

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 13/087
13)
14 BROWN FOR GOVERNOR 2010-)
SPONSORED BY THE SAN DIEGO AND) STIPULATION, DECISION and
15 IMPERIAL COUNTIES LABOR COUNCIL:) ORDER
EL CAMBIO EMPIEZA EL MARTES TO)
SUPPORT JERRY and XAVIER MARTINEZ)
16 Respondents.)
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18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and
19 Respondents Brown for Governor 2010- Sponsored by the San Diego and Imperial Counties Labor
20 Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez, treasurer, agree that this
21 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
22 regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
24 matter and to reach a final disposition without the necessity of holding an administrative hearing to
25 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
28 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,

1 the right to personally appear at any administrative hearing held in this matter, to be represented by an
2 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
3 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
4 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents Brown for Governor 2012- Sponsored by the
6 San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and
7 Xavier Martinez, treasurer, violated the Political Reform Act by (1) failing to timely file a late
8 independent expenditure report, by October 19, 2010, in violation of Section 84204, subdivision (a) of
9 the Government Code (1 count), (2) failing to disclose, for the reporting period ending December 31,
10 2010, required subvendor information, in violation of Section 84211, subdivision (k) and Section 84303
11 of the Government Code (1 count), and (3) failing to disclose, for the reporting period ending December
12 31, 2010, on the Summary of Expenditures page of a semi-annual campaign statement, information
13 concerning independent expenditures, in violation of Section 84211, subdivisions (b), (i) and (k) of the
14 Government Code (1 count). These counts are described in Exhibit 1, which is attached hereto and
15 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
16 the facts in this matter.

17 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
18 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
19 of Seven Thousand Five Hundred Dollars (\$7,500). A cashier's check from Respondents in said
20 amount, made payable to the "General Fund of the State of California," is submitted with this
21 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
22 Commission issues its decision and order regarding this matter. The parties agree that in the event the
23 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
24 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
25 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
26 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
27 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
28 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

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

Dated: _____

Respondent Xavier Martinez, Individually
and on behalf of Brown for Governor 2010-
Sponsored by the San Diego and Imperial
Counties Labor Council: El Cambio Empieza
El Martes to Support Jerry, Respondent

EXHIBIT 1

INTRODUCTION

Committee “Brown for Governor 2010- Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry” (“Committee”) filed a statement of organization on September 21, 2010, as a primarily formed committee in support of Governor Jerry Brown. The Committee was sponsored by the San Diego and Imperial Counties Labor Council. Respondent Xavier Martinez was the Committee’s treasurer at all times relevant, and was responsible for filing the Committee’s reports. The Committee made expenditures totaling \$150,536, with 84% of those expenditures in support of Proposition 25. These included late independent expenditures of \$126,184 in support of Proposition 25. This case was opened as the result of a Franchise Tax Board (“FTB”) audit. Respondents violated the Political Reform Act (the “Act”)¹ by failing to comply with campaign reporting requirements.

For the purposes of this Stipulation, Respondent’s violations are stated as follows:

- COUNT 1: Respondents Brown for Governor 2010- Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez failed to file a late independent expenditure report by October 19, 2010, disclosing \$126,184 in expenditures made in support of Proposition 25, in violation of Section 84204, subdivision (a) of the Government Code.
- COUNT 2: Respondents Brown for Governor 2010- Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez failed to disclose, for the reporting period ending December 31, 2010, required subvendor information for payments totaling approximately \$90,636, in violation of Section 84211, subdivision (k) and Section 84303 of the Government Code.
- COUNT 3: Respondents Brown for Governor 2010- Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez failed to disclose, for the reporting period ending December 31, 2010, on the Summary of Expenditures page of a semi-annual campaign statement, information concerning \$126,184 in independent expenditures made in support of Proposition 25, in violation of Section 84211, subdivisions (b), (i) and (k) of the Government Code.

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 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.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a), defines a “committee” to include any person who receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” A committee formed primarily to support a single candidate is known as a “primarily formed committee.” (Section 82047.5.)

Section 82031 defines an “independent expenditure” as including an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure but which is not made to or at the behest of the affected candidate or committee.

Duty to File Late Independent Expenditure Report

Under section 84204, when a committee makes a late independent expenditure, the committee must file a late independent expenditure report disclosing the expenditure within 24 hours of making the expenditure. Section 82036.5 defines a “late independent expenditure” as an independent expenditure of \$1,000 or more that is made for or against any specific candidate or measure involved in an election before the date of the election, but after the closing date of the last campaign statement required to be filed prior to the election, by a candidate or committee participating in such election. The closing date for the second pre-election campaign statement was October 16, 2010. By failing to file a Late Independent Expenditure Report by October 19, 2010, in connection with expenditures in support of Proposition 25, totaling \$126,184, Respondents violated Section 84204 of the Government Code.

Duty to Report Subvendor Payments

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than overhead and normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of, or for the benefit of any candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. Regulation 18431, subdivision (b), provides specific types of expenditures that must be reported pursuant to Section 84303, including expenditures for advertizing time. Regulation 18431, subdivision (c), requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k), for the committee’s direct expenditures. This information reported by the candidate or committee is commonly referred to as “subvendor information.”

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Duty to Disclose Independent Expenditures on Campaign Statements

Section 84200, subdivision (a) requires primarily formed recipient committees to file two semi-annual campaign statements each year.

Section 84211, subdivision (b), requires committees to disclose the total amount of expenditures made during the period covered by the campaign statement. Additionally, Section 84211, subdivisions (i) and (k), require a committee to disclose on each of its campaign statements the total amount of expenditures made during the reporting period to persons who have received \$100 or more as well as: (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each expenditure; (4) the description of the consideration for which each expenditure was made; (5) in the case of an expenditure which is an independent expenditure to support a measure, in addition to the information required in paragraphs (1) to (4) above, the date of the independent expenditure, the cumulative amount of independent expenditures made relative to a measure; the number or letter of the measure; and the jurisdiction in which the measure is voted upon.

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of the committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Committee "Brown for Governor 2012- Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry" ("Committee") filed as a primarily formed committee on September 21, 2010. Respondent Xavier Martinez was the Committee's treasurer at all times relevant, and was responsible for filing the Committee's reports. The Committee was sponsored by the San Diego and Imperial Counties Labor Council. The Committee made expenditures totaling \$150,536, with 84% in support of Proposition 25. These included late independent expenditures of \$126,184 in support of Proposition 25. This case was opened as the result of a Franchise Tax Board ("FTB") audit.

COUNT 1

Failure to File a Late Independent Expenditure Report

As a primarily formed committee, Respondents had an obligation to file late independent expenditure reports in connection with any late independent expenditures totaling \$1,000 or more. The late independent expenditure reporting period for the November 2, 2010, election was from October 17, 2010 through November 1, 2010. During this reporting period, Respondent made an independent expenditure totaling, \$126,184, which expressly advocated support for Proposition 25. Respondents, however, failed to disclose the expenditure on a

properly filed late independent expenditure report, within 24 hours of making the late independent expenditure.

By failing to disclose \$126,184 in independent expenditures on a properly filed late independent expenditure report, Respondents violated Section 84204 of the Government Code.

COUNT 2

Failure to Report Subvendor Information for Expenditures Made

Respondents had a duty to report on their campaign statements subvendor information for expenditures of \$500 or more made or incurred by an agent to a subvendor on Respondent Committee's behalf for campaign services, as if the expenditures were made directly by the committee. Respondents failed to report on a semi-annual campaign statement for the reporting period ending December 31, 2010 required subvendor information for expenditures made or incurred totaling approximately \$90,636.

Respondents filed a semi-annual campaign statement disclosing payments to Managed Media, Inc, but did not list any subvendor information for payments totaling \$90,636 made by Managed Media, Inc., to three television stations. According to records and invoices, subvendor information should have been reported for expenditures of \$58,629 to KBNT, \$1,747 to KDTF, and \$30,260 to Telemundo. These subvendor payments constituted 100% of the Committee's subvendor expenditures, and 60.2% of the Committee's total expenditures.

By failing to report required subvendor information for expenditures of \$500 or more, Respondents violated Sections 84211, subdivision (k) and 84303 of the Government Code.

COUNT 3

Failure to Disclose Payments as Independent Expenditures on Campaign Statements

Respondents Brown for Governor 2012- Sponsored by the San Diego and Imperial Counties Labor Council: El Cambio Empieza El Martes to Support Jerry and Xavier Martinez failed to disclose for the reporting period ending December 31, 2010, on the Summary of Expenditures page of a semi-annual campaign statement, information concerning \$126,184 in independent expenditures made in support of Proposition 25.

By failing to disclose these payments as independent expenditures, on the Summary of Expenditures page of a semi-annual campaign statement, Respondents violated Section 84211, subdivisions (b), (i) and (k) of the Government Code.

CONCLUSION

This matter consists of three counts, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total of Fifteen Thousand Dollars (\$15,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Regarding Count 1, the administrative penalty for cases with similar facts regarding the failure to file late independent expenditure reports has been in the mid to high level penalty range. The Commission recently approved a stipulation which included a count for failure to maintain records with a similar underlying fact pattern for \$3,000.

In the Matter of Chris Prentiss, FPPC No. 08/534. During the late reporting period before the 2008 election for Malibu City Council, Respondent Chris Prentiss made independent expenditures totaling at least \$8,400 in support of a candidate. The independent expenditures included payments for at least two mass mailings. The commission approved settlement of this case, with a \$3,000 penalty for this violation, on August 12, 2010.

Regarding Count 2, the administrative penalty for cases with similar facts regarding the failure to disclose subvendor information has been in the low to mid-level penalty range. The Commission recently approved a stipulation which included a count for failure to disclose subvendor information on a semi-annual campaign statement with a similar underlying fact pattern for \$2,000.

In the Matter of Mick Gleason for Supervisor 2012, Mick Gleason, and Solomon Rajaratnam, FPPC No. 12/643. In this matter, Respondents failed to report twelve subvendor payments, totaling \$31,848.56. The commission approved settlement of this case, with a \$2,000 penalty for the disclosure violation, on February 28, 2013.

Regarding Count 3, the administrative penalty for cases with similar facts regarding the failure to disclose expenditure information on a semi-annual campaign statement has been in the mid-level penalty range. The Commission recently approved a stipulation which included a count for failure to disclose expenditure information on a semi-annual campaign statement with a similar underlying fact pattern for \$2,500.

In the Matter of Maria T. Santillan, Committee to Re-Elect Maria T. Santillan, and Raul Beas, FPPC No. 02/222. In this matter, Respondent Committee to Re-Elect Maria T. Santillan was the candidate-controlled recipient committee of Respondent Maria T. Santillan. Respondents failed to disclose nonmonetary contributions made and received on a semi-annual campaign

statement. The commission approved settlement of this case, with a \$2,500 penalty for the disclosure violation, on June 18, 2009.

The public harm inherent in these types of violations, where pertinent information is not fully disclosed by the committee, is that the public is deprived of a means to discover the nature of the committee's campaign expenses. There was no evidence to suggest that Respondents' violations were intentional. Respondents cooperated fully with the investigation and, following the FTB audit, the Committee's sponsor terminated its relationship with Respondent Martinez and retained a new firm to ensure full compliance with the reporting requirements of the Act.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Three Thousand Dollars (\$3,000) for Count One , Two Thousand Dollars (\$2,000) for Count Two, and Two Thousand Five Hundred Dollars (\$2,500) for Count Three, for a total of Seven Thousand Five Hundred Dollars (\$7,500) is recommended.