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

10 In the Matter of:

11 BARBADILLO FOR MILPITAS CITY  
COUNCIL 2014, GARRY  
12 BARBADILLO,

13 Respondents.

FPPC Case No. 15/248

STIPULATION, DECISION AND ORDER

14  
15 **INTRODUCTION**

16 This matter arose from a complaint submitted to the Enforcement Division of the Fair Political  
17 Practices Commission. Respondent Barbadillo for Milpitas City Council 2014 is a candidate-controlled  
18 committee formed to support the election of Respondent Garry Barbadillo in the November 4, 2014  
19 General Election. Barbadillo also served as the Committee's treasurer. The Political Reform Act<sup>1</sup>  
20 requires committees to make all expenditures and deposit all contributions into one designated campaign  
21 bank account. The Committee and Barbadillo violated the Act by failing to make all expenditures out of  
22 the designated campaign bank account.

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27 <sup>1</sup> The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections  
81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission  
28 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references  
are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred in  
3 2014. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they  
4 existed at that time—unless otherwise noted.

5 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

6 When enacting the Political Reform Act, the people of California found and declared that  
7 previous laws regulating political practices suffered from inadequate enforcement by state and local  
8 authorities.<sup>2</sup> Thus, it was decreed that the Act “should be liberally construed to accomplish its  
9 purposes.”<sup>3</sup> One purpose of the Act is to promote transparency by ensuring that receipts and expenditures  
10 in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper  
11 practices are inhibited.<sup>4</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so  
12 that the Act will be “vigorously enforced.”<sup>5</sup>

13 **One Designated Campaign Bank Account**

14 A candidate-controlled committee must make all campaign expenditures from the committee’s  
15 designated bank account.<sup>6</sup> Any loans to the candidate or committee shall be deposited in the campaign  
16 bank account before being utilized.<sup>7</sup> Any personal funds a candidate intends to spend on campaign-  
17 related expenses must first be deposited in the campaign bank account before the expenditure is made.<sup>8</sup>

18 **Joint and Several Liability of Committee and Treasurer**

19 It is the duty of a committee treasurer to ensure that the committee complies with the Act.<sup>9</sup> A  
20 treasurer may be held jointly and severally liable, along with the committee, for violations committed by  
21 the committee.<sup>10</sup>

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<sup>2</sup> Section 81001, subdivision (h).

24 <sup>3</sup> Section 81003.

25 <sup>4</sup> Section 81002, subdivision (a).

26 <sup>5</sup> Section 81002, subdivision (f).

27 <sup>6</sup> Section 85201, subdivision (e).

28 <sup>7</sup> Section 85201, subdivision (c).

<sup>8</sup> Section 85201, subdivision (d) and Regulation 18524, subdivision (a).

<sup>9</sup> Sections 81004, 84100, and Regulation 18427.

<sup>10</sup> Sections 83116.5 and 91006.

**SUMMARY OF THE FACTS**

Barbadillo was a successful candidate in the 2014 Milpitas City Council race in the November 4, 2014 General Election. During the campaign, the Committee made payments totaling \$7,373.65 from sources other than the designated campaign bank account. These payments are detailed as follows:

Reporting Period	Payee	Description	Amount
Semiannual 01/01/14-06/30/14	GLP Graphic Design	Literature	\$350.00
Pre-election 07/01/14-09/30/14	Copyworld, Inc.	Literature	\$237.62
	Copyworld, Inc.	Literature	\$990.00
	Copyworld, Inc.	Literature	\$458.89
	Copyworld, Inc.	Literature	\$135.05
	Tigo Corporation	Misc. Campaign	\$822.16
	Milpitas Post	Print Ads	\$1,292.00
	Speedy Signs	Misc. Campaign	\$1,268.93
Pre-election 10/01/14-10/18/14	Sunnyhills Neighborhood Association	Literature	\$250.00
	Prima Mail	Literature	\$550.00
	Not Itemized/Not reported	Not itemized	\$75.00
Semiannual 10/19/14-12/31/14	Robocent, Inc.	Phone Banks	\$158.00
	Facebook, Inc.	Literature	\$341.00
	Phillippine Digest, Inc.	Print Ads	\$350.00
	Not Itemized/Not reported	Not itemized	\$95.00
<b>Total</b>			<b>= \$7,373.65</b>

The Committee reported the payments listed above, including payee, payee address, and description of expenditure, accurately on the campaign statements with only the two exceptions noted above which were less than \$100 each. However, the funds were not sourced from the campaign bank account. The payments, made by Barbadillo, were reported as loans to the campaign. The Enforcement Division requested and received documentation, including: committee bank account statements, copies of checks from Barbadillo’s law firm, personal checks from Barbadillo, and personal credit cards held by Barbadillo. These records showed that the campaign bank account was not used for the payments listed above. The bank account was not opened until October 3, 2014, well after the campaign began making expenditures that require the opening of a campaign bank account.

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2 **VIOLATION**

3 **Count 1**

4 Respondents Barbadillo for Milpitas City Council 2014 and Barbadillo failed to pay a total of  
5 \$7,373.65 in expenditures from the designated campaign bank account, in violation of Section 85201.

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7 **PROPOSED PENALTY**

8 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per  
9 count. Thus, the maximum penalty that may be imposed is \$5,000.<sup>11</sup>

10 In determining the appropriate penalty for a particular violation of the Act, the Commission  
11 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
12 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
13 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
14 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
15 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
16 record of violations.<sup>12</sup> Here, the violation appears negligent, but not deliberate and there is no prior  
17 enforcement history. Further, the Committee's campaign statements disclosed all of the expenditures so  
18 there was no intent to conceal the Committee's expenditures. The violation is considered serious as the  
19 designated campaign bank account rule is considered key to ensuring that committees accurately disclose  
20 their contributions and expenditures.

21 Additionally, the Commission considers penalties in prior cases with comparable violations. In  
22 prior matters, the penalty has ranged from the mid-to-high range. For example, *In the Matter of Friends*  
23 *of Frank Bigelow for Assembly 2016, Frank Bigelow, and Vona L. Copp*, FPPC Case No. 17/0079,  
24 involved respondents made campaign expenditures totaling \$2,189.78 that were not paid from the  
25 campaign bank account. In aggravation, campaign funds were used, in small amounts, for personal use

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28 <sup>11</sup> See Section 83116, subdivision (c).

<sup>12</sup> Regulation 18361.5, subdivision (d).

1 and over \$500 in unitemized expenditures were not reported on campaign statements. The Commission  
2 imposed a penalty of \$2,000 for one count on December 21, 2017. Here, the Committee reported the  
3 expenditures that were spent outside the bank account, but the amount of funds spent outside the account  
4 was larger than in *Bigelow*. After considering the factors listed in Regulation §18361.5 and penalties in  
5 prior similar cases, a penalty of \$2,000 is recommended.

## 6 7 **CONCLUSION**

8 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
9 Respondents Barbadillo for Milpitas City Council 2014 and Garry Barbadillo hereby agree as follows:

10 1. Respondents violated the Act as described in the foregoing pages, which are a true and  
11 accurate summary of the facts in this matter.

12 2. This stipulation will be submitted for consideration by the Fair Political Practices  
13 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

14 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
15 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
16 liability of Respondents pursuant to Section 83116.

17 4. Respondent has consulted with his attorney, Rajeev Madnawat, Attorney at Law, and  
18 understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in Sections  
19 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the  
20 right to appear personally at any administrative hearing held in this matter, to be represented by an  
21 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the  
22 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge  
23 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

24 5. Respondents agree to the issuance of the decision and order set forth below. Also,  
25 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
26 \$2,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
27 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
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1 administrative penalty described above, and same shall be held by the State of California until the  
2 Commission issues its decision and order regarding this matter.

3 6. If the Commission refuses to approve this stipulation—then this stipulation shall become  
4 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
5 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
6 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
7 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
8 Director, shall be disqualified because of prior consideration of this Stipulation.

9 7. The parties to this agreement may execute their respective signature pages separately. A  
10 copy of any party’s executed signature page, including a hardcopy of a signature page transmitted via fax  
11 or as a PDF email attachment, is as effective and binding as the original.

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13 Dated: \_\_\_\_\_

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

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16 Dated: \_\_\_\_\_

\_\_\_\_\_  
Garry Barbadillo, individually and on behalf of  
Barbadillo for Milpitas City Council 2014, Respondents

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18 Dated:

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Rajeev Madnawat  
Attorney for Respondent

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21 The foregoing stipulation of the parties “In the Matter of Barbadillo for Milpitas City Council  
22 2014 and Garry Barbadillo, FPPC Case No. 15/248, is hereby accepted as the final decision and order of  
23 the Fair Political Practices Commission, effective upon execution below by the Chair.

24 IT IS SO ORDERED.

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26 Dated: \_\_\_\_\_

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Joann Remke, Chair  
Fair Political Practices Commission