

1 After an investigation into the two committees, the Enforcement Division found that the Jackson
2 Committee, Jackson, and Barrios committed violations of the Political Reform Act (the “Act”)¹, including
3 failure to adequately maintain committee records and personal use of campaign funds.

4 **SUMMARY OF THE LAW**

5 The Act and its regulations are amended from time to time. The violations in this case occurred
6 in 2016 and 2017. For this reason, all legal references and discussions of law pertain to the Act’s
7 provisions as they existed at that time.

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

9 When enacting the Political Reform Act, the people of the state of California found and declared
10 previous laws regulating political practices suffered from inadequate enforcement by state and local
11 authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

12 A central purpose of the Act is to ensure voters are fully informed and improper practices are
13 inhibited by requiring committees to disclose all contributions and expenditures made throughout a
14 campaign.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be “vigorously
15 enforced.”⁵

16 Definition of Committee

17 A “committee” included any person or combination of persons who received contributions
18 totaling \$2,000 or more in a calendar year.⁶ This type of committee is commonly referred to as a
19 “recipient committee.” A recipient committee controlled by a candidate is called a controlled committee.

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23 ¹ The Act is contained in the Government Code sections 81000 through 91014. All statutory references are to the
24 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.

25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Section 81002, subdivision (f).

⁶ Section 82013, subdivision (a).

1 Recordkeeping

2 It is the duty of the candidate and the treasurer to maintain detailed accounts, records, bills, and
3 receipts necessary to prepare the campaign statements and to establish that these statements were
4 properly filed.⁷ These records include source records related to loans made to the committee and
5 expenditures of the committee, including invoices, receipts, bills, etc. These records must be retained
6 for four years following the date the campaign statement to which they relate is filed.⁸

7 Prohibition Against Personal Use of Committee Funds

8 The Act holds that contributions deposited into a campaign bank account are held in trust for
9 expenses associated with the election of the candidate or for expenses associated with holding office.⁹
10 An expenditure to seek office is within the lawful execution of the trust if it is reasonably related to a
11 political purpose.¹⁰ Expenditures that confer a substantial personal benefit must be directly related to a
12 political, legislative, or governmental purpose.¹¹

13 A committee that is not subject to the trust, such as recipient committee that has designated as a
14 general purpose committee, is subject to the Act's restrictions on use of committee funds.¹² Any
15 expenditure by a general purpose committee must be reasonably related to a political, legislative, or
16 governmental purpose of the committee.¹³ Any expenditure by a committee that confers a substantial
17 personal benefit on any individual or individuals with authority to approve the expenditure of campaign
18 funds held by the committee, shall be directly related to a political, legislative, or governmental purpose
19 of the committee.¹⁴

20 "Substantial personal benefit" is defined as an expenditure of campaign funds that results in a
21 direct personal benefit with a value of more than \$200 to a candidate, elected officer, or any individual
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23 ⁷ Section 84104.

24 ⁸ Regulation 18401, subdivision (b).

25 ⁹ Section 89510.

26 ¹⁰ Section 89512

27 ¹¹ Section 89512.

28 ¹² Section 89511, 89512.5.

¹³ Section 89512.5, subdivision (a).

¹⁴ Section 85912.5, subdivision (b).

1 with authority to approve the expenditure of campaign funds held by a committee.¹⁵ A direct personal
2 benefit has occurred when, within six months of the expenditure and without the assistance of any
3 intervening influence or interruption, the individual realizes an increase in his or her income or assets,
4 or a decrease in his or her expenses, of more than \$200 from the expenditure; or actually makes personal
5 use of an asset obtained as a result of the expenditure.¹⁶

6 Candidate and Treasurer Liability

7 Under the Act, it is the duty of the candidate and the treasurer of a controlled committee to ensure
8 that the committee complies with all the requirements of the Act concerning the receipt, expenditure, and
9 reporting of funds.¹⁷ The candidate and treasurer may be held jointly and severally liable, along with the
10 committee, for violations committed by the committee.¹⁸ Any person who is compensated for services
11 involving the planning, organizing, or directing any activity regulated by this title shall be liable for
12 violating the Act or for purposefully or negligently causing another person to violate the Act.¹⁹

13 **SUMMARY OF THE FACTS**

14 The Jackson Committee was referred to the Enforcement Division by the filing officer, the San
15 Diego Registrar of Voters. FPPC No. 17/00964 was opened in response, identifying the respondents as
16 the Jackson Committee, Jackson as the controlling candidate, and Barrios as the treasurer. The Caucus
17 Committee was referred to the Enforcement Division by the Secretary of State. FPPC No. 17/01473 was
18 opened in response, identifying the respondents as the Caucus Committee, Barrios as the former treasurer,
19 and Sean Rivas as the current treasurer.

20 After investigating both committees, the Enforcement Division found that in both cases Barrios
21 used committee funds for his own personal use. A third case, FPPC No. 18/01465, was opened on the
22 Commission's initiative to investigate Barrios' activity in the 2016 election cycle, where he was involved
23 with several committees active in the San Diego area. In the case of the Caucus Committee, Barrios

24 ¹⁵ Section 89511, subdivision (b)(3).

25 ¹⁶ Regulation 18960.

26 ¹⁷ Sections 81004, 84100, 84213, and Regulation 18427.

27 ¹⁸ Sections 83116.5 and 91006.

28 ¹⁹ Section 83116.5.

1 served as the treasurer and consultant for the committee. He was given access to the Caucus Committee
2 bank account, had a debit card, and authority to write checks on behalf of the Caucus Committee. The
3 Caucus Committee and Barrios had taken steps to rectify the issue prior to the FPPC intervening.
4 Therefore, the Enforcement Division has determined that the personal use violation will be charged under
5 the FPPC No. 18/01465 and the Caucus Committee will be charged for failure to file campaign statements
6 in FPPC Case No. 17/01473.

7 Jackson Committee – Recordkeeping

8 The Jackson Committee, Jackson, and Barrios failed to keep pertinent records of all contributions
9 and loans received and all expenditures made. The Enforcement Division requested committee records.
10 According to Jackson, Barrios maintained the committee records. When asked to produce, Barrios was
11 only able to produce a fraction of the documents that should have been maintained.

12 Jackson – Personal Use

13 After the election, the Jackson Committee’s bank account had funds remaining after all debts
14 associated with the campaign were paid off. By analyzing bank records, the Enforcement Division
15 determined that Jackson used his campaign bank account debit card for his personal benefit. He spent
16 \$1,196 in debit expenditures at local restaurants, grocery stores, gas stations, convenience stores, for a
17 subscription audio book service, and cash withdrawals. He also wrote himself two checks in late 2016
18 for \$250 and \$200. In total, Jackson spent \$1,646 of the Jackson Committee’s campaign funds after the
19 election for personal purposes. This total includes three expenditures totaling \$650 that were over \$200
20 apiece, which did not meet the strict standard of being directly related to a political, legislative, or
21 governmental purpose for permissible use of campaign funds. This total also includes twenty purchases
22 that totaled \$996 that were under \$200 apiece, which did not meet the lesser standard of being reasonably
23 related to a political purpose.

24 Jackson partially reimbursed the account by making payments totaling \$595 between March 14,
25 2017 and December 31, 2017.

1 Jackson explained to the Enforcement Division that he had no intention to misappropriate funds,
2 merely that he mistakenly believed he was permitted to use the remaining funds as he had loaned the
3 committee funds and he further contends that at least one recurring charge may have been an accidental
4 error when making a payment on a mobile device.

5 Barrios – Personal Use

6 The Enforcement Division determined that after the election Barrios wrote himself four checks
7 that totaled approximately \$2,083. He produced no invoices or receipts to justify these expenditures. As
8 a consultant, his work concluded with the election, and he had failed to fulfill his treasurer duties by not
9 maintaining records or filing campaign statements. These payments were for his personal benefit. He also
10 spent a total of approximately \$3,140 on debit or cash withdrawals at local food establishments, USPS
11 for stamps, and the Men’s Warehouse for menswear. Barrios admitted to FPPC investigators that these
12 purchases were for his personal benefit.

13 In total, Barrios spent approximately \$5,224 of funds from the Jackson Committee. Of these
14 funds, \$1,050 were expenditures under \$200, which did not meet the standard of being reasonably related
15 to a political purpose. Barrios made six payments totaling \$4,173 that were over \$200, which did not
16 meet the strict standard of being directly related to a political, legislative, or governmental purpose.

17 Barrios made a partial reimbursement to the Jackson Committee account when he paid \$2,000
18 back on December 14, 2016. However, after this reimbursement, Barrios made additional purchases using
19 his Jackson campaign bank account debit card and wrote himself a check for \$1,183.58.

20 As part of an investigation in the matter of California Young Democrats Latino Caucus (FPPC
21 No. 17/1473), the Enforcement Division determined that Barrios also spent funds from the Caucus
22 Committee for his own personal benefit. Barrios served as the treasurer and as a consultant for the Caucus
23 Committee from February 9, 2016 through February 12, 2018. The Caucus Committee identified, and
24 Barrios agreed, that several expenditures were not authorized uses of committee funds and were for
25 Barrios’ personal benefit.

1 Barrios wrote nine checks to himself totaling \$1,775 from January 22, 2016 through June 20,
2 2017. He also used the Caucus Committee's debit card to make expenditures or cash withdrawals totaling
3 approximately \$798 at local food establishments and to make other miscellaneous expenditures,
4 including paying for parking and a water service. These expenditures totaled approximately \$2,573.
5 Barrios made approximately 32 purchases totaling \$1,623 that were under \$200, which did not meet the
6 standard of being reasonably related to a political purpose. Barrios made two expenditures totaling \$950
7 that were over \$200, which did not meet the strict standard of being directly related to a political,
8 legislative, or governmental purpose.

9 Barrios made a partial reimbursement totaling \$1,500 to the Caucus Committee during the second
10 half of 2017.

11 Barrios asserts that his use of funds was to compensate himself for services to the two committees
12 and that he believed he was using funds that were owed to him. Barrios could provide no invoices or
13 communications to support his assertion. The lack of recordkeeping further obfuscates Barrios's use of
14 committee funds.

15 VIOLATIONS

16 Respondents Jackson Committee, Jackson, and Barrios

17 Count 1: Failure to Maintain Committee Records

18 The Committee, Jackson, and Barrios failed to adequately maintain records to prepare campaign
19 statements and to establish that the campaign statements were properly filed, in violation of Section
20 84104.

21 Respondent Jackson

22 Count 2: Personal Use of Campaign Funds

23 Jackson made multiple payments in increments less than \$200 of Jackson committee campaign
24 funds for food, groceries, and other miscellaneous items of personal benefit that totaled approximately
25 \$996, which were not reasonably related to a political purpose.
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1 In addition, Jackson made three payments of amounts in excess of \$200 with the Jackson
2 committee campaign funds in the form of checks to himself and a purchase at a grocery store totaling
3 \$650, which were not directly related to a political, legislative, or governmental purpose.

4 In total, Jackson made unlawful expenditures of approximately \$1,646 of funds from the Jackson
5 committee's bank account, in violation of Section 89512.

6 **Respondent Barrios**

7 Count 3: Personal Use of Campaign Funds

8 Barrios made payments under \$200 with the Jackson committee campaign funds for food, stamps,
9 parking fees, and other miscellaneous items of personal benefit that totaled approximately \$1,050 and
10 approximately \$1,623 of payments from the funds of the Caucus Committee. These payments were not
11 reasonably related to a political purpose.

12 In addition, Barrios made payments over \$200 with the Jackson committee campaign funds for
13 men's apparel and checks to himself that totaled \$4,173 and wrote checks to himself for payments over
14 \$200 (totaling approximately \$950) with funds from the Caucus Committee. These payments were not
15 directly related to a political, legislative, or governmental purpose.

16 Barrios made unlawful expenditures of approximately \$7,797 of funds from the Jackson
17 committee's and the Caucus Committee's bank accounts, in violation of Section 89512 and 89512.5.

18 **PROPOSED PENALTY**

19 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
20 count. Thus, the maximum penalty that may be imposed is \$15,000.²⁰

21 In determining the appropriate penalty for a particular violation of the Act, the Commission
22 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
23 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
24 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
25 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments

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27 ²⁰ See Section 83116, subdivision (c).

1 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
2 violations.²¹

3 With respect to Count 1, the violation of failure to maintain proper records show a negligent
4 disregard for proper campaign accounting and reporting. The failure to keep adequate records made it
5 impossible to verify or substantiate the campaign statements as filed. In aggravation, the Respondents
6 have a prior enforcement history. In FPPC No. 2016/19862, the Committee, Jackson, and Barrios paid a
7 streamline penalty of \$834 for failure to timely file two pre-election campaign statements filed in
8 connection with the November 8, 2016 General Election. Additionally, the Committee failed to file post-
9 election campaign statements for over three years, however, these statements are not being separately
10 charged in consideration of settlement.

11 The Commission also considers penalties in prior cases with the same or similar violations and
12 comparable facts. *In the Matter of Fred Garcia, Fred Garcia for Sheriff 2014, and Jeff Davis*; FPPC No.
13 14/299 (approved July 21, 2016), Respondents failed to keep pertinent records of all contributions and
14 loans received and all expenditures made. The committee reported receiving \$38,503 and reported
15 spending \$35,630 for that year. The Commission imposed a penalty of \$2,000 for the recordkeeping
16 violation. Here, the Enforcement Division is charging for failure to adequately keep and maintain the
17 records and documentation necessary to substantiate campaign statements. The Jackson Committee was
18 similar in size, having spent and received approximately \$45,000 for the year in question. Therefore, a
19 similar penalty of \$2,000 is recommended.

20 With respect to Counts 2 and 3, the public harm associated with a personal use violation is high.
21 The Act requires campaign contributions to be held in trust for expenses associated with seeking or
22 holding office. This is an important restriction, which helps to distinguish campaign contributions from
23 gifts. When a public official makes personal use of campaign funds, it is a serious violation of the Act
24 that erodes public confidence in the political process by creating the appearance that lawful campaign
25 contributions are personal gifts to the public official.

26 ²¹ Regulation 18361.5, subdivision (d).

1 A comparable case for personal use violations is *In the Matter of Jackie Wong for School Board*
2 *2016 and Jackie Wong*; FPPC No. 17/621 (The Commission approved a stipulated decision in May 2018.)
3 Respondent was a first-time successful candidate for school board. Wong made payments with campaign
4 funds for home office equipment, software, and smartphones totaling approximately \$1,466 that were not
5 substantially related to political, legislative, or governmental purposes. The Commission imposed a
6 penalty of \$3,000.

7 With respect to Count 2, Jackson unlawfully spent a similar amount of funds, however, his
8 purchases were largely under \$200. He was not in office at the time and made some attempts to reimburse
9 the account. He made payments totaling approximately \$595 between March 14, 2017 and December 31,
10 2017. Though Jackson contends that he loaned the committee funds and could have used committee funds
11 to pay back this loan, Jackson could not produce evidence to verify his claim. Therefore, a penalty of
12 \$2,500 is recommended.

13 With respect to Count 3, Barrios unlawfully expended more money for his own personal benefit
14 compared to *Wong* and he exhibited a pattern by using multiple committee accounts in this way.
15 Therefore, a higher penalty is warranted here. In mitigation, Barrios cooperated with the investigation
16 and Barrios made partial reimbursements, paying \$2,000 on December 14, 2016 to the Jackson committee
17 and \$1,500 to the Caucus Committee. However, after his reimbursement to the Jackson committee,
18 Barrios continued to use committee funds for his personal benefit. Barrios claims that he was using funds
19 that he considered owed to himself for his services, however, Barrios could not produce any invoices or
20 evidence to justify these claims and moreover, this would not obviate the violation. Therefore, a penalty
21 of \$4,000 is recommended in this matter.

22 After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant
23 facts, a penalty of \$2,000 is recommended against the Respondents Jackson Committee, Jackson, and
24 Barrios for Count 1; a penalty of \$2,500 is recommended against Jackson for Count 2, and a penalty of
25 \$4,000 is recommended against Barrios for Count 3. The total penalty recommended is \$8,500.

26 CONCLUSION

1 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
2 Respondents Michael D. Jackson for School Board 2016, Michael D. Jackson, and Kelvin Barrios hereby
3 agree as follows:

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

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

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

11 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
12 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
13 This includes, but is not limited to the right to appear personally at any administrative hearing held in
14 this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine
15 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
16 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
17 reviewed.

18 5. Respondents agree to the issuance of the decision and order set forth below. Also,
19 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
20 \$8,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
21 California—is/are submitted with this stipulation as full payment of the administrative penalty described
22 above, and same shall be held by the State of California until the Commission issues its decision and
23 order regarding this matter.

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

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

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8 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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12 Dated: _____

Michael D. Jackson, individually and on behalf of the
committee, Michael D. Jackson for School Board 2016

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15 Dated: _____

Kelvin Barrios

1 The foregoing stipulation of the parties “Michael D. Jackson for School Board 2016, Michael D.
2 Jackson, and Kelvin Barrios,” FPPC Nos. 17/00964, 18/01465, is hereby accepted as the final decision
3 and order of the Fair Political Practices Commission, effective upon execution below by the Chair.
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5 IT IS SO ORDERED.

6 Dated: _____
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Richard C. Miadich, Chair
Fair Political Practices Commission
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