



MEMORANDUM

To: Chair Remke, Vice Chair Eskovitz and Commissioners Casher, Wasserman and Wynne

From: Erin Peth, Executive Director
Gary S. Winuk, Chief of Enforcement
Dave Bainbridge, Senior Commission Counsel

Date: October 29, 2014

RE: Assignment of Hearing to Administrative Law Judge (“ALJ”)

Case Name: In the Matter of American Metal Group, Inc. and Howard Misle (FPPC Case No. 12/490)

I. INTRODUCTION

Respondent American Metal Group, Inc., (“Respondent AMG”) is a California corporation located in San Jose that bought and sold recycled metal. Respondent Howard Misle (“Respondent Misle”) at all times relevant herein was the owner and president of Respondent AMG.

The Political Reform Act (the “Act”)¹ requires that political contributions be made in the name of the person, or entity, actually making the contribution. (Section 84301.) Respondents violated the Act by having Respondent AMG’s employees make campaign contributions to city council candidates from their personal checking accounts and then reimbursing the employees in cash for those contributions, presumably to circumvent local campaign contribution limits.

Respondent in the above-referenced case has requested an administrative hearing on the Accusation attached hereto as Exhibit A. The Accusation alleges five violations of the Act.

II. COMMISSION ACTION IS ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING

The Executive Director and the Chief of Enforcement are recommending that the hearing should be conducted before an ALJ pursuant to Section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then have the opportunity to make the final determination on the case.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated.

This memorandum is submitted to each member of the Commission pursuant to Regulation 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission Action is required if the Commission approves of the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission, if so desired.

III. PROCEDURAL HISTORY

A probable cause hearing was held on August 13, 2014. On August 19, 2014, the Hearing Officer issued an Order Re: Probable Cause (“Order”). The Order included a finding that there is probable cause to believe that the Respondents violated the Act, as set forth in the attached Accusation.

On October 2, 2014, the Accusation was personally served on Respondents. On or about October 9, 2014 Respondent Misle served a Notice of Defense, requesting a hearing.

IV. PROCEDURAL ISSUES

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ. (See Section 11512, subd. (a).)

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ’s proposed decision in the proceeding. (See Section 11512, subd. (b).)

V. SUMMARY OF THE ACCUSATION

Respondent AMG operated a metal recycling business in San Jose for a number of years. Respondent Misle was the president and chief executive officer of Respondent AMG. Respondent Misle owned all outstanding stock of Respondent AMG through another corporation that he owned

and controlled. In April of 2011, Respondents sold the assets of the recycling business to Schnitzer Steel Industries, Inc.

During 2010, Respondents and employees of Respondent AMG made a number of maximum campaign contributions to the campaign committees of Madison Nguyen (“Nguyen”), a city council member in San Jose running for re-election and Armando Gomez (“Gomez”), a city council member in Milpitas who was also running for re-election. The Accusation alleges that some of these employees of Respondent AMG were reimbursed for making contributions to the Nguyen and Gomez committees

Contributions in the Name of Juana Ponce

Respondents employed Juana Ponce as a traffic controller for approximately five years. Her employment ended when Respondents sold the business in 2011. In 2010, on two occasions Respondent Misle asked Ms. Ponce to write checks from her personal bank account, one to Nguyen’s committee and one to the Gomez’s committee. Ms. Ponce wrote the checks as requested and received reimbursement in the form of cash from Respondents. Both committees reported receiving contributions from Ms. Ponce in the amount and around the times that Respondents requested that Ms. Ponce write the checks.

Contributions in the Name of Jennifer Correia

Respondents employed Jennifer Correia as an executive assistant to Respondent Misle. Ms. Correia wrote a check dated August 2, 2010 from her personal bank account to Nguyen’s committee for \$250. The committee reported receiving a \$250 contribution from Ms. Correia on August 14, 2010. Respondents reimbursed Ms. Correia in cash. She deposited that cash reimbursement into her bank account on August 6, 2010

Ms. Correia also wrote a check dated August 4, 2010 from her personal bank account to Gomez’s committee for \$350. It reported receiving a \$350 contribution from Ms. Correia on August 4, 2010. Respondents reimbursed Ms. Correia in cash for the \$350 check she wrote to Gomez’s committee. She deposited the cash reimbursement into her bank account on August 6, 2010.

Contribution in the Name of Dora Zuniga

Respondents employed Dora Zuniga as office staff. In September 2010, Ms. Zuniga provided a check for \$350 drawn from her personal bank account to Respondents in exchange for a payroll advance from Respondents in that amount. Ms. Zuniga did not put the name of the payee on the check because she was not sure whether to make it out to Respondent Misle or Respondent AMG. Rather than cash or deposit the check from Ms. Zuniga, Respondents made the check out to Gomez’s committee and used it to make a campaign contribution to Gomez. Gomez’s committee reported receiving the contribution from Ms. Zuniga on September 27, 2010.

The Accusation consists of five counts.

Count 1

Making a Contribution to Madison Nguyen in the Name of Juana Ponce

Respondents made a \$250 contribution to the campaign committee “Re-elect Madison Nguyen for City Council” on or about March 12, 2010 in the name of Juana Ponce, rather than their own names, in violation of Section 84301.

Count 2

Making a Contribution to Armando Gomez in the Name of Juana Ponce

Respondents made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about September 27, 2010 in the name of Juana Ponce, rather than their own names, in violation of Section 84301.

Count 3

Making a Contribution to Madison Nguyen in the Name of Jennifer Correia

Respondents made a \$250 contribution to the campaign committee “Re-elect Madison Nguyen for City Council” on or about August 14, 2010 in the names of Jennifer Correia, rather than their own names, in violation of Section 84301.

Count 4

Making a Contribution to Armando Gomez in the Name of Jennifer Correia

Respondents made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about August 4, 2010 in the name of Jennifer Correia, rather than their own names, in violation of Section 84301.

Count 5

Making a Contribution to Armando Gomez in the Name of Dora Zuniga

Respondents made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about September 27, 2010 in the name of Dora Zuniga, rather than their own names, in violation of Section 84301.

The Accusation requests a monetary penalty pursuant to Section 83116, subdivision (c), of up to \$5,000 per count, for a total monetary penalty in an amount not to exceed \$25,000.

VI. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available. (Regulation 18361.5, subd. (b).) Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

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6 Attorneys for Complainant

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

10 In the Matter of)
11 AMERICAN METAL GROUP, INC. and) FPPC No. 12/490
HOWARD MISLE)
12 Respondents.) ACCUSATION
13) (Gov. Code §11503)
14)

15 Complainant, the Fair Political Practices Commission, after a finding of probable cause made
16 pursuant to Government Code Section 83115.5, hereby alleges the following:

17 **JURISDICTION**

18 1. Complainant is the Fair Political Practices Commission (the "Commission") and makes
19 this Accusation in its official capacity and in the public interest.

20 2. The authority to bring this action is derived from Title 2, California Code of Regulations,
21 Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of California, specifically
22 including, but not limited to, Government Code Sections 83111, 83116, and 91000.5, which assign to
23 the Commission the duty to administer, implement, and enforce the provisions of the Political Reform
24 Act, found at Government Code Sections 81000 through 91014.

25 3. When enacting the Political Reform Act (the "Act"),¹ California voters specifically found
26 and declared, as stated in Sections 81001, subdivision (h), and 81002, subdivision (f), that previous laws

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28 ¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are

1 regulating political practices had suffered from inadequate enforcement, and it was their purpose to
2 ensure that the Act be vigorously enforced.

3 4. To that end, Section 81003 requires that the Act be liberally construed to achieve its
4 purposes.

5 5. One of the stated purposes of the Act, as set forth in Section 81002, subdivision (a), is to
6 ensure that candidates and committees fully and truthfully disclose receipts and expenditures in election
7 campaigns so that the voters may be fully informed and improper practices may be inhibited.

8 6. In furtherance of this purpose, the Act establishes a comprehensive campaign reporting
9 system.

10 RESPONDENTS

11 7. Respondent American Metal Group, Inc. ("Respondent AMG") is a California
12 corporation located in San Jose that operated a metal recycling business.

13 8. Respondent Howard Misle ("Respondent Misle") at all times relevant herein, was the
14 owner and president of Respondent AMG. Respondent Misle directed and controlled all aspects of
15 Respondent AMG.

16 9. The actions of the Respondent AMG and Respondent Misle (collectively referred to
17 hereafter as "Respondents") – making campaign contributions in the names of other person – are
18 violations of the law and public policies of the State of California.

19 APPLICABLE LAW

20 21 10. All applicable law referenced herein is the law as it existed during the relevant time for
22 the violations alleged in this Accusation.

23 A. Definitions

24 11. Pursuant to Section 82047, a "person" is an individual, proprietorship, firm, partnership,
25 joint venture, syndicate, business trust, company, corporation, limited liability company, association,
26 committee, or any other organization or group of persons acting in concert.

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28 contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to
Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

1 12. Pursuant to Section 82015, subdivision (a) a "contribution" is any payment, forgiveness
2 of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the
3 extent that full and adequate consideration is received, unless it is clear from the surrounding
4 circumstances that it is not made for political purposes.

5 **B. Contribution Made in Legal Name**

6 13. No contribution shall be made, directly or indirectly, by any person in a name other than
7 the name by which such person is identified for legal purposes. (Section 84301.)

8 **C. Factors Considered by the Commission and ALJ**

9 14. In framing a proposed order following a finding of a violation pursuant to Section 83116,
10 the Commission and the administrative law judge shall consider all the surrounding circumstances
11 including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any
12 intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or
13 inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission staff or
14 any other government agency in a manner not constituting a complete defense under Section 83114(b);
15 (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of
16 violations of the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of a
17 reporting violation, voluntarily filed amendments to provide full disclosure. (Regulation 18361.5,
18 subd. (d).)

19 **GENERAL FACTS**

20 15. Complainant incorporates paragraphs 1 – 14 of this Accusation, as though completely set
21 forth herein.

22 16. Respondent AMG operated a metal recycling business in San Jose for a number of years.

23 17. Respondent Misle was the president and chief executive officer of Respondent AMG.
24 Respondent Misle owned all outstanding stock of Respondent AMG through another corporation that he
25 owned and controlled.

26 18. In April of 2011, Respondents sold the assets of the recycling business to Schnitzer Steel
27 Industries, Inc.

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2 **Contributions to Madison Nguyen**

3 19. Madison Nguyen was first elected to the City of San Jose City Council in 2005. She ran
4 for re-election in 2010.

5 20. Prior to the 2010 Primary Election, Respondents both made \$250 contributions to Ms.
6 Nguyen's campaign committee, Re-elect Madison Nguyen for City Council 2010 ("Nguyen
7 Committee").

8 21. Nguyen Committee reported receiving a total of seven contributions of \$250 each from
9 employees of Respondents prior to the Primary Election, as well as from Diamond Metal Recycling,
10 Inc., a related business also owned by Respondent Misle.

11 22. Respondent Misle's wife made a \$250 contribution to the Nguyen Committee for the
12 2010 Primary Election.

13 23. Ms. Nguyen qualified in the Primary Election for the General Election.

14 24. In the General Election, Nguyen Committee reported receiving \$250 contributions from
15 Respondent Misle, and five of Respondents' employees.

16 25. The contribution limit for San Jose City Council candidates in the 2010 elections was
17 \$250 per election.

18 **Contributions to Armando Gomez**

19 26. Armando Gomez was first elected to the City of Milpitas City Council in 2002. In 2010,
20 he ran for reelection.

21 27. Mr. Gomez's campaign committee, Re-elect Armando Gomez for City Council 2010
22 ("Gomez Committee"), received a contribution of \$350 from Respondent Misle for the 2010 General
23 Election.

24 28. The Gomez Committee also reported receiving a total of eight contributions of \$350 each
25 from Respondents' employees for the 2010 General Election.

26 29. The contribution limit for candidates for Milpitas City Council in 2010 was \$350.
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2 **COUNT 1**

3 **Making a Contribution to Madison Nguyen in the Name of Juana Ponce**

4 30. Complainant hereby incorporates Paragraphs 1 – 29 of this Accusation as though
5 completely set forth herein.

6 31. Respondents employed Juana Ponce (“Ms. Ponce”) as a traffic controller for
7 approximately five years. Her employment ended when Respondents sold the business in 2011.

8 32. In March 2010, Respondent Misle asked Ms. Ponce to write a check in the amount of
9 \$250 from her personal bank account to Nguyen Committee. He told her that she would be reimbursed
10 for writing the check.

11 33. Respondents each made a contribution of \$250 to Nguyen Committee for the Primary
12 Election in their own names. Any additional contribution made in their names for the Primary election
13 to the Nguyen Committee would exceed the contribution limit for that election.

14 34. Ms. Ponce wrote the check for \$250 as Respondent Misle requested and received
15 reimbursement in the form of cash from Respondents. Nguyen Committee reported receiving a \$250
16 contribution from Ms. Ponce on March 12, 2010.

17 35. By reimbursing Ms. Ponce for writing the contribution check to Nguyen Committee from
18 her personal account, Respondents violated Section 84301 because the contribution made in the name of
19 Juana Ponce was actually from Respondents.

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21 **COUNT 2**

22 **Making a Contribution to Armando Gomez in the Name of Juana Ponce**

23 36. Complainant hereby incorporates Paragraphs 1 – 35 of this Accusation as though
24 completely set forth herein.

25 37. On September 27, 2010, Respondent Misle asked Ms. Ponce to write a check in the
26 amount of \$350 check to Gomez Committee from her personal checking account. He told her she would
27 receive cash reimbursement for the amount of the check.

1 48. By reimbursing Ms. Correia for writing the contribution check to Nguyen Committee
2 from her personal account, Respondents violated Section 84301 because the contribution made in the
3 name of Jennifer Correia was actually from Respondents.

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6 **COUNT 4**

7 **Making a Contribution to Armando Gomez in the Name of Jennifer Correia**

8 49. Complainant hereby incorporates Paragraphs 1 – 48 of this Accusation as though
9 completely set forth herein.

10 50. Ms. Correia wrote a check dated August 4, 2010 from her personal bank account to
11 Gomez Committee for \$350.

12 51. Gomez Committee reported receiving a \$350 contribution from Ms. Correia on August 4,
13 2010.

14 52. Ms. Correia wrote the check to Gomez Committee at Respondents' request.

15 53. Respondents reimbursed Ms. Correia in cash for the \$350 check she wrote to Gomez
16 Committee. She deposited the cash reimbursement into her bank account on August 6, 2010.

17 54. Respondent Misle made a contribution of \$350 to Gomez Committee for the General
18 Election. Any additional contribution by Respondent Misle in his own name to Gomez Committee
19 would exceed the contribution limit for that election.

20 55. By reimbursing Ms. Correia for writing the contribution check to Gomez Committee
21 from her personal account, Respondents violated Section 84301 because the contribution made in the
22 name of Jennifer Correia was actually from Respondents.

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24 **COUNT 5**

25 **Making a Contribution to Armando Gomez in the Name of Dora Zuniga**

26 56. Complainant hereby incorporates Paragraphs 1 – 55 of this Accusation as though
27 completely set forth herein.

1 57. Respondents employed Dora Zuniga ("Ms. Zuniga") as office staff.

2 58. In September 2010, Ms. Zuniga provided a check for \$350 drawn from her personal bank
3 account to Respondents in exchange for a payroll advance from Respondents in that amount.

4 59. Ms. Zuniga did not put the name of the payee on the check because she was not sure
5 whether to make it out to Respondent Misle or Respondent AMG.

6 60. Rather than cash or deposit the check from Ms. Zuniga, Respondents made the check out
7 to Gomez Committee and gave it to the Gomez Committee as a campaign contribution.

8 61. Gomez Committee reported receiving the contribution from Ms. Zuniga on September
9 27, 2010.

10 62. Respondent Misle made a contribution of \$350 to Gomez Committee for the General
11 Election. Any additional contribution by Respondent Misle in his own name to Gomez Committee
12 would exceed the contribution limit for that election.

13 63. By providing a check from Ms. Zuniga's personal account intended for Respondents to
14 Gomez Committee, Respondents violated Section 84301 because they made a contribution to the Gomez
15 Committee using their funds in the name of Dora Zuniga.

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17 **PRAYER**

18 WHEREFORE, Complainant prays as follows:

19 1. That the Fair Political Practices Commission hold a hearing pursuant to Government
20 Code Section 83116 and Title 2, California Code of Regulations, Section 18361.5, and at such hearing
21 find that the Respondents violated the Political Reform Act as alleged herein;


22 2. That the Commission, pursuant to Government Code Section 83116, subdivision (c),
23 order Respondents to pay a monetary penalty of at least One Thousand Dollars (\$1,000) per count and
24 not more than Five Thousand Dollars (\$5,000) per count for the violations of the Political Reform Act
25 alleged herein in **Counts 1-5**;

26 3. That the Commission, pursuant to Title 2, California Code of Regulations,
27 Section 18361.5, subdivision (d), consider the following factors in framing a proposed order following a
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1 finding of a violation pursuant to Government Code Section 83116: (1) the seriousness of the violation;
2 (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation
3 was deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting
4 the Commission staff or any other government agency in a manner not constituting a complete defense
5 under Government Code Section 83114(b); (5) whether the violation was isolated or part of a pattern
6 and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
7 (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
8 full disclosure.

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10 4. That the Commission grant such other and further relief as it deems just and proper.

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12 Dated: 9/29/14

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14 Gary S. Winuk
15 Chief of Enforcement
16 Fair Political Practices Commission