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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of KURT VANDER WEIDE, FRIENDS OF KURT VANDER WEIDE, and CARL FOGLIANI, Respondents.	FPPC No. 08/814 DEFAULT DECISION AND ORDER (Gov. Code, §§ 11506 and 11520)

Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and Order for consideration at its next regularly scheduled meeting.

Pursuant to the California Administrative Procedure Act,[1] Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani have been served with all of the documents necessary to conduct an administrative hearing regarding the above-captioned matter, including the following:

1. Orders Finding Probable Cause;
2. An Accusation;
3. A Notice of Defense (Two Copies);
4. A Statement to Respondent; and
5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

[1] The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a hearing on the merits of the Accusation. The Statement to Respondent (which was served on the above-captioned Respondents) explicitly stated that a Notice of Defense must be filed in order to request a hearing. Substantially more than 15 days have elapsed since the Accusation was served, and the above-captioned Respondents have failed to file a Notice of Defense.

Government Code Section 11520 provides that, if the respondent fails to file a Notice of Defense, the Commission may take action, by way of a default, based upon Respondents' express admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the Respondents.

Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated the Political Reform Act as described in Exhibit 1 and the supporting declarations of Neal Bucknell and Beatrice Moore, which are attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a final disposition of this matter.

Dated: _____

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

ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of $32,500, of which Respondents Kurt Vander Weide and Friends of Kurt Vander Weide are

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responsible for the full amount, and Respondent Carl Fogliani is jointly and severally liable for $20,000. This penalty is payable to the "General Fund of the State of California."

IT IS SO ORDERED, effective upon execution below by the Chairman of the Fair Political Practices Commission at Sacramento, California.

Dated:_____

_____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

This matter involved a joint investigation with the Attorney General's office as to multiple violations of the Political Reform Act (the "Act").[1]

In 2008, Amy Bublak was a non-incumbent candidate for the Turlock City Council. She won one of two seats that were up for election that year. Amy Bublak for City Council was her candidate controlled committee. Milton Richards was the committee treasurer (and the husband of Amy Bublak). These three have elected to settle with the Enforcement Division. (Their stipulation in this regard is a separate agenda item.) Accordingly, their rights are not affected by this Default Decision and Order ("Default").[2]

In this same election, Respondent Kurt Vander Weide was an incumbent candidate for the Turlock City Council. He lost the election. Respondent Friends of Kurt Vander Weide was his candidate controlled committee.

At all relevant times, Respondent Carl Fogliani was a paid consultant for Amy Bublak for City Council and Friends of Kurt Vander Weide; he was an agent for these committees and for the above-described candidates who controlled these committees. In this capacity, Respondent Carl Fogliani was compensated for services involving the planning, organizing, and/or directing of various campaign-related activities, including, but not limited to, the broadcasting of recorded political messages via thousands of automated telephone calls that were made for the benefit of Amy Bublak and Kurt Vander Weide. (Hereafter, these automated calls sometimes are referred to as robocalls or a robocall campaign.)

For purposes of this Default Decision and Order, the violations of the Act by Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani are stated as follows:[3]

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[1] The 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.

[2] The settlement with Ms. Bublak (a peace officer) and her committee does not include charges for the robocalls (Counts 1 through 4 of the Accusation). The reason for this is that Ms. Bublak maintains that she instructed her campaign consultant, Carl Fogliani, not to do robocalls. Also, there is evidence to suggest that Mr. Fogliani may not have invoiced Ms. Bublak for the robocalls—even though he claims, through his former attorney, that her committee paid for half of the cost of them. Additionally, Ms. Bublak, her committee, and her husband agreed to pay a fine and settle with the Enforcement Division as to other counts.

[3] The Accusation includes 13 counts, but the non-settling Respondents only were named in Counts 1 through 4, 7, 9, 11, and 13 of the Accusation. These counts have been renumbered as Counts 1 through 8 for purposes of this Default Decision and Order.

Failure to Comply with Identification Requirements for Making Political Robocalls

COUNT 1: On or about October 11, 2008, a recorded political message was broadcast via approximately 13,248 automated telephone calls. The calls referred to Mary Jackson, a candidate for Turlock City Council, in a negative manner. Although half of the cost of the calls was paid for by Respondent Kurt Vander Weide by and through his controlled committees (Friends of Kurt Vander Weide), the calls falsely purported to be paid for by "Taxpayers for Safer Neighborhoods." Respondent Carl Fogliani aided and abetted in the carrying out of this deception (within the meaning of Section 83116.5) by serving as campaign consultant for Respondent Kurt Vander Weide and by planning, organizing and/or directing the making of the calls for Respondent Kurt Vander Weide's benefit. In this way, Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

COUNT 2: On or about October 14, 2008, a recorded political message was broadcast via approximately 5,593 automated telephone calls. The calls solicited votes for Amy Bublak and Kurt Vander Weide for Turlock City Council, referring to both candidates in a positive manner. Although half of the cost of the calls was paid for by Respondent Kurt Vander Weide by and through his controlled committee (Friends of Kurt Vander Weide), the calls falsely purported to be paid for by "Taxpayers for Safe Neighborhoods." Respondent Carl Fogliani aided and abetted in the carrying out of this deception (within the meaning of Section 83116.5) by serving as campaign consultant for Respondent Kurt Vander Weide and by planning, organizing and/or directing the making of the calls for Respondent Kurt Vander Weide's benefit. In this way, Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

COUNT 3: On or about October 22, 2008, a recorded political message was broadcast via approximately 5,614 automated telephone calls. The calls referred to Mary Jackson, a candidate for Turlock City Council, in a negative manner, and the required identification regarding who paid for the calls was not provided. Although half of the cost of the calls was paid for by Respondent Kurt Vander Weide by and through his controlled committee (Friends of Kurt Vander Weide), this information was not disclosed during the calls. Respondent Carl Fogliani aided and abetted in the carrying out of this nondisclosure (within the meaning of Section 83116.5) by serving as campaign consultant for Respondent Kurt Vander Weide and by planning, organizing and/or directing the making of the calls for

Respondent Kurt Vander Weide's benefit. In this way, Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

COUNT 4: On or about November 2, 2008, a recorded political message was broadcast via approximately 17,096 automated telephone calls. The calls featured a woman who falsely claimed to be Mary Jackson. The woman espoused a position against Proposition 8 and stated, "Turlock must support a rich, vibrant community that includes everyone and regardless of whom they choose to love. If you agree, I urge you to vote Mary Jackson for Turlock City Council. . . ." Although half of the cost of the calls was paid for by Respondent Kurt Vander Weide by and through his controlled committee (Friends of Kurt Vander Weide), the calls falsely purported to be paid for by "the Friends of Mary Jackson." Respondent Carl Fogliani aided and abetted in the carrying out of this deception (within the meaning of Section 83116.5) by serving as campaign consultant for Respondent Kurt Vander Weide and by planning, organizing and/or directing the making of the calls for Respondent Kurt Vander Weide's benefit. In this way, Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani violated Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

Failure to Maintain Required Committee Records

COUNT 5: In connection with Respondent Kurt Vander Weide's candidacy for Turlock City Council in 2008, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide failed to maintain (for a period of four years following the filing of each applicable campaign statement) detailed accounts, records, bills, and receipts necessary to prepare campaign statements, establish that campaign statements were properly filed, and to otherwise comply with Chapter 4 of the Political Reform Act. This included, but was not limited to, failure to maintain accounts, records, and original source documentation regarding invoice/payment information for the robocalls that are the subjects of Counts 1 through 4, scripts of the robocalls, and copies of the recordings of the robocalls. In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated the recordkeeping requirements of Sections 84104 and 84310, subdivision (c).

False Reporting/Failure to Report Robocall Expenditures

COUNT 6: On or about October 8, 2008, Respondent Friends of Kurt Vander Weide paid Carl Fogliani in excess of $100 per robocall for the robocalls that are the subjects of Counts 1 through 4. Respondents Kurt Vander Weide and Friends of Kurt

Vander Weide were required to report this payment on a campaign statement for the reporting period ending October 18, 2008. The required campaign statement was filed on or about October 23, 2008. However, only one payment to Carl Fogliani was disclosed on the statement, and it was reported as being for "Slate mail," not as being for robocalls. Accordingly, payment for the robocalls was not reported—or it was falsely reported—which served to conceal the source of the robocalls from the public. In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated Section 84211, subdivisions (b), (i), and (k), which requires accurate reporting of information about expenditures, including the consideration for which expenditures are made.

Failure to Report Payments to Subvendors

COUNT 7: Between approximately July 1 and December 31, 2008, Respondent Carl Fogliani made three expenditures to subvendors on behalf of Respondents Kurt Vander Weide and Friends of Kurt Vander Weide, which totaled approximately $10,983. Each expenditure was made by Respondent Carl Fogliani in his capacity as agent and campaign consultant for Respondents Kurt Vander Weide and Friends of Kurt Vander Weide, and each expenditure was more than $500. Respondents Kurt Vander Weide and Friends of Kurt Vander Weide were required to report subvendor information for these expenditures on campaign statements for the periods ending September 30, October 18, and/or December 31, 2008. The required campaign statements were filed on or about October 6, 2008, October 23, 2008, and March/April 2009, respectively. However, the required subvendor information was not disclosed in the statements. In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated the subvendor reporting requirements of Sections 84211, subdivision (k), and 84303.

Failure to Notify Major Donor of the Need to File Campaign Statements

COUNT 8: During the reporting period ending September 30, 2008, Respondent Friends of Kurt Vander Weide received a contribution from Respondent Mark Hall in excess of $5,000. Within two weeks of receipt, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide were required to provide notification to Respondent Mark Hall (or the business entity through which he directed the contribution) of the potential need to file major donor campaign statements. However, this required notification was not provided. In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated the major donor notification requirements of Section 84105.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practices Commission (the "Commission" or "FPPC") determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing

itself, must be conducted in accordance with the Administrative Procedure Act (the "APA").[4] (*Ibid*.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA is the right to file a Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

An administrative action is commenced by service of the probable cause hearing notice, and service must be within five years of the violations at issue—which is the applicable statute of limitations. (See Sections 83115.5 and 91000.5.)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is: (1) notified of the violation by service of process or registered mail with return receipt requested; (2) provided with a summary of the evidence; and (3) informed of his or her right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

When the Commission determines there is probable cause for believing that the Political Reform Act has been violated, it may hold a hearing in accordance with the Administrative Procedure Act to determine if a violation has occurred. (Section 83116.)

For a recitation of the procedural history of this case, please see pages 3 through 5 of the Accusation. The Accusation begins on the third page of Exhibit A-1 to the Declaration of Neal

[4] The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Bucknell in Support of Default Decision and Order. The Bucknell declaration is attached to this Default Decision and Order as Exhibit A.

In summary, on March 29, 2013, the probable cause packet was sent to Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani via certified mail, return receipt requested. A true and correct copy of the probable cause packet, which included the probable cause report, is attached to the Accusation as Exhibit A. Also, a true and correct copy of the proof of service of the probable cause packet is attached to the Accusation as Exhibit B.

The mailing to Respondents Kurt Vander Weide and his committee was received and signed for on March 30, 2013. This date of signing is the effective date of service/notice. (Section 83115.5. Also, see Gov. Code, § 8311.) A true and correct copy of the signed certified mail receipt is included as part of Exhibit B to the Accusation (at p. 0003).

Respondent Carl Fogliani attempted to evade service by claiming that he no longer lived with his mother at the address to which the probable cause packet was mailed. Thereafter, out of an abundance of caution, the FPPC personally served the probable cause packet on Respondent Carl Fogliani on July 26, 2013. A true and correct copy of the proof of service is attached to the Accusation as Exhibit C.

The violations in the above-described counts occurred less than five years before the foregoing dates of service/notice—consistent with the statute of limitations set forth in Section 91000.5.

B. Findings of Probable Cause

On October 25, 2013, pursuant to Regulation 18361.4, subdivision (e), the Commission issued an Order re: Probable Cause in this case. The order pertained to all of the named Respondents in this case (except for Respondent Carl Fogliani, who was the subject of a separate order, which is described below). A true and correct copy of the order is attached to the Accusation as Exhibit D. As noted on page 1 of the order, the probable cause conference took place on October 21, 2013, and Respondent Kurt Vander Weide attended by telephone, but Respondent Carl Fogliani did not participate.

On November 4, 2013, pursuant to Regulation 18361.4, subdivision (e), the Commission issued a separate Finding of Probable Cause and Order to Prepare and Serve an Accusation (as to Respondent Carl Fogliani only). A true and correct copy of the order is attached to the Accusation as Exhibit E. (This second order was separate from the first order because Respondent Carl Fogliani did not submit a response to the probable cause report, and he did not request a probable cause conference. Pages 1 and 2 of the order include findings in this regard. On the other hand, the order as against the other Respondents was issued following a probable cause conference and briefings by the parties.)

Both orders included findings that there is probable cause to believe that Respondents violated the Political Reform Act as set forth in the Accusation.

C. The Issuance and Service of the Accusation

Under the Act, if the Hearing Officer makes a finding of probable cause, an accusation shall be prepared pursuant to Section 11503 of the APA, and it shall be served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

In this regard, Section 11503 states:

> A hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned shall be initiated by filing an accusation or District Statement of Reduction in Force. The accusation or District Statement of Reduction in Force shall be a written statement of charges that shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of those statutes and rules. The accusation or District Statement of Reduction in Force shall be verified unless made by a public officer acting in his or her official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall: (1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); (2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; (3) include a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing; and (4) include copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b), sets forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c), provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

In this regard, the accusation packet (which includes the Accusation, Statement to Respondent, two copies of a form of Notice of Defense, and a copy of Government Code sections 11506 through 11508) was personally served on the Respondents that are the subject of this Default Decision and Order. The accusation packet is attached to the supporting declaration

of Neal Bucknell as Exhibit A-1. The Bucknell declaration is attached to this Default Decision and Order as Exhibit A.

The accusation packet was personally served on Respondent Carl Fogliani on April 8, 2014. (See proof of service attached as second-to-last page of the accusation packet.)

The accusation packet was personally served on Respondents Kurt Vander Weide and Friends of Kurt Vander Weide on May 6, 2014. (See proof of service attached as last page of the accusation packet. Also, see the first page of the accusation packet, which provided notice that Respondent Kurt Vander Weide was being served in his individual capacity and on behalf of his committee.)

The Statement to Respondent notified Respondents that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, Respondents would be deemed to have waived the right to a hearing. (See the first page of the accusation packet.)

Substantially more than 15 days have passed since the service of the accusation packet, but Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani never filed a Notice of Defense. (See Bucknell declaration, ¶ 7.)

As a result, the Enforcement Division sent letters to Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani advising that this matter would be submitted for a Default Decision and Order at the Commission's next public meeting. A copy of the proposed Default Decision and Order, with exhibits, was included. (See Exs. A-2 and A-3 to the Bucknell declaration.)

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed at the time of Respondents' violations in 2008.

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be "liberally construed" to achieve its purposes.

One of the purposes of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Along these lines, the Act includes a comprehensive campaign reporting system. (Sections 84200, et seq.)

Also, in keeping with the promotion of transparency, the Act prohibits robocalls unless the robocalls disclose who paid for them. (Section 84310.) Additionally, the Act imposes strict

recordkeeping requirements (which help establish whether or not candidates, committees, and their treasurers have violated the law), and the Act places a burden upon candidates and committees to remind contributors of large sums of money of the potential need to file major donor campaign statements. (Sections 84104, 84105, and 84310, subd. (c).)

Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Definition of Controlled Committee

Section 82013, subdivision (a), defines a "committee" to include any person or combination of persons who receives contributions totaling $1,000 or more in a calendar year. This type of committee commonly is referred to as a "recipient committee." Under Section 82016, a recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a "controlled committee." A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

Definition of Major Donor Committee

A major donor committee is a person or combination of persons who directly or indirectly make contributions of $10,000 or more during a calendar year. (Section 82013, subd. (c).) Such a committee is subject to certain filing requirements, which are discussed in more detail below.

Definition of City General Purpose Committee

The definition of a general purpose committee includes major donor committees formed or existing primarily to support or oppose more than one candidate. A city general purpose committee is a committee to support or oppose candidates voted on in only one city. (See Section 82027.5, subd. (d).)

Definition of Monetary, In-kind and Non-monetary Contributions

Generally speaking, "contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Section 82015, subd. (a).)

The most common type of contribution results in the payment of money to a candidate or committee. Such contributions are referred to as "monetary contributions," but sometimes a contribution of goods or services is made to a candidate or committee—rather than an outright payment to the candidate or committee. Such contributions are referred to as "in-kind" or "non-monetary" contributions. For example, if you pay for a billboard for the benefit of a candidate, you are making an in-kind/non-monetary contribution to the candidate because your money is

not going directly to the candidate, but the candidate is receiving the benefit of your money in the form of a billboard. The terms "in-kind" and "non-monetary" are interchangeable. (See Section 84203.3 as compared to Regulation 18421.1, subd. (f).)

Definition of Expenditure

An expenditure includes a payment, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made—and hence, required to be reported—on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. (See Section 82025.)

Required Identification of Candidates/Committees that Pay for Robocalls

A candidate or committee may not expend campaign funds, directly or indirectly, to pay for telephone calls that are similar in nature and aggregate 500 or more in number where the calls advocate support of or opposition to a candidate—unless during the course of each call the name of the organization that authorized or paid for the call is disclosed to the recipient of the call. (Section 84310, subd. (a).)

Campaign committees are prohibited from contracting with any phone bank vendor that does not disclose the foregoing information. (Section 84310, subd. (b).)

Required Filing of Campaign Statements

At the core of the Act's campaign reporting system is the requirement set forth in Sections 84200, et seq. that committees, including candidate controlled committees and major donor committees, must file campaign statements and reports for certain reporting periods and by certain deadlines.

For example, major donor committees that also are city general purpose committees are required to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, if they have made contributions during the six-month period before the closing date of the statements. (Section 84200, subd. (b).) Also, such committees are required to file pre-election campaign statements if they make contributions totaling $500 or more during the period covered by the pre-election statement. (Sections 84200.5, subd. (g)(1), and 84200.7, subd. (b).)

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For more information about reporting periods and filing deadlines applicable to candidate controlled committees and major donor committees, see the schedules attached to the probable cause report as Exhibits 1 and 2, respectively, which were published by the FPPC in connection with the election that was held on November 4, 2008.[5]

With respect to the place where campaign statements are filed, candidates for city office, their controlled committees, and major donor committees that are city general purpose committees are required to file their statements and reports with the city clerk. (Section 84215, subd. (e), as it was in effect in 2008.)

Required Reporting of Contributions, Expenditures and Subvendor Information

Campaign statements must include information about the making of contributions and expenditures, including information about payments to subvendors.

In this regard, Section 84211, subdivision (b), requires reporting of "[t]he total amount of expenditures [including contributions] made during the period covered by the campaign statement and the total cumulative amount of expenditures made." Also, Section 84211, subdivision (i), requires reporting of the total amount of expenditures (including contributions) made during the period covered by the campaign statement to persons who have received $100 or more. Additionally, Section 84211, subdivision (k), requires that certain identifying information be provided for each person to whom an expenditure of $100 or more has been made during the period covered by the campaign statement, including the following: (1) the person's full name; (2) his or her street address; (3) the amount of each expenditure; (4) a brief description of the consideration for which each expenditure was made; and (5) in the case of an expenditure which is a contribution to a candidate, elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she seeks nomination or election.

Also, no expenditure of $500 or more may be made (other than for overhead or normal operating expenses) by an agent or independent contractor 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. (Section 84303.) This type of information commonly is referred to as "subvendor information." Specifically, the following subvendor information must be reported: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure; and (4) a brief description of the consideration for which each expenditure was made. (Section 84211, subds. (k)(1)-(4) and (6).)

[5] The probable cause report is part of the probable cause packet, which is Exhibit A to the Accusation. (The schedules may be found at pp. 0032-0035 of the probable cause packet.) The Accusation begins on the third page of the Accusation packet, which is Exhibit A-1 to the supporting declaration of Neal Bucknell. The Bucknell declaration is Exhibit A to this Default Decision and Order.

Recordkeeping Requirements

It is the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were filed properly, and to otherwise comply with the Act's campaign disclosure provisions. (Section 84104.)

For example, for an expenditure of $25 or more, or a series of payments for a single product or service totaling $25 or more, the accounts and records must contain the date the expenditure was made (or, for an accrued expense, the date the goods or services were received), the amount of the expenditure, the full name and street address of the payee, and a description of the goods or services for which each expenditure was made. If the person or vendor providing the goods or services is different from the payee, the accounts and records also must contain the same detailed information for that person or vendor. Additionally, the original source documentation for such expenditures shall consist of cancelled checks, wire transfers, credit card charge slips, bills, receipts, invoices, statements, vouchers, and any other documents reflecting obligations incurred by the candidate, elected officer, campaign treasurer, or committee, and disbursements made from any checking or savings account, or any other campaign accounts, in any bank or other financial institution. In lieu of cancelled checks, the original source documentation may consist of copies of cancelled checks that contain a legible image of the front and back of the cancelled check, provided the copy was obtained from the financial institution. (See Regulation 18401, subd. (a)(4).)

Also, in the case of robocalls, the candidates/committees that paid for the robocalls are required to maintain audio recordings of the robocalls, plus the scripts for the calls. (Section 84310, subd. (c).)

All of the foregoing records are required to be maintained for a period of four years following the date the campaign statement to which they relate is filed. (Regulation 18401, subd. (b)(2); Sections 84104 and 84310, subd. (c).)

Required Notification to Contributors of $5,000 or More

A candidate or committee that receives contributions of $5,000 or more from any person shall inform the contributor of the potential need to file campaign reports. The notification shall occur within two weeks of receipt of the contributions. (See Section 84105.) This serves as a reminder to major donors so that they do not forget to file major donor campaign statements.

Liability for Aiding and Abetting

The Act imposes liability on those who: (i) violate the Act; (ii) purposely or negligently cause another to violate the Act; or (iii) aid and abet another in violating the Act. However, this applies only to persons who have filing or reporting obligations under the Act, or who are compensated for services involving the planning, organizing, or directing of any activity regulated or required by the Act. (See section 83116.5.)

Joint and Several Liability

If two or more persons are responsible for any violation of the Act, they are jointly and severally liable. (Section 91006.) For example, if a candidate and a campaign consultant (who aided and abetted) are responsible for a violation of the Act, they are jointly and severally liable for the violation, along with the committee.

Candidates are Responsible for the Acts of their Agents

In keeping with principles of agency, a candidate is responsible for the acts of his or her campaign consultants. (See Civ. Code, § 2295: "An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Also, see Civ. Code, § 2332: "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.")

The doctrine of *respondeat superior* makes this clear. The determining factor is not whether the act was authorized by the employer, benefited the employer, or was performed specifically for the purpose of fulfilling the employee's job responsibilities; rather, the question is whether the risk of such an act is typical of or broadly incidental to the employer's enterprise. (*Yamaguchi v. Harnsmut* (2003) 106 Cal.App. 4th 472, 481-482.) For example, when a campaign consultant orchestrates robocalls to help elect his candidate-clients, the robocalls are, at the very least, "broadly incidental" to the candidate-clients' campaigns.

In addition to being consistent with principles of agency and the doctrine of *respondeat superior*, holding candidates responsible for the acts of their campaign consultants is consistent with the purpose of the Political Reform Act. The provisions of the Act that are at issue in this case specifically impose liability/responsibility upon the candidate and the committee (and in some cases the treasurer)—not upon campaign consultants. (For example, see Gov. Code, §§ 84104; 84105; 84200, et seq.; 84303; and 84310.) Candidates and committees cannot escape liability by blaming their consultants. Based upon a theory of aiding and abetting, a consultant may be named as a respondent along with a candidate and committee, but under such circumstances, the candidate, committee, and the consultant all share joint and several liability for the violation. (Gov. Code, §§ 83116.5 and 91006.) To hold otherwise would render the Act virtually meaningless. When faced with prosecution, it would be a simple matter for candidates and public officials to point the finger at a loyal consultant to "take the fall."

Additionally, holding candidates responsible for the acts of their consultants is consistent with the FPPC's handling of other cases—as well as its promulgation of regulations over the years. (For example, see the manner in which "agent" is used in the following Regulations, as they were in effect in 2008: 18215, subd. (a)(2); 18225.7, subds. (c)(2), (d)(2), and (f); and 18421.1, subds. (c), (e), and (f)(2).)

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SUMMARY OF THE FACTS

Background Information about the Election and the Parties

As stated above, in 2008, two seats on the Turlock City Council were up for election. Amy Bublak was a non-incumbent candidate for one of the seats. Amy Bublak for City Council was her candidate controlled committee, and Milton Richards was the committee treasurer (as well as the husband of Amy Bublak). (See Declaration of Beatrice Moore in Support of Default Decision and Order, Ex. B hereto, ¶¶ 3 and 4.)

In this same election, Respondent Kurt Vander Weide was an incumbent candidate for one of the seats as well. Respondent Friends of Kurt Vander Weide was his candidate controlled committee. (See Moore decl., ¶ 5.)

Another candidate for one of the seats was a woman by the name of Mary Jackson. (See Moore decl., ¶ 6.)

Ultimately, Amy Bublak won one of the two seats, and Mary Jackson won the other seat. Respondent Kurt Vander Weide did not win. However, it was a close election. Amy Bublak came in first place, receiving approximately 25.97% of the vote. Mary Jackson came in second place, receiving approximately 25.30% of the vote. Respondent Kurt Vander Weide came in third place, receiving approximately 23.93% of the vote. Since only two seats were up for election, Respondent Kurt Vander Weide lost. (There were other candidates in the election, but the next highest candidate only received approximately 15.04% of the vote.) (See Moore decl., ¶¶ 7 and 8.)

Respondent Carl Fogliani was a paid consultant for Amy Bublak for City Council and Friends of Kurt Vander Weide; he was an agent for these committees and for the above-described candidates who controlled these committees. In this capacity, Respondent Carl Fogliani was compensated for services involving the planning, organizing, and/or directing of various campaign-related activities, including, but not limited to, the broadcasting of recorded political messages (robocalls) via thousands of automated telephone calls that were made for the benefit of Amy Bublak and Kurt Vander Weide. (See Moore decl., ¶¶ 9-38.)

Respondents' Robocall Campaign

Since two seats were up for election that year, Amy Bublak and Kurt Vander Weide formed an alliance. In this regard, they shared a campaign consultant (Carl Fogliani, who ran a campaign consulting business called Fogliani Strategies), received contributions from the same major donor (a developer named Mark Hall), and split the cost of a robocall campaign designed to support themselves and discredit their opponent, Mary Jackson. However, since two of the robocalls were "hit pieces" and one of them actually impersonated Mary Jackson, the candidates would not want to be identified as the source of the robocall campaign, which helps explain the failure to comply with the Act's identification requirements for making the robocalls. (See Moore decl., ¶¶ 10-12.)

With respect to Counts 1 through 4 (which are described in more detail later in this Accusation), the robocalls at issue are summarized in the following chart (Moore decl., ¶¶ 11-12):

Count	Date	Transcript (false ID in *italics*)
1	10/11/08	Special interests looking for favors are behind Mary Jackson's campaign for the Turlock City Council. We need leaders who will fight for taxpayers not special interests. Will Mary Jackson stand up for you or payback her special interest friends? If it's about action for special interests, it's about Mary Jackson. *Paid for by Taxpayers for Safer Neighborhoods.*
2	10/14/08	Turlock's police and firefighters need your help. We're asking you to vote for Amy Bublak and Kurt Vander Weide for Turlock City Council on Tuesday, November 4th. Amy Bublak and Kurt Vander Weide are the only candidates endorsed by Turlock's police and firefighters, Sheriff Adam Christianson and the Turlock Chamber of Commerce. Amy Bublak and Kurt Vander Weide are the only candidates committed to maintaining strong public safety services while exercising sound fiscal responsibility. Please join the people you trust the most in voting for Amy Bublak and Kurt Vander Weide for Turlock City Council on Tuesday, November 4th. *Paid for by Taxpayers for Safe Neighborhoods.*
3	10/22/08	Mary Jackson is running for council saying she won't accept special interest money. She even sent a mailer to everyone in town telling them all about it. Now we find out that she took thousands from development interests to pay for that mailer, a mailer that even has a San Francisco postage stamp. Those sure aren't the kind of Turlock values we want on City Council. *[No identification statement was included for this call.]*
4	11/02/08	*This is Mary Jackson* urging you to support the right of gay marriage by voting no on Proposition 8 this coming Tuesday, November the 4th. Turlock must support a rich, vibrant community that includes everyone and regardless of whom they choose to love. If you agree, I urge you to vote Mary Jackson for Turlock City Council on Tuesday, November 4th. *Paid for by the Friends of Mary Jackson.*

Hereafter, the robocall that is the subject of Count 1 is referred to as Robocall 1; the robocall that is the subject of Count 2 is referred to as Robocall 2, etc.

Respondents' Responsibility for Robocalls 1 and 3

This case arose from a sworn complaint submitted by Mary Jackson. The complaint pertained to Robocalls 1, 2 and 4. (Robocall 3 was discovered part way through the FPPC's investigation.) (See Moore decl., ¶ 13.)

Through his attorney, Brian Hildreth, Respondent Carl Fogliani denied knowledge of and involvement with Robocalls 1, 2 and 4. (See Moore decl., ¶ 14.)

To ascertain whether or not Respondent Carl Fogliani was being truthful, the FPPC followed up on a lead with a robocall "middleman" in another state with whom Respondent Carl Fogliani was known to have done business. This led to a phone bank vendor used by the "middleman" in yet another state to carry out robocalls for Respondent Carl Fogliani. Instead of turning over its records to the FPPC, the phone bank vendor turned over its records to Respondent Carl Fogliani's attorney, Mr. Hildreth. (See Moore decl., ¶ 15.)

Thereafter, the FPPC sought the records from Mr. Hildreth. The records pertained to various robocalls, including Robocalls 1 and 3. (This is how the existence of Robocall 3 was determined.) (See Moore decl., ¶ 16.)

Via email, Mr. Hildreth, on behalf of his client, Respondent Carl Fogliani, made the following admission regarding Robocalls 1 and 3 in connection with turning over the records of the phone bank vendor (Moore decl., ¶ 17):

> The costs of the calls was split between Kurt Vander Weide and Amy Bublak. As you will see, both calls were well under the subvendor threshold. As a result, separate invoices were not prepared by Carl and sent to Bublak and/or Vander Weide.
>
> The expense for Vander Weide's share of the two calls came out of the $1,000 he paid to Carl pursuant to Carl's September 25, 2008 invoice, and was included in the October 8, 2008 check Vander Weide paid to Carl. Both of these documents are attached.
>
> For Bublak, virtually the same scenario occurred. As with Vander Weide, Carl does not have in his possession specific documentation reflecting invoicing and payment of the exact amounts for the costs of the robocalls for Bublak. The cost of the calls were built into other invoices by Carl and other checks from Bublak to Carl for payment of the robocalls.

In connection with this admission, Mr. Hildreth produced invoices from the robocall "middleman," R T Burns, Inc., to Respondent Carl Fogliani's business, Fogliani Strategies, and an invoice from the phone bank vendor to R T Burns, Inc. The invoices reflected that Robocall 1 involved approximately 13,248 automated telephone calls, and Robocall 3 involved approximately 5,614 calls. (See Moore decl., ¶ 18.)

Also, Mr. Hildreth confirmed on behalf of his client, Respondent Carl Fogliani, that the calls for Robocall 1 were made on October 11, 2008, and the calls for Robocall 3 were made on October 22, 2008. (See Moore decl., ¶¶ 19 and 20.)

Therefore, it is clear that half of the cost of Robocalls 1 and 3 was paid for by Respondent Kurt Vander Weide (through his controlled committee). In connection with these robocalls, Respondent Carl Fogliani acted as agent and paid campaign consultant for

Respondents Kurt Vander Weide and Friends of Kurt Vander Weide—planning, organizing, and/or directing the making of the calls for the benefit of Respondents Kurt Vander Weide and Friends of Kurt Vander Weide. At the very least, Respondent Carl Fogliani made arrangements with a robocall "middleman" and arranged for the "middleman" to be paid.

Respondents' Responsibility for Robocall 2

With this knowledge of who was responsible for Robocalls 1 and 3, it is important to note that Robocall 2 was paid for, planned, organized, and directed by the same Respondents and in the same manner. This is true for three reasons.

First, as shown in the chart above, Robocall 2 purported to be paid for by Taxpayers for Safe Neighborhoods,[6] which is virtually the same false identification disclosure that was used by Robocall 1. This shows a common plan, scheme, or *modus operandi* between the two robocalls, which strongly suggests that Robocall 2 was paid for, planned, organized, and directed by the same Respondents and in the same manner as Robocall 1. (See Moore decl., ¶ 21.)

Second, Robocall 2 specifically mentions Amy Bublak and Kurt Vander Weide, speaking favorably about them and soliciting votes for them in the election for Turlock City Council. It requires no stretch of the imagination to conclude that such a robocall was paid for by the same two people that it supported—especially in light of the other facts discussed above and below this paragraph. (See Moore decl., ¶ 22.)

Third, the timing of Robocall 2 relative to Robocall 1 suggests that they were part of a single robocall campaign. On October 11, 2008, Robocall 1 attacked Mary Jackson in an attempt to discredit her. Then, three days later, Robocall 2 depicted Amy Bublak and Kurt Vander Weide as excellent candidates for Turlock City Council. The proximity in time between these messages created the impression that Amy Bublak and Kurt Vander Weide were superior alternatives to Mary Jackson, and this strongly suggests that Robocalls 1 and 2 were part of a single robocall campaign, paid for, planned, organized, and directed by the same persons and in the same manner as Robocalls 1 and 3.

Respondents' Responsibility for Robocall 4

With this knowledge of who was responsible for Robocalls 1, 2 and 3, it is important to note that Robocall 4 was paid for, planned, organized, and directed by the same persons and in the same manner. This is shown by the fact that Robocall 4 originated from the same out-of-state phone bank vendor as Robocall 2, which is described in more detail below.

At the outset of this case, witnesses provided the FPPC with dates and times that they remembered receiving Robocalls 2 and 4. (See Moore decl., ¶ 23.)

[6] When the FPPC conducted a search of campaign records, the closest match was a committee registered as Taxpayers for Safe*r* Neighborhoods. (Emphasis added.) Based upon review of the statements of this committee and an interview with the committee treasurer, the FPPC's Enforcement Division concluded that this committee did not pay for Robocall 2.

Additionally, one witness went so far as to report Robocall 4 to the Turlock Police Department. (See Moore decl., ¶ 24.)

According to the sworn complaint that gave rise to this case, caller identification information ("caller ID") for Robocall 2 was missing, and the caller ID for Robocall 4 was 000-000-0000. (See Moore decl., ¶ 25.)

Accordingly, it was necessary to follow the call flow backward from the destination telephone numbers of witnesses who reported receiving the robocalls in question, using as much information as was known and available about the robocalls, including the dates and approximate times that the robocalls were reported received by the witnesses, the approximate duration of the robocalls, and the high likelihood that Robocalls 2 and 4 would have the same originating telephone number (because they both related to the Turlock City Council election and they both appeared to be opposed to Ms. Jackson's election—either by supporting her opponents, or by impersonating Ms. Jackson and advocating a position that was viewed with disfavor by local voters at the time). (See Moore decl., ¶ 26.)

Along these lines, subpoenas were issued to AT&T for information about incoming calls to two different witnesses in the Turlock area who reported receiving the robocalls. AT&T was able to identify certain telephone calls that were suspicious because the calls were made to each witness on the dates in question (October 14 and November 2) and the calls all had the same Michigan caller ID, which after investigation, appeared to be bogus/spoofed. Also, the approximate times of the calls correlated with witness statements, and the durations were close enough to the durations of the audio recordings of the robocalls to be suspicious. (See Moore decl., ¶ 27.)

Since the caller ID information for the suspicious calls appeared to be bogus/spoofed, it was necessary to follow the call flow back to the prior telecommunications carrier that passed the call to AT&T. (See Moore decl., ¶ 28.)

Accordingly, a subpoena was issued to Verizon, and Verizon led to another carrier known as CCI Communications, a Utah company. (See Moore decl., ¶ 29.)

CCI Communications confirmed that the suspicious calls of October 14 and November 2 were billed to robocall businesses operated by a phone bank vendor named Tony Dane in

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Nevada.[7] Also, CCI Communications confirmed that all of the suspicious calls had the same ANI number (automatic number identification) of (501) 324-2008.[8] (See Moore decl., ¶ 30.)

The witness who reported Robocall 4 to the Turlock Police Department reported receiving the robocall at 3:30 p.m. According to CCI Communications, Mr. Dane's business (Dane & Associates) was billed for placing a call to that same witness at 3:28 p.m. (after taking time zone differences into account for Utah, the location of CCI Communications, versus Nevada, the location of Mr. Dane and his business). The difference in time of two minutes is to be expected given the difference in times between clocks. (See Moore decl., ¶ 31.)

Also, CCI Communications reported that the duration of the call was 28 seconds. This is very close to the duration of Robocall 4, which is approximately 25 seconds (determined by timing an audio recording of the robocall). (See Moore decl., ¶ 32.)

According to the records provided by CCI Communications, Mr. Dane's businesses were responsible for making thousands of calls to residents of Turlock, California on October 14 and November 2, 2008. In addition to the two witnesses whose telephone records were subpoenaed as described above, other witnesses reported receiving the robocalls in question. All of the witnesses show up on records produced by CCI Communications as having received calls from Mr. Dane's businesses on the dates that Robocalls 2 and 4 went out (October 14 and November 2, 2008). This is not a coincidence; rather, this shows that Robocalls 2 and 4 originated from the same phone bank vendor, Tony Dane. (See Moore decl., ¶ 33.)

As discussed above, Robocalls 1 and 3 were planned, organized, and directed by Respondent Carl Fogliani on behalf of Respondents Kurt Vander Weide and Friends of Kurt Vander Weide—who paid for one-half of the cost of the calls. Also, as discussed above, Robocall 2 was paid for, planned, organized, and directed by the same Respondents and in the same manner. Since Robocall 4 originated from the same out-of-state phone bank vendor as Robocall 2 (Tony Dane in Las Vegas, Nevada, and since both robocalls pertained to the Turlock City Council election), it strongly appears to be more likely than not that Robocall 4 also was paid for, planned, organized, and directed by the same Respondents and in the same manner.

Number of Calls Made

The identification requirements of Section 84310, subdivision (a), only apply to robocalls where 500 or more calls are made.

[7] Mr. Dane sued the FPPC in a Nevada court for alleged abuse of process in connection with the FPPC's investigation of this case—but his lawsuit was dismissed by the court on a summary judgment motion.

[8] This number turned out to be a number for Mike Huckabee's political action committee known as Huck PAC. Huck PAC records show that the committee was a client of Mr. Dane's earlier in 2008. Huck PAC denies that it had anything to do with Robocalls 2 and 4. Mr. Dane also denies that he had anything to do with Robocalls 2 and 4, and during a telephone conversation with the FPPC, he stated his belief that the Huck PAC ANI must have been an error/mistaken throwback to earlier work that had been done for Huck PAC.

Invoices from Respondent Carl Fogliani's attorney reflect that Robocalls 1 and 3 involved 13,248 and 5,614 calls, respectively. These figures are well over 500 each. (See Moore decl., ¶ 34.)

Phone records reflect that Mr. Dane placed approximately 5,593 calls to the 209 area code on October 14, 2008, and approximately 17,096 calls to the 209 area code on November 2, 2008. These are the dates of Robocalls 2 and 4, respectively. The Enforcement Division verified that of the 5,593 calls to the 209 area code on October 14, 2008, approximately 5,577 were made to Turlock prefixes, and of the 17,096 calls to the 209 area code on November 2, 2008, approximately 14,147 were made to Turlock prefixes. (The calls that involved non-Turlock prefixes mostly were made to cell phones related to Modesto, Stockton, Manteca, Merced, etc. As information, Mary Jackson's cell phone received one of the robocalls—even though she does not have a Turlock prefix.) Accordingly, Robocalls 2 and 4 also involved more than 500 calls apiece. (Technically, it is possible that some of these calls could have been unrelated to Robocalls 2 and 4, but there would have to be a tremendous number of unrelated calls for the number of calls attributable to Robocalls 2 and 4 to drop below 500 apiece. Also, considering that Robocalls 2 and 4 were made by a phone bank vendor in Las Vegas, Nevada, it is unlikely that he would have been calling Turlock or the 209 area code for any reason other than to make Robocalls 2 and 4.) (See Moore decl., ¶ 35.)

Cost of the Robocalls

As for the cost of Robocalls 1 and 3, invoices from R T Burns, Inc. to Fogliani Strategies reflected a rate of five cents per call and were in the amounts of $662.40 and $280.70, respectively. According to Respondent Carl Fogliani's former attorney, the cost of the calls was split between Amy Bublak for City Council and Friends of Kurt Vander Weide—which means each committee paid approximately $331.20 and $140.35 for Robocalls 1 and 3, respectively. (See Moore decl., ¶ 36.)

As for the cost of Robocalls 2 and 4, since no invoices were available, the FPPC, as part of a joint investigation with the Attorney General's office, engaged in undercover email correspondence in 2012 with phone bank vendor Tony Dane to ascertain how much he charged for robocalls. Mr. Dane quoted five cents per call for a job that would involve 5,500 to 20,000 robocalls—which is the same rate per call that was quoted in the invoices for Robocalls 1 and 3. As discussed above, Robocall 2 involved approximately 5,593 calls, and Robocall 4 involved approximately 17,096 calls. At a rate of five cents per call, Robocalls 2 and 4 would have cost approximately $279.65 and $854.80, respectively. According to Respondent Carl Fogliani's former attorney, the cost of the calls was split between Amy Bublak for City Council and Friends of Kurt Vander Weide—which means that each committee paid approximately $139.83 and $427.40 for Robocalls 2 and 4, respectively. (See Moore decl., ¶ 37.)

Adding these figures shows that each committee's share of the cost of the robocall campaign was approximately $1,038.78 apiece. Coincidentally, or not, this figure is in the ballpark of an invoice in the amount of $1,000 (dated September 25, 2008) from Fogliani Strategies to Respondent Kurt Vander Weide's committee—and based upon Respondent Carl

Fogliani's admission through his attorney, Brian Hildreth, we know that the payment in respect of that invoice was for robocalls. (See Moore decl., ¶ 38.)

Counts 1 through 4

Failure to Comply with Identification Requirements for Making Political Robocalls

As stated above, one-half of the cost of Robocalls 1 through 4 was paid for by Respondent Kurt Vander Weide, by and through his controlled committee, Friends of Kurt Vander Weide, and each robocall involved more than 500 calls.

Hence, the robocalls were required by Section 84310, subdivision (a), to include identification of those who paid for them, and pursuant to Section 84310, subdivision (b), Respondent Friends of Kurt Vander Weide was prohibited from contracting with phone bank vendors unless the vendors provided the required disclosure.

Rather than provide the required disclosure, Robocall 1 falsely purported to be paid for by Taxpayers for Safer Neighborhoods. Robocall 2 falsely purported to be paid for by Taxpayers for Safe Neighborhoods. Robocall 3 provided no disclosure as to who paid for it, and Robocall 4 falsely purported to be paid for by the Friends of Mary Jackson. (See Moore decl., chart following ¶ 11, and fn. 1.)

Respondent Carl Fogliani aided and abetted in the carrying out of this unlawful robocall campaign (within the meaning of Section 83116.5) by serving as campaign consultant for Respondents Kurt Vander Weide and Friends of Kurt Vander Weide—and by planning, organizing and/or directing the making of the calls for the benefit of Respondents Kurt Vander Weide and Friends of Kurt Vander Weide.

In the manner described above, Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani committed four violations of Section 84310, subdivisions (a) and (b), which requires robocalls to include identification of those who paid for them—and which prohibits campaign committees from contracting with phone bank vendors who fail to disclose this required information.

Count 5

Failure to Maintain Required Committee Records

Regarding Count 5, in 2010, the Enforcement Division obtained copies of committee records for Respondent Friends of Kurt Vander Weide. However, the records were incomplete, reflecting that the committee failed to maintain (for a period of four years following the filing of each applicable campaign statement) detailed accounts, records, bills, and receipts necessary to prepare campaign statements, establish that campaign statements were properly filed, and to otherwise comply with Chapter 4 of the Act. For example, missing records included accounts, records, and original source documentation regarding invoice/payment information for the robocalls that are the subjects of Counts 1 through 4, scripts of the robocalls, and copies of the recordings of the robocalls. (See Moore decl., ¶ 39.)

In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated the recordkeeping requirements of Sections 84104 and 84310, subdivision (c).

Count 6

False Reporting/Failure to Report Robocall Expenditures

Regarding Count 6, information and records from Respondent Carl Fogliani's attorney reflect that on or about October 8, 2008, Respondent Friends of Kurt Vander Weide made a payment to Fogliani Strategies to cover the invoice discussed above (dated September 25, 2008) in the amount of $1,000. (See Moore decl., ¶ 40.)

Respondent Carl Fogliani admitted, through his attorney, that the invoice/payment included payment for Respondent Kurt Vander Weide's share of the cost of Robocalls 1 and 3. However, the Enforcement Division respectfully submits that it is reasonable to believe that the invoice/payment of $1,000 applied to all four robocalls in this case—not just Robocalls 1 and 3. This is especially reasonable considering that $1,000 was the approximate amount of Respondent Kurt Vander Weide's share of the cost of the entire robocall campaign (as described above). (See Moore decl., ¶ 41.)

Respondents Kurt Vander Weide and Friends of Kurt Vander Weide were required to report this robocall payment on a campaign statement for the reporting period ending October 18, 2008 (because the check was dated October 8, 2008). The required campaign statement was filed on or about October 23, 2008. However, only one payment to Carl Fogliani was disclosed on the statement, and it was reported as being for "Slate mail," not as being for robocalls. Accordingly, payment for the robocalls was not reported—or it was falsely reported—which served to conceal the source of the robocalls from the public. (See Moore decl., ¶ 42.)

In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated Section 84211, subdivisions (b), (i), and (k), which requires accurate reporting of information about expenditures, including the consideration for which expenditures are made.

Count 7

Failure to Report Payments to Subvendors

Regarding Count 7, invoices from Fogliani Strategies to Respondent Kurt Vander Weide's candidate controlled committee reflect that Respondent Carl Fogliani (acting as agent and campaign consultant for Respondents Kurt Vander Weide and Friends of Kurt Vander Weide) made three expenditures of $500 or more to subvendors on behalf of Respondents Kurt Vander Weide and Friends of Kurt Vander Weide, as follows (Moore decl., ¶ 43):

Invoice Date	RE:	Listed Subvendor	Amount
9/25/08	Phones	R. T. Burns, Inc.	$1,761.57
9/25/08	Slates	MPR Strategies	$7,536.95
10/20/08	Walk Pieces	Tony Siciliani	$1,684.30
		Total:	**$10,982.82**

Respondents Kurt Vander Weide and Friends of Kurt Vander Weide were required to report subvendor information for these expenditures on campaign statements for the periods ending September 30, October 18, and/or December 31, 2008. The required campaign statements were filed on or about October 6, 2008, October 23, 2008, and March/April 2009, respectively. However, the required subvendor information was not disclosed in the statements. This is significant because these unreported subvendor payments comprised approximately 48% of reported expenditures for the committee that year. (See Moore decl., ¶¶ 44 and 45.)

Count 8

Failure to Notify Major Donor of the Need to File Campaign Statements

Regarding Count 8, campaign records reflect that during the reporting period ending September 30, 2008, Respondent Friends of Kurt Vander Weide received a contribution from developer Mark Hall in the amount of $10,000. (The contribution was reported as being from Monte Vista Crossings. Mr. Hall confirmed that he is the sole managing shareholder of that entity.) (See Moore decl., ¶ 46.)

Within two weeks of receipt, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide were required to provide notification to Mr. Hall (or the business entity through which he directed the contribution) of the potential need to file major donor campaign statements. However, the required notification was not sent. (See Moore decl., ¶¶ 47 and 48.)

In this way, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide violated the major donor notification requirements of Section 84105.

CONCLUSION

This matter consists of eight counts of violating the Act, which carry a maximum administrative penalty of $5,000 per count, for a total maximum administrative penalty of $40,000.

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. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

As stated above, Ms. Bublak, her committee, and her husband/treasurer (Milton Richards) have elected to settle with the Enforcement Division. (Their stipulation in this regard is a separate agenda item.) Accordingly, their rights are not affected by this Default Decision

and Order.[9] The discussion below only applies to Respondents Kurt Vander Weide, Friends of Kurt Vander Weide, and Carl Fogliani.

Regarding Counts 1 through 4, failure to disclose the source of political robocalls is a serious violation of the Act, which deprives the public of important information before an election about who is supporting/opposing which candidates. The most recent stipulation involving a violation of Section 84310 imposed a penalty in the low range. (See *In the Matter of Neighbors Opposing Tebbs, Eason & Haney for Fire Board 2010, and Thomas J. Francl, Treasurer*, FPPC No. 10/1090, approved Sep. 22, 2011 [$1,500 penalty].) However, this was a reduced penalty, which involved only one robocall—not a robocall campaign—and no deception as to the source of the robocall.

In this case, a higher penalty is warranted because Respondents' robocall campaign consisted of four different robocalls (not just one), and three of the robocalls deceived the public as to the identities of those who paid for them. Also, Robocall 4 falsely purported to be narrated by Mary Jackson. Additionally, at the outset of the Enforcement Division's investigation, Respondents denied responsibility for the robocalls—but these denials turned out to be false. After going to great lengths, the Enforcement Division uncovered a "smoking gun" as to two of the robocalls. At that point, Respondent Carl Fogliani admitted (through his attorney) that these two robocalls were paid for by committees controlled by Amy Bublak and Respondent Kurt Vander Weide, but Respondents continued to deny responsibility for the remaining two robocalls—despite the strong circumstantial evidence to the contrary (that is discussed above). Also, a higher penalty is warranted because this is a default proceeding. This is not a case where Respondents have agreed to a settlement and have cooperated with the Enforcement Division. The opposite is true. Any fine handed down by this Default Decision and Order will need to go through a collections process.

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of $5,000 per count for Counts 1 through 4 is justified.

Regarding Count 5, failure to maintain campaign records makes it difficult to determine the financial activity of a committee and to ascertain the accuracy of the activity reported on campaign filings. Also, record-keeping violations may result in concealment of other violations of the Act—that otherwise would be much easier to find during an investigation if proper records had been kept. A recent stipulation involving a record-keeping violation imposed a penalty in the mid-range. (See *In the Matter of Judith L. Dunlap, Dunlap for Mayor 2010, Dunlap 2009, and Friends to Elect Judy Dunlap*, FPPC No. 10/208, approved Aug. 22, 2013 [$2,000 penalty].)

[9] The settlement with Ms. Bublak (a peace officer) and her committee does not include charges for the robocalls (Counts 1 through 4 of the Accusation). The reason for this is that Ms. Bublak maintains that she instructed her campaign consultant, Carl Fogliani, not to do robocalls. Also, there is evidence to suggest that Mr. Fogliani may not have invoiced Ms. Bublak for the robocalls—even though he claims, through his former attorney, that her committee paid for half of the cost of them. Additionally, Ms. Bublak, her committee, and her husband agreed to pay a fine and settle with the Enforcement Division as to other counts.

In this case, a higher penalty is warranted because the record-keeping violation did in fact help to conceal the violations that are encompassed by Counts 1 through 4, relating to Respondents' robocall campaign. Also, as discussed above, Respondents untruthfully denied any involvement with the robocall campaign at the outset of this case. Additionally, a higher penalty is warranted because this is a default proceeding. This is not a case where Respondents have agreed to a settlement and have cooperated with the Enforcement Division. The opposite is true. Any fine handed down by this Default Decision and Order will need to go through a collections process.

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of $3,500 for Count 5 is justified.

Regarding Count 6, the public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended by the campaign, the identities of the recipients of such expenditures, and the reasons for such expenditures. A recent stipulation involving the expenditure reporting requirements of Section 84211 imposed a penalty in the mid-range. (See *In the Matter of Kathleen DeRosa and Committee to Elect Kathleen DeRosa for Mayor*, FPPC No 12/867, approved Apr. 17, 2014 [$2,500 penalty imposed for failure to report expenditures and accrued expenses].)

In this case, Respondents Kurt Vander Weide and Friends of Kurt Vander Weide *either* falsely reported that their payment to Respondent Carl Fogliani was for "Slate mail," *or* they *failed* to report a separate payment to Respondent Carl Fogliani that was for the robocall campaign. Either way, the public was deprived of important information that clearly would have identified Respondents' involvement with the robocall campaign. This false reporting or failure to report served to conceal the violations that are encompassed by Counts 1 through 5. Also, a higher penalty is warranted because this is a default proceeding. This is not a case where Respondents have agreed to a settlement and have cooperated with the Enforcement Division. The opposite is true. Any fine handed down by this Default Decision and Order will need to go through a collections process.

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of $3,500 for Count 6 is justified.

Regarding Count 7, a recent stipulation involving failure to report required information about payments to subvendors imposed a penalty in the mid-range. (See *In the Matter of 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*, FPPC No. 13/87, approved Apr. 17, 2014 [$2,000 penalty for failure to disclose subvendor information].)

In this case, the amount of unreported payments to subvendors was significant, comprising approximately 48% of reported expenditures for the year. Also, a higher penalty is warranted because this is a default proceeding. This is not a case where Respondents have agreed to a settlement and have cooperated with the Enforcement Division. The opposite is true. Any fine handed down by this Default Decision and Order will need to go through a collections process.

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of $3,500 for Count 7 is justified.

Regarding Count 8, the Act places a burden upon candidates and committees to notify contributors of large sums of money of the potential need to file major donor campaign statements. There are no recent stipulations involving this type of violation. However, two different stipulations from 2006 imposed a penalty in the mid-range for this type of violation. (See *In the Matter of Diana R. Hall and Committee to Re-Elect Judge Diana R. Hall*, FPPC No. 04/220, approved May 11, 2006 [$2,000 penalty for failure to send major donor notice]; and *In the Matter of William E. Simon, Jr., Bill Simon for Governor, and William R. Turner*, FPPC No. 04/489, approved July 12, 2006 [$2,000 penalty imposed per count for multiple counts of failure to send major donor notices].)

In this case, because of the size of the contribution from Mark Hall ($10,000), Respondents Kurt Vander Weide and Friends of Kurt Vander Weide knew or should have known that Mr. Hall was required to file major donor campaign statements. However, they failed to send the required notice to Mr. Hall, and he was fined $1,600 by the FPPC for failure to file (pursuant to a streamline stipulation). (See the online agenda for the Commission meeting of May 16, 2013, agenda item No. 14.) Also, a higher penalty is warranted because this is a default proceeding. This is not a case where Respondents have agreed to a settlement and have cooperated with the Enforcement Division. The opposite is true. Any fine handed down by this Default Decision and Order will need to go through a collections process. In mitigation, however, the Vander Weide campaign did report receipt of the contribution from Mr. Hall on a campaign statement for the period ending September 30, 2008—so the public had access to the information on his campaign statement prior to the election.

Under these circumstances, it is respectfully submitted that imposition of a penalty in the amount of $2,000 for Count 8 is justified.

PROPOSED PENALTY

In summary, it is respectfully submitted that the facts of this case justify imposition of the following penalty:

Count	Description	Named Respondents	Penalty
1	Failure to Comply with Identification Requirements for Making Political Robocalls	Kurt Vander Weide Friends of Kurt Vander Weide Carl Fogliani	$5,000
2	Failure to Comply with Identification Requirements for Making Political Robocalls	Kurt Vander Weide Friends of Kurt Vander Weide Carl Fogliani	$5,000

Count	Description	Named Respondents	Penalty
3	Failure to Comply with Identification Requirements for Making Political Robocalls	Kurt Vander Weide Friends of Kurt Vander Weide Carl Fogliani	$5,000
4	Failure to Comply with Identification Requirements for Making Political Robocalls	Kurt Vander Weide Friends of Kurt Vander Weide Carl Fogliani	$5,000
5	Failure to Maintain Required Committee Records	Kurt Vander Weide Friends of Kurt Vander Weide	$3,500
6	False Reporting/Failure to Report Robocall Expenditures	Kurt Vander Weide Friends of Kurt Vander Weide	$3,500
7	Failure to Report Payments to Subvendors	Kurt Vander Weide Friends of Kurt Vander Weide	$3,500
8	Failure to Notify Major Donor of the Need to File Campaign Statements	Kurt Vander Weide Friends of Kurt Vander Weide	$2,000
		Total:	**$32,500**