

1 GALENA WEST
Acting Enforcement Chief
2 DAVE BAINBRIDGE
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 LYDIA SALAZAR WIBERT, THE
13 PEOPLE TO ELECT LYDIA SALAZAR
14 WIBERT FONTANA CITY COUNCIL
2012, and DAVID WIBERT

15 Respondents.

FPPC No. 14/861

16
17 **STIPULATION, DECISION, AND ORDER**

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission and
20 respondents Lydia Salazar Wibert, The People to Elect Lydia Salazar Wibert Fontana City Council
21 2012, and David Wibert (Respondents) hereby agree that this Stipulation will be submitted for
22 consideration by the Fair Political Practices Commission (Commission) at its next regularly-scheduled
23 meeting.

24 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
25 matter and to reach a final disposition without the necessity of holding an additional administrative
26 hearing to determine the liability of Respondents.

27 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
28 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of

1 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to
2 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
3 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
4 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
5 the hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
7 to timely disclose the occupation and employer of individuals who made contributions of \$100 or more
8 in violation of Government Code section 842211, subdivision (f), and making campaign expenditures of
9 \$100 or more in cash in violation of Government Code section 84300, subdivision (b), all as described
10 in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
11 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 an administrative penalty in the total amount of
14 Two Thousand Five Hundred Dollars (\$2,500). Respondents submitted with this Stipulation a cashier's
15 check in said amount, made payable to the "General Fund of the State of California," as full payment of
16 the administrative penalty that shall be held by the State of California until the Commission issues its
17 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
18 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 Respondents in
20 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
21 agree 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 Galena West, on behalf of the Enforcement Division
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: _____
Lydia Salazar Wibert, individually, and on behalf of
The People to Elect Lydia Salazar Wibert Fontana City
Council 2012

Dated: _____
David Wibert, individually, and on behalf of The
People to Elect Lydia Salazar Wibert Fontana City
Council 2012

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Lydia Salazar Wibert, The People to Elect Lydia Salazar Wibert Fontana City Council 2012, and David Wibert,” FPPC No. 14/861, 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

EXHIBIT 1

INTRODUCTION

Respondent Lydia Salazar Wibert (“Wibert”) is a Fontana city council member. Respondent The People to Elect Lydia Salazar Wibert Fontana City Council 2012 (the “Committee”) was her campaign committee. The treasurer of the Committee was respondent David Wibert (the “Treasurer”).

Under the Political Reform Act (the “Act”)¹ candidates and committees must provide information on campaign statements about individuals who contribute \$100 or more to their campaign. Also candidates and their committees are prohibited from making expenditures of \$100 or more in cash. Wibert, the Committee, and the Treasurer violated the Act by failing to disclose information about individuals who made contributions of \$100 or more, and making expenditures of \$100 or more in cash. The Treasurer is liable, along with the Committee and Wibert, for the Committee’s campaign reporting violations.²

SUMMARY OF THE LAW

The Act requires campaign committees to disclose the name, address, occupation, and employer for every individual who contributes \$100 or more to a candidate’s campaign committee.³ The Act also prohibits the use of cash to make expenditures of \$100 or more.⁴

SUMMARY OF THE FACTS

Wibert won a seat on the city council in Fontana in the 2012 general election. Fair Political Practices Commission (“Commission”) staff randomly selected the Committee for an audit of its campaign records by the Franchise Tax Board (“FTB”). The FTB audit covered activity from January 1, 2011 through December 31, 2012. During that period, the Committee reported receiving contributions totaling \$103,165 and making expenditures totaling \$84,792. The audit found that the Committee largely complied with the Act’s reporting requirement but it did reveal two areas where the Committee committed multiple violations of the Act during the course of the campaign.

Count 1 – Failure to Disclose Contributor Information

The Committee received contributions of \$100 or more from three individuals for whom the Committee did not provide the occupation and employer on its original campaign statement. Those contributions consisted of the following:

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Sections 83116.5 and 91006

³ Section 84211, subd. (f)

⁴ Section 84300, subd. (b)

Contributor	Statement Period	Amount	Occupation and Employer (not included on statements) ⁵
Michael and Rima Tahan	10/1/12 – 10/21/12	\$600	Michael – President/CEO of TMIC Group; Rima – not employed
Reggie King	10/21/12 – 12/31/12	\$10,000	Partner, Young Homes
Victor Sanchez	10/21/12 – 12/31/12	\$198	Not employed
Total:		\$10,798	

By failing to timely provide the occupation and employer information for individuals who made contributions of \$100 or more on the Committee’s campaign statements, Wibert, the Committee, and the Treasurer violated Section 84211, subdivision (f).

Count 2 – Making Cash Expenditures of \$100 or more

During the course of the campaign, the Committee’s bank records showed cash withdraws totaling \$4,200. Of the total cash withdrawn, the Committee withdrew \$3,300 in increments larger than \$100. The Committee accounted for the spending of the withdrawn cash through a combination of receipts, invoices, and a petty cash log and it appears most of the cash expenditures were less than \$100 each. However, the Committee did disclose on its campaign statements making six cash expenditures of \$100 or more. The table below details the Committee’s cash expenditures of \$100 or more.

Amount	Payee	Description	Statement Period
\$200	Daniel Wibert	Campaign worker salary	7/1/12 – 9/30/12
\$400	David Wibert	Campaign worker salary	10/1/12 – 10/20/12
\$400	Ilaiasi Tuitupoa	Campaign worker salary	10/1/12 – 10/20/12
\$200	Loseli Tuitupoa	Campaign worker salary	10/21/12 – 12/31/12
\$200	Cesar Quintero	Campaign worker salary	10/21/12 – 12/31/12
\$200	American Legion Post	Victory party expenses	10/21/12 – 12/31/12
Total: \$1,600			

By making expenditures of \$100 or more in cash, Wibert, the Committee, and the Treasurer violated Section 84300, subdivision (b).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count, and \$10,000 total.

⁵ Occupation and employer information was determined by FTB and Enforcement Division staff.

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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.⁶ Cash transactions make it very difficult for FTB and the public to track and verify the contributions and expenditures of a committee. Further, the occupation and employer of a contributor is important information for the public in determining the identity and interests of a contributor. The Committee's actions in this case denied the public important information that the Act requires candidates and committees to provide. But it does not appear the Committee, or Wibert, were attempting to conceal or mislead the public. The Committee did disclose the cash expenditures, as well as the identity of the contributors for whom it did not provide occupation and employer information. The Committee and Wibert's violations appear to have been inadvertent or negligent, but not deliberate.

In determining the appropriate penalty for a violation, the Commission also considers penalties in prior cases involving similar violations. Recent similar cases where the respondents failed to disclose occupation and employer information for contributors include:

- *In the Matter of Mike Stoker, Stoker for Assembly 2010, and Trent Benedetti*, FPPC No. 12/090. Respondents failed to timely disclose the occupation and employer information for persons who contributed \$100 or more on a total of 23 contributions over four reporting periods. The total amount of these contributions was \$4,783, which was approximately 1% of the total amount of all contributions received by the committee. On December 13, 2012, the Commission approved a stipulation in which respondents agreed to pay a penalty of \$1,000 per count for two counts of failing to timely disclose occupation and employer information.
- *In the Matter of Joe Yee, Friends of Joe Yee for City Council 2012, and Lynda Otto*, FPPC No. 12/820. Respondents failed to disclose occupation and employer information for 60 contributions over six statement periods. The total amount of these contributions was \$11,525, which was approximately 6% of the total amount of contributions received by the respondents during that election year. On February 20, 2014 the Commission approved a stipulation in which respondents agreed to a penalty of \$1,500 per count for two counts of failing to timely provide occupation and employer information.

The present case involves just three contributions for which the Committee failed to timely disclose occupation and employer information. But the total dollar amount of those contributions was 10.5% of the total amount of the contributions the Committee received for the

⁶ Section 81002, subdivision (a)

year. This is a significantly higher percentage than the committees in the comparable cases. The total dollar amount of the incompletely disclosed contributions in this case was between the amounts in the *Stoker* case and the *Yee* case. While the contributions that the Committee failed to properly disclose occurred in two statement periods, a single count for these violations is appropriate since it was only three contributions that were not properly disclosed. The Committee asserts that its failure to provide the occupation and employer information was a mistake and it had no intent to conceal the business interests of the contributors. But as a result of the Committee's violation, the public could not determine from the campaign filings prior to the election that the Committee received contributions from a local real estate agency and a residential building company.

With regard to violations for making cash expenditures of \$100 or more, recent similar cases include:

- *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652. Respondents made five cash expenditures of \$100 or more, totaling approximately \$1,400. All of these expenditures occurred in the same statement period. Respondents did not disclose the expenditures on their campaign statement. On February 10, 2011, the Commission approved a stipulation in which respondents agreed to pay a penalty of \$2,000 for one count of making cash expenditures of \$100 or more.
- *In the Matter of Andrew Ammon and Committee to Elect Andrew Ammon to the San Gabriel School Board 2011*, FPPC No. 13/549 (the Commission approved the stipulation) Respondent made a single \$1,000 cash expenditure. The respondents failed to disclose making the cash expenditures on their campaign statement. On July 17, 2014, the Commission approved a stipulation in which respondents agreed to pay a penalty of \$2,000 for one count of making a cash expenditure of \$100 or more.

The total dollar amount of cash expenditures of \$100 or more in this case is similar to the comparable cases. The main distinction between these cases is the Committee disclosed making the cash expenditures, whereas the respondents in the comparable cases did not. Disclosure of the cash expenditures reduces the public harm caused by making expenditures of \$100 or more since the recipient is known. This justifies combining the cash expenditures that occurred in multiple statement periods into a single count. Still, cash expenditures are very difficult to track and verify, and the Committee withdrew a substantial sum of cash to make expenditures.

To its credit, the Committee cooperated with FTB's audit and with Commission staff in reaching this resolution. The Committee amended its campaign filings upon learning of its violations and the Committee and Wibert do not have a record of prior violations of the Act.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, we propose a penalty of \$1,000 for Count 1 and \$1,500 for Count 2, resulting in a total penalty of \$2,500.