relevant period, Peri is liable for accepting a contribution in the form of a cashier’s check over \$100, along with the Committee.²

SUMMARY OF THE LAW

Duty to File Late Contribution Reports

Under the Act at the time of the violations, when a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report filed at each office with which the committee is required to file its next campaign statement, within 24 hours of making or receiving the contribution.³ Under the Act, a “late contribution” means a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before an election, but after the closing date of the last campaign statement that is required to be filed before the election.⁴

Prohibitions Against Receiving Cash and Cash Equivalents of \$100 or More

Under the Act: 1) no contribution of \$100 or more may be made or received in cash; 2) 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; and 3) a cash expenditure is deemed to be received when it is negotiated or deposited.⁵

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 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.

² See Sections 83116.5 and 91006

³ Sections 84203, subdivisions (a) and (b), and 84215

⁴ Section 82036

⁵ Section 84300, subdivisions (a) and (c)

SUMMARY OF THE FACTS

The Fair Political Practices Commission (“Commission”) randomly selected the Committee for a campaign audit performed by the Franchise Tax Board (“FTB”) for the period July 1, 2008, through June 30, 2012. During that period, the Committee received contributions totaling \$369,159 and made expenditures totaling \$559,153.

FTB’s audit found that the Committee, by in large, complied with the Act’s campaign reporting requirements. However, the Committee failed to file three late contribution reports and accepted a contribution over \$100 in the form of a cashier’s check.

Counts 1-3: Failure to File Late Contribution Reports

Carbajal and the Committee failed to disclose making four late contributions in three late contribution reports. The late contribution reporting period for the June 8, 2010 Election was May 23, 2010, through June 7, 2010. The late contribution period for the November 2, 2010 Election was October 17, 2010, through November 1, 2010. The subject late contributions are shown in the following table, according to the corresponding count.

| Count | Date the Late Contribution was Made | Filing Deadline | Recipient of the Late Contribution | Amount of the Late Contribution |
|-------|-------------------------------------|-----------------|------------------------------------|---------------------------------|
| 1 | May 27, 2010 | Within 24 Hours | Janet Wolf 2010 | \$2,500 |
| | | | No on Measure J Committee | \$2,500 |
| 2 | June 7, 2010 | Within 24 Hours | Kamala Harris for Attorney General | \$5,500 |
| 3 | October 26, 2010 | Within 24 Hours | Yes on Measure S | \$1,000 |
| | | | Total: | \$11,500 |

Carbajal and the Committee failed to disclose late contributions made in late contribution reports, as set forth above, in violation of Section 84203, subdivisions (a) and (b). (3 Counts)

Count 4: Accepting Cash and Cash Equivalents of \$100 or More

On or about June 30, 2011, Respondents Carbajal, Committee and Peri accepted and deposited a contribution of \$15,000 from Craig McCaw in the form of a cashier’s check which was not drawn from the bank account of the contributor, in violation of Section 84300, subdivision (c). (1 Count)

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of \$5,000 for each violation, for a total of \$20,000.

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 the context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): (1) the seriousness of the violations; (2) the presence or lack of intent to conceal, deceive or mislead; (3) whether the violation was deliberate, negligent, or inadvertent; (4) whether the respondents demonstrated good faith in consulting with Commission staff; (5) whether there was a pattern of violations; and (6) whether, upon learning of the violation, the Respondent voluntarily filed an amendment to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. A recent similar case where the respondents failed to file a late contribution report includes:

In the Matter of League of Placer County Taxpayers and Michael Musolino, FPPC No. 12/949. Respondents failed to timely file a late contribution report disclosing the receipt of a \$10,000 contribution. In August 2013, the Commission approved a fine of \$2,000 for this violation. In mitigation, the Respondents had no history of enforcement actions.

In this matter, Carbajal and the Committee failed to file three late contribution reports, disclosing four contributions in the amount of \$11,500. It appears the Committee's late contribution report violations were at worst negligent, as the late contributions were relatively small in comparison with the expenditures made by the Committee. Further, Carbajal and the Committee have no prior enforcement history and cooperated with the Enforcement Division.

Recent similar cases where the respondents received contributions of \$100 or more in cash, or by a method not drawn on the account of the donor, include:

In the Matter of Dan Hamburg for Supervisor 2010, Dan Hamburg and Geoffrey Baugher, FPPC No. 10/751 and 10/981. In April 2013, the Commission approved a fine amount of \$1,500 for accepting two contributions totaling \$1,500 in the form of a money order from Hamburg to the Dan Hamburg for Supervisor 2010 committee. (1 Count) In mitigation, Hamburg had no previous violations of the Act, the violation appeared unintentional and the contributions made up a small percentage of the total contributions received (2.4%).

In the Matter of Arthur Brown, Art Brown for Orange County 4th District Supervisor 2010, Art Brown for City Council 2012 and Christie Brown, FPPC No. 12/224. Respondents received 2 campaign contributions of \$100 or more in cash, in unsubstantiated amounts as no records were kept and the contributions were unreported, in violation of Section 84300, subd. (a). (1 Count) In November 2014, the Commission imposed a \$1,500 penalty for this violation. There were no mitigating circumstances in this matter.

Making a cash contribution of \$100 or more deprives the public of valuable information regarding the source of the contribution and eliminates the checks and balances used in order to verify who the actual contributors are to a campaign. In this matter, Peri explained that the treasurer did not realize the contribution was in the form of a cashier's check. While the contribution was higher than the amounts in the above mentioned Hamburg case, it accounts for a relatively small percentage of the total contributions received by the Committee (4%). There is no evidence to suggest this behavior was intentional, as this violation was an isolated incident and the contribution was timely reported.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, prior similar cases, and other relevant factors, a penalty of \$2,000 for each of Counts 1-3 for Respondents Carbajal and the Committee, for a total of \$6,000, is recommended and a penalty of \$1,500 for Count 4 for Respondents Carbajal, Committee and Peri is recommended, for a total penalty of \$7,500.