

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

6 Attorneys for Complainant

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

10
11 In the Matter of

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13 FAMILIAS POR MAYWOOD aka
FAMILIAS POR MAYWOOD
14 SUPPORTING AGUIRRE MAGAÑA
VARELA FOR MAYWOOD CITY
15 COUNCIL and FELIPE AGUIRRE,

16 Respondents.
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FPPC No. 12/422

DEFAULT DECISION AND ORDER

(Gov. Code §§ 11506 and 11520)

19 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
20 Order for consideration at its next regularly-scheduled meeting.

21 Respondents Familias por Maywood aka Familias por Maywood Supporting Aguirre Magaña
22 Varela for Maywood City Council, and Felipe Aguirre (“Respondents”) have been provided advice by
23 an attorney of their choosing as to their right to an administrative hearing under the Political Reform
24 Act, Administrative Procedure Act, and all other relevant laws. Respondents have chosen to waive all
25 such rights to an administrative hearing and to allow this matter to proceed to a default decision.

26 In this case, Respondents violated the Political Reform Act as described in Exhibit 1, which is
27 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
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1 accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted
2 to the Commission to obtain a final disposition of this matter.

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5 Dated: _____

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

The Commission issues this Default Decision and Order and imposes an administrative penalty of Five Thousand Dollars (\$5,000) upon Familias por Maywood aka Familias por Maywood Supporting Aguirre Magaña Varela for Maywood City Council, and Felipe Aguirre payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Familias por Maywood aka Familias por Maywood Supporting Aguirre Magaña Varela for Maywood City Council (“Respondent Committee”) is a campaign committee that over the years has been controlled by various candidates for City Council in the city of Maywood (“City Council”). In the 2009 General Election, respondent Felipe Aguirre (“Respondent Aguirre”) a City Council member running for re-election, controlled Respondent Committee, along with two new candidates for City Council named Edward Varela (“Varela”) and Oscar Magaña (“Magaña”).¹ (Respondent Committee and Respondent Aguirre are referred to collectively herein as “Respondents.”)

The Fair Political Practices Commission (“Commission”) randomly selected Maywood for auditing by the Franchise Tax Board (“FTB”) of campaign records for candidates within the jurisdiction for the 2009 General Election. The FTB could not complete an audit of Respondent Committee because Respondent Committee did not file campaign statements for the audit period and did not maintain campaign records as required under the Political Reform Act (the “Act”). As a result, FTB referred the case to the Commission.

The Act requires committees to regularly file campaign statements detailing all contributions received by a committee, as well as its expenditures. The Act also requires a committee to report any contribution it receives shortly before an election that totals \$1,000 or more, and prohibits committees from receiving cash contributions and making cash expenditures of \$100 or more. Candidates who control committees are liable for a committee’s failure to comply with the Act.

Respondents violated the Act by failing to file a number of campaign statements, failing to report a late contribution of \$1,000, and making expenditures and receiving contributions in cash. For the purposes of this Default Decision and Order, Respondents’ violations of the Act are:

- COUNT 1: Respondents failed to file a semi-annual campaign statement for the October 18, 2009 through December 31, 2009 period by the February 1, 2010 deadline in violation of Section 84200, subdivision (a).
- COUNT 2: Respondents failed to file a late contribution report disclosing a \$1,000 contribution it received from Fiesta Taxi Co-Op, Inc. on or about October 26, 2009 in violation of Section 84203.
- COUNT 3: Respondents received contributions of \$100 or more and made expenditures of \$100 or more in cash in violation of Section 84300, subdivisions (a) and (b).

¹ Edward Varela and Oscar Magaña entered into a stipulated agreement for violations related to this matter that was approved by the Fair Political Practices Commission on June 14, 2014. They are not subject to this default decision.

WAIVER OF RIGHTS

Respondents have been informed of the charges set forth herein and their rights to an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. Respondents have agreed to waive these rights, and Respondents are aware that by doing so, the Enforcement Division will proceed with this Default recommendation to the Commission, which, if approved by the Commission, will result in Respondent being held liable for the penalty amount of \$5,000.

A copy of Respondent's written waiver in this regard is submitted herewith as Exhibit A and incorporated herein by reference as if set forth herein.

In this situation, where the Respondents have waived their rights to an administrative hearing, the Commission may take action based upon the Respondents' express admissions (if any) or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subdivision (a).)

SUMMARY OF THE LAW

Semi-annual Campaign Statements

Section 84200, subdivision (a) requires elected officers, candidates, and committees to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. Candidates for city council and their committees file campaign statements with the city clerk. (Section 84215, subdivision (d).)

Late Contribution Reports

A committee shall report all late contributions made or received to the office with which the committee is required to file its next campaign statement within 24 hours of receiving or making the contribution. (Section 84203.) A "late contribution" is any contribution that totals \$1,000 or more and is made or received by a candidate-controlled committee before the date of the election but after the closing date of the last campaign statement required to be filed before the election. (Section 82036.)

Cash Contributions and Expenditures

Section 84300, subdivision (a) prohibits a committee from receiving a campaign contribution of \$100 or more in cash. Section 84300, subdivision (b) prohibits a committee from making expenditures of \$100 or more in cash.

SUMMARY OF THE FACTS

Committee Formation

Respondent Committee filed a statement of organization (Form 410) with the Secretary of State's Office on September 5, 2007, identifying itself as a joint candidate-controlled committee controlled by Veronica Guardado ("Guardado") and Ana Rosa Rizo ("Rizo"), who at the time were candidates for City Council. Prior to that election, Guardado had little political experience but had become involved in a community organization. Through that organization, Guardado met Respondent Aguirre, who was a City Council member at the time. She also met political activist Hector Alvarado ("Alvarado"), who along with Respondent Aguirre, ran a non-profit organization in Maywood called "Comite Pro-Uno." Alvarado convinced Guardado to run for City Council.

Alvarado also recruited Rizo, another political novice, to run for City Council. He introduced Guardado and Rizo to Leonardo Vilchis ("Vilchis"), who he indicated would run their campaign. Vilchis was the executive director of Union de Vecinos, another non-profit organization with a presence in Maywood. According to Guardado, Vilchis told her and Rizo that they needed to walk precincts, talk to people, and raise money, and that he would handle everything in the background.

Both Guardado and Rizo won City Council seats. Respondent Committee filed two pre-election statements in 2007 but, according to the Maywood City Clerk's Office, did not file a semi-annual statement for that year. In 2008, Respondent Committee did not file any campaign statements despite receiving a number of contributions and making numerous expenditures.

Change in Committee Candidates and Subsequent Campaign Filings

On October 19, 2009, Respondent Committee filed an amended statement of organization. The amended statement listed Respondent Aguirre as the sole controlling candidate of Respondent Committee and Karl Weichinger¹ as the treasurer. Also on October 19, 2009, Respondent Committee filed a campaign statement for the stated filing period of July 1, 2009 through October 14, 2009 that listed Respondent Committee's controlling candidates as Respondent Aguirre, Varela, and Magaña, and identified each as running for a seat on the City Council in the November 3, 2009 General Election. Like Guardado and Rizo before them, Varela and Magaña were political novices who were encouraged to run for City Council by Vilchis, Alvarado, and Respondent Aguirre.

Respondent Committee filed a second campaign statement (Form 460) on October 23, 2009 for the stated filing period of October 15, 2009 through October 27, 2009. Respondent Committee did not file a second semi-annual campaign statement for 2009 despite significant financial activity as evidenced by Respondent Committee's bank records for that time period.

¹ Mr. Weichinger died in June of 2010

Respondent Aguirre won re-election in 2009. Varela and Magaña did not win City Council seats in 2009.

Audit and Investigation

Maywood was randomly selected by the Commission for an audit by FTB of campaign records of candidates within the jurisdiction for the 2009 General Election. Respondent Aguirre told FTB that he was unable to obtain Respondent Committee's records from the estate of its former treasurer Karl Weichinger and provided only the two pre-election campaign statements that Respondent Committee filed in 2009.

The Commission's Enforcement Division obtained Respondent Committee's bank statements via administrative subpoena. The bank records revealed significant financial activity from 2008 through the end of 2009 that was not reported on campaign statements and reports.

On June 17, 2014, the Commission approved a stipulation and decision with Guardado and Rizo whereby they accepted liability individually, and on behalf of Respondent Committee for violations in 2008 and the first half of 2009, and agreed to pay a penalty of \$5,000. That same day, the Commission also approved a stipulation and decision with Varela and Magaña in which they agreed to pay a fine of \$2,000 for their roles in Respondent Committee's violations in 2009. This left Respondent Aguirre as the only candidate who had controlled Respondent Committee that had not paid a fine for Respondents' violations of the Act.

VIOLATIONS

Count 1

Failure to File Semi-annual Campaign Statement

Respondents did not file a semi-annual campaign statement for the October 18, 2009 through December 31, 2009 reporting period by the February 1, 2010 deadline. Because Respondents did not file the semi-annual campaign statement, contributions to Respondent Committee and expenditures by Respondent Committee went unreported. During this statement period, Respondent Committee's bank records show it made 11 deposits of \$100 or more which totaled \$5,450. Respondent Committee's bank records also show it made 46 withdrawals of \$100 or more during this statement period and, in total, made \$26,561.86 in withdrawals. The deposits and withdrawals constitute campaign contributions and expenditures that Respondents should have disclosed on the campaign statement for that period. But Respondents did not file the required campaign statement. By failing to file a semi-annual campaign statement for the October 18, 2009 through December 31, 2009 statement period, Respondents violated Section 84200, subdivision (a).

Count 2
Failure to File Late Contribution Report

Respondents received a \$1,000 contribution from Fiesta Taxi Co-Op, Inc. on or about October 26, 2009 which was deposited in Respondent Committee's bank account on November 2, 2009. Fiesta Taxi Co-Op, Inc. made the contribution at Respondent Aguirre's request. Respondents did not file a late contribution report disclosing this contribution.

By failing to file a late contribution report for the \$1,000 contribution from Fiesta Taxi Co-Op, Inc., received after the end of the pre-election statement period and before the election, Respondents violated Section 84203.

Count 3
Receiving Cash Contributions and Making Cash Expenditures

Respondent Committee's bank records indicate it made six cash deposits of \$100 or more into the committee account. Those cash deposits totaled \$2,934. Respondents did not report receiving any of the cash on campaign statements.

Respondent Committee's bank records also indicate it made six cash withdrawals of \$100 or more from its account. The cash withdraws totaled \$2,020. Respondents did not report these cash expenditures on campaign statements.

The cash deposits and withdrawals were for contributions received and expenditures made by Respondents that exceeded \$100. By receiving cash contributions of \$100 or more and making cash expenditures of \$100 or more, Respondents violated Section 84300, subdivisions (a) and (b).

CONCLUSION

This matter consists of three counts of violating the Act, which carries a maximum administrative penalty of \$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. Additionally, 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(s) 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.

Comparable Cases

Count 1 – Failure to File Semi-annual Campaign Statement

In the Matter of Tina Baca Del Rio and Friends of Tina Baca Del Rio, FPPC No. 08/423 (“*Baca Del Rio*”) (Commission approved stipulation on April 11, 2011): The respondents failed to file semi-annual campaign statements for three statement periods resulting in three counts for violating the Act with fines of \$3,500 to \$4,000 per count. Baca del Rio was a member of the Commerce City Council. She and her committee failed to file three semi-annual and four pre-election campaign statements over a two year period. During these three semi-annual campaign statement periods, they received \$19,527 in contributions and made expenditures totaling \$19,515. Baca Del Rio and her committee ignored multiple written notifications from the city clerk reminding them of their filing obligations and requesting that they file the delinquent statements.

In the Matter of Sandra Davis and Committee to Elect Sandra Davis, FPPC No. 06/372 (Commission approved stipulation on September 17, 2010): Respondent Sandra Davis was a candidate for the Culver City Unified School District Governing Board who failed to file a semi-annual campaign statement. Had she filed, the statement would have disclosed \$5,610 in contributions and \$7,015 in expenditures. She paid a penalty of \$2,000 for one count of failing to file a semi-annual campaign statement.

In the Matter of Familias por Maywood, Veronica Guardado, and Ana Rosa Rizo, FPPC No. 14/356 (“*Familias por Maywood P*”) (Commission approved stipulation and decision on June 19, 2014.): Veronica Guardado and Ana Rosa Rizo, who preceded Respondent Aguirre as the controlling candidates of record for Respondent Committee, stipulated to two counts of failing to file semi-annual campaign statements and paid a penalty of \$2,500 per count. Respondent Committee’s bank records showed \$22,330 in contributions in 2008 and expenditures of \$23,816.87. For the first half of 2009, Respondent Committee received \$466.75 in contributions and made expenditures of \$351.66.

Count 2 – Failure to File Late Contribution Report

In the Matter of League of California Cities CITIPAC, Supporting Proposition 22 and Dan Harrison, FPPC No. 12/727 (Commission approved stipulation on February 28, 2013): The respondent failed to file a late contribution report for contributions totaling \$4,250. They paid a penalty of \$1,500 for that violation.

In the Matter of Putting Riverside First - Bill Emmerson for Senate 2010, funded by California Dental Association Independent Expenditure PAC and California Real Estate Independent Expenditure Committee, FPPC No. 12/212 (Commission approved stipulation on July 12, 2012): The respondent received a \$10,000 contribution from Quality Health Care for Californians, sponsored by CAHHS, during the late contribution reporting period in connection with the April 13, 2010, special election and failed to report the contribution in a timely manner. The Commission approved a penalty of \$1,500.

Count 3 – Cash Contributions and Expenditures

In the Matter of Hubert Walsh, Hub Walsh for Supervisor, and Marcia B. Hall, FPPC No. 10/771 (Commission approved stipulation on January 28, 2011): The respondents received seven cash campaign contributions of \$100 or more that all together totaled \$825. Respondents reported all seven of the contributions on the appropriate campaign statement. The Commission approved a penalty of \$1,500 for one count of receiving contributions over the limit.

In the Matter of League of California Cities CITIPAC, Supporting Proposition 22 and Dan Harrison, FPPC No. 12/727 (Commission approved stipulation on February 28, 2013): The respondents received \$650 in cash contributions. They paid a penalty of \$1,500 for the violation.

Respondents' Violations

A central purpose of the Act 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. (Section 81003, subd. (a).) To that end, the Act contains a comprehensive campaign finance disclosure and reporting system and prohibits the use of cash in amounts over \$100 or more. Respondent Committee failed to comply with the Act's campaign disclosure requirements during the time that Respondent Aguirre was controlling candidate for Respondent Committee. This not only denied the voters information regarding Respondents' campaign activity but also prevented FTB from performing an audit to determine if Respondents complied with the law.

Regarding Count 1: The amount of undisclosed activity by Respondents is similar to that found in the *Baca Del Rio* and *Familias por Maywood I* cases discussed above. Further, the *Familias por Maywood I* case involved very similar circumstances and even involved the same committee. For these reasons, a penalty similar to the one in those cases is justified.

Regarding Count 2: The unreported late contribution Respondents received was \$1,000, which is the minimum amount that would require the filing of a late contribution report. As indicated above, violations for failure to file late contribution reports usually are at the low end of the penalty range and even, in some cases, can result in streamline fines equal to 15% of the amount of the contribution. But Respondents did not file a semi-annual campaign statement that would have disclosed the late contribution at issue so the public did not have notice of it before or even after the election. Considering all of the above, a fine at the low end of the mainline penalty range is justified in these circumstances.

Regarding Count 3: The total amount of cash contributions and cash expenditures by Respondents is similar to the amounts at issue in the comparable cases discussed above. Therefore, a similar penalty is justified in this case.

Respondent Aguirre contends he was unaware of Respondent Committee's accounting and reporting activity, or lack thereof, because his campaign manager handled those aspects of the campaign. However, Respondent Aguirre was an experienced elected official who was ultimately responsible for Respondent Committee's reporting and disclosure obligations under the Act.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, the imposition of the following penalties are recommended: \$2,500 for Count 1; \$1,000 for Count 2; and \$1,500 for Count 3, for a total proposed penalty of \$5,000.

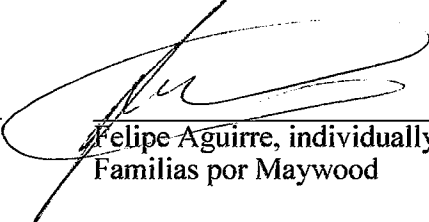


**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WITHDRAWAL OF NOTICE OF DEFENSE AND WAIVER OF RIGHT TO
ADMINISTRATIVE HEARING**

1. I, the undersigned, am a respondent in Fair Political Practices Commission ("FPPC") Case No. 12/422. In executing this waiver, I am acting on behalf of myself, individually, and on behalf of the campaign committee Familias por Maywood aka Familais por Maywood Supporting Aguirre Magana Varela for Maywood City Council (the "Committee"), which also is a respondent in this case, and of which I was a controlling candidate in 2009 and 2010.
2. I have consulted with an attorney of my choosing, and I understand my rights to an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws.
3. I hereby withdraw the Notice of Defense I filed with the FPPC dated July 15, 2014 in response to the Accusation dated June 25, 2014 issued by the FPPC against me and the Committee. I do so willingly because I no longer wish to contest this matter.
4. I hereby waive my rights to an administrative hearing, and I understand and agree that this case will proceed to a default recommendation by the Enforcement Division of the FPPC.

Dated: 12-20-2014


Felipe Aguirre, individually and on behalf of
Familias por Maywood