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7 Fax No: (707) 581-6905

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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

*In The Matter Of:* ) FPPC No. 14/1112  
)  
PAM BERTANI FOR SOLOANO COUNTY ) RESPONDENTS' REQUEST FOR  
SUPERVISOR 2014 AND PAM BERTANI, ) RECONSIDERATION AND MITIGATION  
) REGARDING DEFAULT DECISION AND  
RESPONDENTS ) ORDER  
)  
) (Government Code Sections 11506 and  
) 11520

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Respondents respectfully submit this Request for Reconsideration and Mitigation in the above-referenced Matter. More specifically, with respect to the alleged Violations set forth in Counts 1-6 of the Default Decision and Order executed October 30, 2017 by Galena West, Chief of Enforcement, Fair Political Practices Commission, Respondents respectfully request that the Fair Political Practices Commission (hereinafter "FPPC") exercise its discretion in issuing a Warning Letter in resolution of the above-referenced Matter – as opposed to a monetary penalty. According to Commission case precedent, the Commission has issued Warning Letters in lieu of monetary penalties in cases – such as the instant case – where Respondents filed required campaign statements after applicable due dates, but soon after reporting discrepancies were brought to their attention.

Commission Case Precedent Supports Issuing A Warning Letter In Final Disposition Of This Matter – Instead Of Issuing A Monetary Penalty

In determining the appropriate penalty for a particular violation of the Political Reform Act (hereinafter "Act"), the Enforcement Division considers the typical treatment of a violation in the

1 overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act.  
2 Additionally, the Enforcement Division considers the facts and circumstances of the violation in the  
3 context of the following factors set forth in Regulation 18361.5 subdivision (d)(1) through (6):  
4

- 5 ➤ The seriousness of the violation;
- 6 ➤ The presence or absence of any intention to conceal, deceive or mislead;
- 7 ➤ Whether the violation was deliberate, negligent or inadvertent;
- 8 ➤ Whether the violator demonstrated good faith by consulting the Commission staff or  
9 any other government agency in a manner not constituting complete defense under  
10 Government Code section 83114(b);
- 11 ➤ Whether the violation was isolated or part of a pattern and whether the violator has a  
12 prior record of violations of the Political Reform Act or similar laws; and
- 13 ➤ Whether the violator, upon learning of a reporting violation, voluntarily filed  
14 amendments to provide full disclosure.

15 A. *In The Matter Of Working For Working Americans (FPPC Case No. 14/328) (September 16,*  
16 *2014), The FPPC Issued A Warning Letter In Lieu Of A Monetary Penalty Due To Mitigating*  
17 *Factors Similar To Mitigating Factors That Exist In The Instant Case*

18 *In The Matter Of Working For Working Americans*, The FPPC found that the violator “failed  
19 to timely file a statement of organization (Form 410) upon qualifying as a committee ... and  
20 also failed to timely file a report disclosing two contributions of \$5,000 or more in connection  
21 with a state ballot measure (Form 497).” In addition, the Commission found that the violator  
22 “made a \$250,000 contribution to the ballot measure committee ... but did not file a Form  
23 497 reporting the contribution until November 16, 2010 ... [and that the violator] made a  
24 second \$250,000 contribution ... but did not file a Form 497 reporting that contribution until  
25 November 19, 2010 [after election day]”.

26 Despite the stated reporting violations, the FPPC issued the violators a Warning Letter –  
27 instead of issuing monetary penalties. More specifically in this regard, the Commissions  
28 stated:

Despite your violations of the Act, mitigating factors exist such that the FPPC has  
decided to issue you a warning letter rather than impose a fine. The majority of your  
violations resulted from your apparently unintentional misclassification of the  
committee as a major donor committee instead of a recipient committee. Upon  
realizing your mistake, you filed the proper statements and reports. Further, the  
information contained on the statements and reports that you failed to timely file was  
disclosed on other statements and reports before the election and there is no  
evidence that you intended to conceal any information. Lastly, you do not have a  
history of violating the Act.

1  
2 B. In The Matter Of John Chiang / John Chiang for California 2006 (FPPC Case No. 08/0324)  
3 (January 21, 2010), The FPPC Issued A Warning Letter In Lieu Of A Monetary Penalty  
4 Due To Mitigating Factors Similar To Mitigating Factors That Exist In The Instant Case

5 *In The Matter Of John Chiang / John Chiang For California 2006*, the FPPC found that out  
6 of the 165 late contributions received totaling \$387,443, the violator failed to file late  
7 contribution reports for two contributions received totaling \$1,000 each and did not timely  
8 file late contribution reports for sixteen other contributions received totaling \$31,200. In  
9 addition, the Commission noted that of the approximately \$3.4 million in expenditures  
10 made, subvendor information totaling \$500,378 for the semi-annual reporting period ending  
11 June 30, 2006, was disclosed one year late.

12 Again, despite the alleged reporting violations, the FPPC issued a Warning Letter to the  
13 violators instead of imposing monetary penalties. More specifically in this regard, the  
14 Commission concluded:

15 Though your actions violated the Act, we have decided to close this case with a  
16 warning letter because [the violator] timely filed late contribution reports for 147  
17 contributions received and the majority of the late contribution reports not timely  
18 filed were filed before the election resulting in a minimal lack of disclosure.  
19 Further, [the violator] amended the campaign statements and disclosed all the  
20 subvendor information on [their] own accord.

21 C. In The Matter Of Tyron Hampton, Friends Of Tyron Hampton For School Board (FPPC  
22 Case No. 15,242) (June 22, 2016), The FPPC Issued A Warning Letter In Lieu Of A  
23 Monetary Penalty Due To Mitigating Factors Similar To Mitigating Factors That Exist In  
24 The Instant Case

25 *In The Matter Of Tyrone Hampton, Friends Of Tyron Hampton*, the FPPC concluded that  
26 the violator's actions violated the Act because they filed four campaign statements after the  
27 due dates, failed to include occupation/employer information for some of their contributors  
28 when they initially filed their campaign statements, and failed to file a late contribution  
statement. Nonetheless, the Commission ruled:

[B]ecause prior to contact by the Enforcement Division, [the violator] filed [their]  
original statements within a few days of the due dates, [and] amended [their]  
campaign statements before the relevant elections, and [violators] disclosed the late  
contribution information in a preelection statement filed before the relevant election,  
we are closing this portion of our file in this matter.

///

1 D. Pam Bertani / Pam Bertani For Solano County Supervisor 2014 Filed Timely Disclosures  
2 For The Vast Majority Of Contributions And Expenditures, And Voluntarily Filed  
3 Supplemental Corrective Disclosures Prior To FPPC Notifications

4 Respondents respectfully requests that the Commission issue a Warning Letter in lieu of  
5 imposing a monetary penalty because, consistent with the above-referenced Commission case  
6 precedent, the Bertani Committee acted expeditiously and in good faith in filing accurate  
7 disclosures for the vast majority of campaign contributions and expenditures, and voluntarily filed  
8 supplemental disclosures to complete the provision of campaign contribution and expenditure  
9 information for the applicable reporting periods.

10 Moreover, Respondent respectfully requests that the Commission issue a Warning Letter for  
11 stated reporting violations instead of imposing monetary penalties for the following additional  
12 reasons:

- 13 ➤ The alleged reporting violations were inadvertent, relatively minor and lacked the  
14 requisite significance to constitute a serious violation;
- 15 ➤ There is no cognizable evidence to establish any intention to conceal, deceive or  
16 mislead;
- 17 ➤ There is no cognizable evidence to establish that the alleged reporting violations were  
18 deliberate or even negligent;
- 19 ➤ Respondents demonstrated good faith by consulting with Commission staff to reach a  
20 final disposition of this matter in good faith;
- 21 ➤ The alleged violations were isolated – and there is no cognizable evidence to show  
22 that the alleged violations demonstrated a pattern:
- 23 ➤ Respondents do not have a prior record of violations of the Political Reform Act or  
24 similar laws; and
- 25 ➤ Respondents, upon learning of the alleged reporting violation, voluntarily filed  
26 amendments to provide full disclosure.

27 (Attached hereto as Exhibits A, B, C and D are true and correct copies of email correspondence  
28 between the Bertani Committee and FPPC staff regarding resolution and mitigation of the alleged  
reporting violations in the instant matter.

1 For the foregoing reasons, Respondents respectfully request that the Commission issue a  
2 Warning Letter in final disposition of this matter instead of imposing monetary penalties – consistent  
3 with Commission case precedent as discussed above.  
4

5 Executed on November 10, 2017 at Fairfield, California (County of Solano).  
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9 Pamela Winston Bertani  
10 (Respondent)  
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**EXHIBIT A**

| [Close](#) [Close](#)

**Subject:** In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112  
**From:** Bill Steck <bill.steck@att.net>  
**Date:** Thu, Sep 29, 2016 8:43 am  
**To:** Tanya Smith <tsmith@fppc.ca.gov>  
**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>  
**Attach:** William Steck response, 9\_29\_2016, FPPC Case No. 14\_1112.pdf

Ms. Smith,

Attached please find additional information and discussion of mitigating factors concerning Count #5 in the above-referenced matter. Thank you for your continued consideration, and I look forward to speaking with you tomorrow.

Sincerely,

William Steck

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9/29/2016

Tanya Smith, Commission Council  
Enforcement Division  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814-2329

Re: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Dear Ms. Smith,

Thank you for your revised Stipulation of September 26, 2016 based on my previous communication in this matter.

I would like to submit the following additional information with respect to this matter:

**Response to Revised Allegations**

Failure to Timely Report Late Contributions, November 4, 2014 General Election:  
Revised Allegation #2

	Date Rcvd	Amount Not Timely Reported	Name of Contributor	Date Reported	Number of Days Late
1	9/15/2014	\$ 4491.61	SEIU	9/29/2014	12

According to the records available on the Secretary of State's website, the SEIU's 497 Late Contribution Report for this in-kind contribution was filed on September 26, 2014 (please see copy, attached).

In as much as it was the SEIU that failed to file a timely 497 Late Contribution Report, I don't believe a reasonable person would hold the Pam Bertani for Solano County Board of Supervisors 2014 Committee responsible for predicting the value of an in-kind contribution and filing a 497 Late Contribution Report 10 or more days prior to the contributor disclosing the in-kind contribution to either the appropriate filing authority or the Committee.

As documented in my previous memo regarding this allegation, the Pam Bertani for Solano County Board of Supervisors 2014 Committee's 497 Late Contribution Report for this in-kind



contribution was filed with the Solano County Registrar of Voters Office on September 29, 2014, within the 48-hour filing deadline, both from the date of the SEIU's original disclosure and the date of the SEIU's notification to the Committee.

Failure to Timely Report Late Contributions, November 4, 2014 General Election:  
Revised Allegation #4

	Date Rcvd	Amount	Name of Contributor	Date Reported	Number of Days Late
4	10/10/2014	\$7,056.00	SEIU	10/23/2014	11

As documented in my previous memo regarding this allegation, on or about October 13, 2014, the Pam Bertani for Solano County Board of Supervisors 2014 Committee received a memo dated October 13, 2014 from the firm of Olson Hagel & Fishburn LLC disclosing a \$7056.00 in-kind contribution made by SEIU on October 10, 2014.

On October 14, 2014, the Committee filed a Form 497 Contribution Report of this contribution with the Solano County Registrar of Voters Office, within the 48-hour filing deadline. A date stamped copy of that report follows for your reference.

**Mitigating Factors**

Count #5 of the revised stipulation includes four allegations of failure to timely disclose receipt of late contributions. Based on the above information, I would ask that Allegations #1 and #4 be dismissed.

With respect to the revised allegation #3, the \$1,000 aggregated contribution from Solano United:

The 497 Late Contribution Report of the aggregated contribution, filed at most 5 days late, was disclosed almost 30 days prior to the election, giving the electorate advance notice of the aggregated contribution.

With respect to the revised allegation #1, \$4,170.00 in-kind contribution from the SEIU:

The SEIU Local 1021 PAC contributions (monetary and in-kind) to the Pam Bertani for Solano County Board of Supervisors 2014 Committee November 4, 2014 General Election campaign totaled \$64,578.44. The SEIU Local 1021 PAC made a total of nine separate contributions, all occurring during the 90 Day Late Contribution Reporting Period. We believe the Committee timely filed 497 Late Contribution reports for eight of those nine contributions, totaling

\$60,408.44, and would have timely filed for the contribution in revised allegation #1 had we been timely notified by the SEIU, as I documented in my previous memo regarding this allegation. (It seems like a weakness in the FPPC regulations regarding reporting of in-kind contributions aggregating \$1,000 or more during the 90 Day Late Reporting Period, as the contributor is required to file within 48 hours with the appropriate filing agency but apparently has no obligation to concurrently notify the recipient Committee of the contribution.)

In addition, SEIU United Long Term Care Workers Local 6434 State PAC made one monetary contribution of \$5,000 to the Committee, also during the 90 Day Late Contribution Reporting Period. The Committee also timely filed a 497 Late Contribution Report for the contribution.

The Pam Bertani for Solano County Board of Supervisors 2014 Committee timely disclosed 93.5% of the SEIU Local 1021 PAC's contributions to the 2014 General Election and 94% of the total contributions of the two SEIU Local Union PACs. In addition, on or about October 23, 2014, the Committee filed amended FPPC reports disclosing all previously unreported contributions from the two SEIU Local Union PACs (monetary and in-kind) made during the 2014 Primary Election, totaling \$99,846.94.

Prior to the November 4, 2014 Election the Committee disclosed \$165,255.38 in contributions from the two SEIU Local Union PACs, or 97.5% of the two SEIU Local Union PACs total of \$169,425.38 in combined 2014 Primary and General Election contributions. There was clearly no intent on the part of the Committee to conceal any contributions from the SEIU Local Union PACs or to deceive the electorate.

In fact, the extent of the SEIU's contributions were widely and prominently reported in the local press, as evidenced by the following two items from the Fairfield Daily Republic, as well as in the opponent's campaign literature:

[www.daily](#)  
[republic.com](#)

[www.daily](#)

[republic.com](#)

[republic.com](#)

[republic.com](#)

[republic.com](#)

Exhibit 1 of the revised Stipulation cites two previous FPPC cases used in determining penalties:

In the Matter of Ruben Valencia, Valencia for City Council 2014, and Kathleen Christiansen, the respondents failed to disclose nine Late Contribution Reports totaling \$17,000 and was fined \$1,500 for this violation. In the 2014 General Election, the Pam Bertani for Solano County Board of Supervisors 2014 Committee failed to timely file two Late Contribution Reports totaling \$5,170, and one \$1,000 aggregate contribution was filed only a few days late, well in advance of the election. The Pam Bertani for Solano County Board of Supervisors 2014 Committee missed 78% fewer Late Contribution Reports involving 70% less in contributions, which should be reflected in a proportionately lower fine.

In the manner of No Government Waste, No on Measure B, et. al., the respondents failed to disclose receiving six non-monetary contributions totaling \$16,293 at any time prior to the election, was fined \$2,500, and also appeared to engage in other conduct to deceive the electorate concerning the source of contributions to the committee. The Pam Bertani for Solano County Board of Supervisors 2014 Committee missed 67% fewer Late Contribution Reports involving 68% less in contributions, cured all of those missed reports except one well prior of the election, and made no attempts to conceal the source of contributions or deceive the electorate, which should be reflected in a proportionately lower fine.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Steck', with a stylized flourish at the end.

William Steck

# Late Contribution Report

Type or print in ink.  
Amounts may be rounded to whole dollars.

<b>NAME OF FILER</b> Service Employees International Union Local 1021 Candidate PAC			<b>Date of This Filing</b> _____ 09/26/2014 _____	Date Sta
AREA CODE/PHONE NUMBER (510)350-4527	I.D. NUMBER (if applicable) 1296948		<b>Report No.</b> _____ 12529 _____	Page' 2
STREET ADDRESS			<input type="checkbox"/> <b>Amendment to Report No.</b> _____ (explain below)	
CITY Oakland	STATE CA	ZIP CODE 94609	<b>No. of Pages</b> _____ 3 _____	

## Late Contribution(s) Made

DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	CC
09/15/2014	Pam Bertani for Solano County Supervisor 2014 Fairfield, CA 94533  ID# 1361145 Memo Reference: PDT:S497:159	Pam Bertani County Supervisor District 3 Jurisdiction: Other Solano County	\$4,499.00

Reason for Amendment:

# 497 Contribution Report

Type or print in ink.  
Amounts may be rounded to whole dollars.

497 CONTRIBUTION REPORT



**REPORTING PERIOD**  
Ira J. ROSS  
SOLANO COUNTY  
BOARD OF SUPERVISORS

**DATE OF THIS FILING** 10/30/2014  
**REPORT NO.** 10\_00\_14\_01

Amendment to Report No. (per page below)  
**NO. OF PAGES** 1  
**OCT 30 2014**  
1 of 1

**NAME OF FILER**  
Pam Bertani for Solano County Board of Supervisors 2014  
**AREA CODE/PHONE NUMBER**  
707-476-7777

**STREET ADDRESS**  
728 Texas Street  
Fairfield  
CA 94533

## 1. Contribution(s) Received

DATE RECEIVED	FULL NAME (PLEASE PRINT FULL NAME AND ADDRESS) (PLEASE PRINT FULL NAME AND ADDRESS)	AMOUNT RECEIVED
10/29/2014	SEIU Local 1021 - Candidate Pkg, ID:1295048 555 Capitol Mall, Suite 1125 Sacramento CA 95814	774.00

Check if Loan

- IND - Individual
- COM - Committee (other than PTY or NOC)
- OTI - Other (e.g., Business Cash)
- PTY - Political Party
- SOC - Small Contributor/Conventive

**Reason for Amendment:**

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**EXHIBIT B**

[Print](#) | [Close Window](#)

**Subject:** Fw: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112  
**From:** Bill Steck <bill.steck@att.net>  
**Date:** Thu, Sep 29, 2016 1:19 pm  
**To:** Pam Bertani <pambertani@winstonbertanilawgroup.com>  
**Attach:** FPPC\_497\_10\_14\_14.pdf

Bill Steck  
Information, Strategy, Design  
707-843-9688

----- Forwarded Message -----

**From:** Bill Steck <bill.steck@att.net>  
**To:** Tanya Smith <TSmith@fppc.ca.gov>  
**Sent:** Thursday, September 29, 2016 12:30 PM  
**Subject:** Re: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Ms. Smith,

Thank you for your response and clarifications. Please reconsider the following information with respect to item #2 (\$7056.00 in-kind contribution), as I still believe the Committee timely filed a 497 Late Contribution Report for this contribution:

- The \$7,056 in-kind contribution was made on Friday, October 10, 2014.
- The Committee has 48 hours to file from the date of the contribution, excluding Saturdays, Sundays and Holidays.
- Monday, October 13 and Tuesday, October 14 would therefore constitute the 48-hour period.
- The Committee filed a 497 Late Contribution Report on Tuesday, October 14, 2104.
- I now see sent you the wrong date stamped 497 Report in my previous communication and I've attached to correct report.

If you concur that this was timely filed, then the amount not timely disclosed would be essentially the same as in Valencia.

Thank you for your continued consideration.

Sincerely,

William Steck

---

**From:** Tanya Smith <TSmith@fppc.ca.gov>  
**To:** Bill Steck <bill.steck@att.net>

**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>

**Sent:** Thursday, September 29, 2016 11:48 AM

**Subject:** RE: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Protected Settlement Communication Pursuant to Evidence Code Sections 1152 and 1154

Good morning, Mr. Steck.

Thank you for the additional material provided. I have reviewed your documents and will respond in order of the points you organized. If I have missed anything, please do not hesitate to let me know, and I will address anything that remains outstanding either today or tomorrow.

1. With regard to the late contribution report of the 9/15/14 non-monetary contribution from SEIU (\$4,491.61), the Act uses strict liability rather than the reasonable person standard to which you refer.

This strict liability standard is set forth in Government Code sections 83116.5 and 91004. See also *Inquiry Regarding Hall*, 49 Cal. 4<sup>th</sup> CJP Supp. 146 at 163 (2006): “[T]here is strict liability for violations of the Political Reform Act.”

The Act defines the date a contribution is received as the earliest of either the date that a contributor expended the funds for goods or services or the date that a candidate receives the benefit of the expenditure. Regulation 18421.1, subdivision (f).

While the Act requires SEIU's committee to notify your committee of each in-kind contribution, your committee is still liable for failing to report the late non-monetary contribution within 48 hours, with or without notification. You are correct that disclosure was made prior to the election, but that would only be a mitigating factor for the penalty, not excuse the violation.

2. With regard to the late contribution report of the 10/10/14 non-monetary contribution from SEIU (\$7,056), the same strict liability standard applies as described in the paragraph above.

Thus, although the Act requires SEIU's committee to notify your committee of the contribution, your committee is still liable for failing to report the late nonmonetary contribution within 48 hours, with or without notification. You are correct that disclosure was made prior to the election, but that would only be a mitigating factor for the fine, not excuse the violation.

3. With regard to the failure to report a \$1,000 aggregated contribution from Solano United on 10/10/14, the same strict liability standard applies. You are correct that disclosure was made prior to the election, but that would only be a mitigating factor for the fine, not excuse the violation.

4. With regard to lack of intent to conceal contributions: the investigation found no intent, and thus there was no aggravating factor of intent to conceal included in the exhibit. It is true that your work as a treasurer helped aid the Committee by lowering its overall fine even before we began these negotiations to settle prior to a hearing. The



amendments you filed mitigated the public harm for failure to timely disclose and reduced the overall fines being proposed for the Commission's approval. It also appears that many of SEIU's contributions were disclosed prior to the election. However, this does not excuse the violation.

5. With regard to the percentage of SEIU contributions timely disclosed, I need to know what figures on the exhibit charts or paragraphs need to be changed, as well as have the supporting documentation for those changes.

The investigation took so long because each amendment changed contributor information and total expenditures/contributions, and I cannot confirm your figures without more information. However, the fact that disclosure did not occur either 24 hours after a monetary contribution or 48 hours after a non-monetary contribution means that the Act was violated with respect to the contributions listed in the charts described within the exhibit. If you know of any inaccuracies, please provide me more detailed information.

6. With regard to press coverage of SEIU's contributions, whether there was (or was not) media coverage is not relevant to a committee's filing obligations under the Act. The committee is judged under the strict liability standard. Either a filing happened within the required timeframe, or it did not. That is all that a probable cause conference hearing officer or administrative law judge would consider.

7. With regard to the Valencia comparable case, the \$1,500 fine reflects smaller dollar amounts that were not timely disclosed in late contribution reports. In Valencia, 8 late contribution reports were not timely filed, resulting in the failure to disclose \$17,000 in contributions. In our case, count 5 covers the November 2014 late contribution reports, of which 4 late contribution reports were not timely filed, totaling \$24,467 in contributions. The higher dollar amount justifies a fine of \$2,000 rather than \$1,500.

If you review the last 3 or 4 Commission meetings on FPPC youtube, you will note that the Commission has lately increased fines they felt were too low, even though Enforcement and the respondents had agreed to them based on recent comparable cases. By trying to match count 5 to the slightly lower fine in Valencia, we risk the Commission rejecting our settlement and imposing a higher penalty, particularly because the dollar amount in count 5 is higher than in Valencia. The Commission will also be affected by the higher activity in counts 1 through 4, which was not an issue in Valencia. Valencia had only 8 late contribution reports that were not filed, compared to a total 22 in this case spanning all counts, with a much higher overall dollar amount involved.

8. With regard to the Government Waste comparable case, the \$2,500 fine reflects activity that is less than any of the activity in our case for counts 2, 3, 4, or 5. Thus, a \$2,500 fine for higher activity (even activity disclosed before the election) would likely be accepted by the Commission. However, for count 5, we are going for a \$2,000 penalty, so Government Waste is being used to illustrate the outermost limit we hope the Commission will use for counts 2, 3, and 4. As I explained in the paragraph above, the Commission has lately been setting aside recent comparable cases and going for higher penalties. The intent to conceal in Government Waste can be seen by the much higher

penalties imposed in the other 15 counts imposed by the commission, particularly counts 1, 5, 6, 7, 11, 12, and 13, where the penalty was at or very near the maximum penalty of \$5,000 per violation.

I look forward to speaking with both you and Mrs. Bertani tomorrow regarding our case. Please do not hesitate to contact me before then if you have additional mitigating information.

Sincerely,

Tanya Smith  
Commission Counsel  
Enforcement Division  
Fair Political Practices Commission  
428 J Street, Ste. 620  
Sacramento, CA 95814  
(916) 322-5021

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**From:** Bill Steck [mailto:bill.steck@att.net]  
**Sent:** Thursday, September 29, 2016 8:44 AM  
**To:** Tanya Smith <TSmith@fppc.ca.gov>  
**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>  
**Subject:** In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Ms. Smith,

Attached please find additional information and discussion of mitigating factors concerning Count #5 in the above-referenced matter. Thank you for your continued consideration, and I look forward to speaking with you tomorrow.

Sincerely,

William Steck

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**497 Contribution Report**

Amounts may be rounded to whole dollars.

**FILED**

497 CONTRIBUTION REPORT

**NAME OF FILER**  
 Pam Bertani for Solano County Supervisor 2014

**AREA CODE/PHONE NUMBER**  
 707-578-7777

**STREET ADDRESS**  
 728 Texas Street  
 Fairfield

**CITY**  
 Fairfield

**STATE**  
 CA

**ZIP CODE**  
 94533

**DATE OF THIS FILING**  
 10/14/2014

**REPORT NO.**  
 10\_14\_14\_01

**AMENDMENT TO REPORT NO.**  
 Amendment to Report No. (explain below)

**NO. OF PAGES**  
 1

**BY**  
 Ira Rosenthal  
 Registrar of Voters  
 Deputy Clerk

**DATE STAMP**  
 Solano County  
 OCT 14 2014

**CALIFORNIA FORM 497**  
 For Official Use Only

**1. Contribution(s) Received**

DATE RECEIVED	CONTRIBUTOR NAME (IF COMMITTEE ALSO ENTER ID NUMBER)	CONTRIBUTION CODE *	IS AN EMPLOYER ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED
10/14/2014	Service Employees International Union Local 1021 Candidate PAC 447 29th Street Oakland, CA 94609 ID# 1296546	<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input checked="" type="checkbox"/> SCC		\$500.00 <input type="checkbox"/> Check if Loan Provide Abstract #
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		<input type="checkbox"/> Check if Loan Provide Abstract #

**\*\*Contributor Codes**  
 IND - Individual  
 COM - Recipient Committee (other than PTY or SCC)  
 OTH - Other (e.g., business entity)  
 PTY - Political Party  
 SCC - Small Contributor Committee

Reason for Amendment

FPPC Form 497 (March/2011)  
 FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)

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**EXHIBIT C**

| [Close Window](#)

**Subject:** Re: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112  
**From:** Bill Steck <bill.steck@att.net>  
**Date:** Thu, Sep 29, 2016 4:08 pm  
**To:** Tanya Smith <TSmith@fppc.ca.gov>  
**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>

Ms. Smith,

Thank you for your response. I'd like to discuss this further on tomorrow's call.

I've been referring to the FPPC Campaign Manual 2 as an information source. Chapter 10.3, Heading "When and Where to File Form 497," states an exception is provided: "Filing deadlines are extended to the next business day on Saturdays, Sundays, and official state holidays. However, the extension does not apply on the Saturday, Sunday, or an official state holiday immediately prior to an election."

Given this exception, an in-kind contributor making a contribution in on a Friday in early October could timely file a 497 Report and notify the recipient of the contribution by the close of business on the following Monday, leaving the receiving Committee with no opportunity to file a timely 497 Report, as happened in this instance.

Thank you, again, for you consideration.

William Steck

---

**From:** Tanya Smith <TSmith@fppc.ca.gov>  
**To:** Bill Steck <bill.steck@att.net>  
**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>  
**Sent:** Thursday, September 29, 2016 2:31 PM  
**Subject:** RE: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Protected Settlement Communication Pursuant to Evidence Code Sections 1152 and 1154

Thank you for this information, Mr. Steck.

Many times, when a due date falls on a weekend, the Act allows for submission the following business day. This is set forth in Regulation 18116(b)(1), which I have attached. However, this extension of time does not apply to late contribution reports, which are set forth in Government Code 84203 and 84203.3, also attached.

I have highlighted the portions of the regulation and Act which apply here. I have used both to conclude that the \$7,056 nonmonetary contribution was not timely reported within 48 hours.

The Act states that such late contribution reports must be faxed in to the filing officer.

Please let me know if there are other mitigating factors that I should add to our exhibit.

Sincerely,

Tanya Smith  
Commission Counsel  
Enforcement Division  
Fair Political Practices Commission  
428 J Street, Ste. 620  
Sacramento, CA 95814  
(916) 322-5021

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**From:** Bill Steck [mailto:bill.steck@att.net]  
**Sent:** Thursday, September 29, 2016 12:31 PM  
**To:** Tanya Smith <TSmith@fppc.ca.gov>  
**Subject:** Re: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Ms. Smith,

Thank you for your response and clarifications. Please reconsider the following information with respect to item #2 (\$7056.00 in-kind contribution), as I still believe the Committee timely filed a 497 Late Contribution Report for this contribution:

- The \$7,056 in-kind contribution was made on Friday, October 10, 2014.
- The Committee has 48 hours to file from the date of the contribution, excluding Saturdays, Sundays and Holidays.
- Monday, October 13 and Tuesday, October 14 would therefore constitute the 48-hour period.
- The Committee filed a 497 Late Contribution Report on Tuesday, October 14, 2104.
- I now see sent you the wrong date stamped 497 Report in my previous communication and I've attached to correct report.

If you concur that this was timely filed, then the amount not timely disclosed would be essentially the same as in Valencia.

Thank you for your continued consideration.

Sincerely,

William Steck

**From:** Tanya Smith < >  
**To:** Bill Steck < >  
**Cc:** Pam Bertani < >  
**Sent:** Thursday, September 29, 2016 11:48 AM  
**Subject:** RE: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Protected Settlement Communication Pursuant to Evidence Code Sections 1152 and 1154

Good morning, Mr. Steck.

Thank you for the additional material provided. I have reviewed your documents and will respond in order of the points you organized. If I have missed anything, please do not hesitate to let me know, and I will address anything that remains outstanding either today or tomorrow.

1. With regard to the late contribution report of the 9/15/14 non-monetary contribution from SEIU (\$4,491.61), the Act uses strict liability rather than the reasonable person standard to which you refer.

This strict liability standard is set forth in Government Code sections 83116.5 and 91004. See also *Inquiry Regarding Hall*, 49 Cal. 4<sup>th</sup> CJP Supp. 146 at 163 (2006): “[T]here is strict liability for violations of the Political Reform Act.”

The Act defines the date a contribution is received as the earliest of either the date that a contributor expended the funds for goods or services or the date that a candidate receives the benefit of the expenditure. Regulation 18421.1, subdivision (f).

While the Act requires SEIU’s committee to notify your committee of each in-kind contribution, your committee is still liable for failing to report the late non-monetary contribution within 48 hours, with or without notification. You are correct that disclosure was made prior to the election, but that would only be a mitigating factor for the penalty, not excuse the violation.

2. With regard to the late contribution report of the 10/10/14 non-monetary contribution from SEIU (\$7,056), the same strict liability standard applies as described in the paragraph above.

Thus, although the Act requires SEIU’s committee to notify your committee of the contribution, your committee is still liable for failing to report the late nonmonetary contribution within 48 hours, with or without notification. You are correct that disclosure was made prior to the election, but that would only be a mitigating factor for the fine, not excuse the violation.

3. With regard to the failure to report a \$1,000 aggregated contribution from Solano United on 10/10/14, the same strict liability standard applies. You are correct that disclosure was made prior to the election, but that would only be a mitigating factor for the fine, not excuse the violation.

4. With regard to lack of intent to conceal contributions: the investigation found no intent, and thus there was no aggravating factor of intent to conceal included in the exhibit. It is true that your work as a treasurer helped aid the Committee by lowering its overall fine even before we began these negotiations to settle prior to a hearing. The amendments you filed mitigated the public harm for failure to timely disclose and reduced the overall fines being proposed for the Commission's approval. It also appears that many of SEIU's contributions were disclosed prior to the election. However, this does not excuse the violation.

5. With regard to the percentage of SEIU contributions timely disclosed, I need to know what figures on the exhibit charts or paragraphs need to be changed, as well as have the supporting documentation for those changes.

The investigation took so long because each amendment changed contributor information and total expenditures/contributions, and I cannot confirm your figures without more information. However, the fact that disclosure did not occur either 24 hours after a monetary contribution or 48 hours after a non-monetary contribution means that the Act was violated with respect to the contributions listed in the charts described within the exhibit. If you know of any inaccuracies, please provide me more detailed information.

6. With regard to press coverage of SEIU's contributions, whether there was (or was not) media coverage is not relevant to a committee's filing obligations under the Act. The committee is judged under the strict liability standard. Either a filing happened within the required timeframe, or it did not. That is all that a probable cause conference hearing officer or administrative law judge would consider.

7. With regard to the Valencia comparable case, the \$1,500 fine reflects smaller dollar amounts that were not timely disclosed in late contribution reports. In Valencia, 8 late contribution reports were not timely filed, resulting in the failure to disclose \$17,000 in contributions. In our case, count 5 covers the November 2014 late contribution reports, of which 4 late contribution reports were not timely filed, totaling \$24,467 in contributions. The higher dollar amount justifies a fine of \$2,000 rather than \$1,500.

If you review the last 3 or 4 Commission meetings on FPPC youtube, you will note that the Commission has lately increased fines they felt were too low, even though Enforcement and the respondents had agreed to them based on recent comparable cases. By trying to match count 5 to the slightly lower fine in Valencia, we risk the Commission rejecting our settlement and imposing a higher penalty, particularly because the dollar amount in count 5 is higher than in Valencia. The Commission will also be affected by the higher activity in counts 1 through 4, which was not an issue in Valencia. Valencia had only 8 late contribution reports that were not filed, compared to a total 22 in this case spanning all counts, with a much higher overall dollar amount involved.

8. With regard to the Government Waste comparable case, the \$2,500 fine reflects activity that is less than any of the activity in our case for counts 2, 3, 4, or 5. Thus, a \$2,500 fine for higher activity (even activity disclosed before the election) would likely be



accepted by the Commission. However, for count 5, we are going for a \$2,000 penalty, so Government Waste is being used to illustrate the outermost limit we hope the Commission will use for counts 2, 3, and 4. As I explained in the paragraph above, the Commission has lately been setting aside recent comparable cases and going for higher penalties. The intent to conceal in Government Waste can be seen by the much higher penalties imposed in the other 15 counts imposed by the commission, particularly counts 1, 5, 6, 7, 11, 12, and 13, where the penalty was at or very near the maximum penalty of \$5,000 per violation.

I look forward to speaking with both you and Mrs. Bertani tomorrow regarding our case. Please do not hesitate to contact me before then if you have additional mitigating information.

Sincerely,

Tanya Smith  
Commission Counsel  
Enforcement Division  
Fair Political Practices Commission  
428 J Street, Ste. 620  
Sacramento, CA 95814  
(916) 322-5021

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**From:** Bill Steck [ ]  
**Sent:** Thursday, September 29, 2016 8:44 AM  
**To:** Tanya Smith < >  
**Cc:** Pam Bertani < >  
**Subject:** In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Ms. Smith,

Attached please find additional information and discussion of mitigating factors concerning Count #5 in the above-referenced matter. Thank you for your continued consideration, and I look forward to speaking with you tomorrow.

Sincerely,

William Steck



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**Subject:** Re: application of Regulation 18116(b)(1)  
**From:** Bill Steck <bill.steck@att.net>  
**Date:** Fri, Sep 30, 2016 7:22 am  
**To:** Tanya Smith <TSmith@fppc.ca.gov>  
**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>  
**Attach:** Nexus between FPPC regulations.pdf

Ms. Smith,

I agree that the 497 Report should have reported the contribution date as 10/10/2104. However, I continue to respectfully disagree that the report was not timely filed, and the incorrect date therefore seems immaterial.

I believe the FPPC is ignoring the clear nexus between the notification obligation of the nonmonetary contributor and that of the recipient, in this instance as well as in allegations #1 and #2, in pursuing fines for these alleged violations. Please see my attached explanation.

Thank you for your continued consideration. I look forward to discussing this further this afternoon.

William Steck

---

**From:** Tanya Smith <TSmith@fppc.ca.gov>  
**To:** Bill Steck <bill.steck@att.net>  
**Cc:** Pam Bertani <pambertani@winstonbertanilawgroup.com>  
**Sent:** Thursday, September 29, 2016 6:34 PM  
**Subject:** application of Regulation 18116(b)(1)

Protected Settlement Communication Pursuant to Evidence Code Sections 1152 and 1154

Dear Mr. Steck,

You are correct that 18116(b)(1) allows for a delay to Monday if a filing deadline for a late contribution falls on a weekend that is not the weekend before an election.

I have reviewed the exhibit and believe that the following changes need to be made:

On page 5:

3/29/14 \$1,000 late contribution from Allan Johnson removed because it was not 1 day late; adjust total for this chart to \$27,409.70

On page 6:

10/10/14 \$7,056 late contribution from SEIU should now read that it was reported 10/14/14, 1 day late. This 497 was not provided by the Solano County Clerk during our investigation, so I am glad you kept a copy.

I've attached the letter from Richard Rios sent to the Committee on 10/13/14 regarding SEIU's non-monetary donation of \$7,056 on 10/10/14.

From my review of the file, Rios sent several letters on behalf of SEIU that do not appear timely in complying with the Act. However, because the Act is a strict liability one, nothing relieves our committee from the duty to file within 48 hours of 10/10/14 – here, by 10/13/14 because of the weekend being in early October and our use of Regulation 18116(b)(1) which you helped me interpret.

I've attached a second regulation, 18421.1, which states that a non-monetary contribution is received when a candidate or committee receives the benefit of the expenditure. I've highlighted and attached this regulation so that you understand why the date on the 497 you scanned to me was incorrect. It should have shown a receipt date of 10/10/14, since that was the date that our committee received the benefit of SEIU's \$7,056 contribution for Jim Ross Consulting. Thus, the date of receipt of Rios' letter is not the date our committee received a notice of the non-monetary donation, but the date it received the benefit of the expenditure.

As we apply Section 84203.3 (b) of the Act, it is clear that “nothing... shall relieve ...the recipient of a late in-kind contribution from the requirement to file late contribution reports...” So, even a one day delay is still a violation of the Act, because we didn't file a 497 on Monday, but filed it on a Tuesday after Ross mailed us the notice late. However, if our committee rejected the non-mon or paid it back within a few days of the notice, please let me know. That would change things.

I know it seems unfair, but even one day late is a violation for respondents we investigate. I speculate that the Commission wrote Regulation 18421.1 so tightly to discourage respondent committees from arguing they didn't report because they didn't know someone was contributing to their benefit, because of past abuses with the definition of when a contribution is received.

I look forward to discussing our case further when we have a phone conference.

Please feel free to email any questions you have before then.

Sincerely,

Tanya Smith  
Commission Counsel  
Enforcement Division  
Fair Political Practices Commission  
428 J Street, Ste. 620  
Sacramento, CA 95814  
(916) 322-5021

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**From:** Bill Steck [<mailto:bill.steck@att.net>]  
**Sent:** Thursday, September 29, 2016 4:09 PM  
**To:** Tanya Smith <[TSmith@fppc.ca.gov](mailto:TSmith@fppc.ca.gov)>  
**Cc:** Pam Bertani <[pambertani@winstonbertanilawgroup.com](mailto:pambertani@winstonbertanilawgroup.com)>  
**Subject:** Re: In the Matter of Pam Bertani, et. al., FPPC Case No. 14/1112

Ms. Smith,

Thank you for your response. I'd like to discuss this further on tomorrow's call.

I've been referring to the FPPC Campaign Manual 2 as an information source. Chapter 10.3, Heading "When and Where to File Form 497," states an exception is provided: "Filing deadlines are extended to the next business day on Saturdays, Sundays, and official state holidays. However, the extension does not apply on the Saturday, Sunday, or an official state holiday immediately prior to an election."

Given this exception, an in-kind contributor making a contribution in on a Friday in early October could timely file a 497 Report and notify the recipient of the contribution by the close of business on the following Monday, leaving the receiving Committee with no opportunity to file a timely 497 Report, as happened in this instance.

Thank you, again, for you consideration.

William Steck

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There is a clear nexus between the regulation requiring a committee that makes a nonmonetary contribution to notify the recipient of the contribution's values within 24 hours, and the recipient committee's requirement to file a 497 Report within 48 hours. Each party is given a 24 hour reporting deadline, as illustrated below:

$$\begin{aligned} & 24 \text{ hours for contributor to notify recipient} \\ & \underline{+24} \text{ hours for recipient to file 497 Report} \\ & = 48 \text{ hour filing deadline for recipient committee} \end{aligned}$$

In the case of alleged violation #4 (\$7,056.00 in-kind contribution), the 497 Report was timely filed, as illustrated below:

If the contribution had been made on a Monday:

$$\begin{aligned} & 24 \text{ hours for contributor to notify recipient} = \text{Tuesday} \\ & \underline{+24} \text{ hours for recipient to file 497 Report} = \text{Wednesday} \\ & = 48 \text{ hour filing deadline for recipient committee} = \text{Wednesday} \end{aligned}$$

Because the contribution was made on Friday, October 10, 2014, and the 24 hour requirement excludes Saturday & Sunday except for the weekend prior to the Election:

$$\begin{aligned} & 24 \text{ hours for contributor to notify recipient} = \text{Monday 10/13} \\ & \underline{+24} \text{ hours for recipient to file 497 Report} = \text{Tuesday 10/14} \\ & = 48 \text{ hour filing deadline for recipient committee} = \text{Tuesday 10/14} \end{aligned}$$

In the case of alleged violations #1 and #2, the contributor failed to provide the required notice for more than 48 hours, creating the following circumstance:

$$\begin{aligned} & >48 \text{ hours for contributor to notify recipient} \\ & \underline{+0} \text{ hours for recipient to file 497 Report} \\ & = 48 \text{ hour filing deadline for recipient committee} \end{aligned}$$

It is factually impossible for the recipient committee to meet the 48 hour reporting deadline when the contributing party's notification to the recipient party is provided more than 48 hours after the nonmonetary contribution was made, as previously documented in allegations #1 and #2.

Fining the recipient in this circumstance is akin to being rear ended in a car accident, having the police arrive on the scene, ignore the party at fault, and issue the injured party a ticket and fine for having a broken tail light as a result of the accident.