



FAIR POLITICAL PRACTICES COMMISSION

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

From: Zackery P. Morazzini, General Counsel

Subject: Monthly Report on Legal Division Activities

Date: November 4, 2013

A. OUTREACH AND TRAINING

In September, Commission Counsel Sukhi Brar made two presentations to international delegations:

- On September 17th, Sukhi Brar along with Sarah Lang of the Technical Assistance Division spoke to a group of government anti-corruption officials from China about the Political Reform Act's conflicts of interest rules.
- On September 19th Sukhi Brar met with a Polish delegation and the United States Department of State Visitors at the Institute of International Education in San Francisco. The delegation was interested in creating an ethics agency like the Commission in Poland. Sukhi spoke about conflicts of interest, gifts and campaign rules.

On September 19th, 2013, Senior Commission Counsel Bill Lenkeit met with city attorneys at the League of Cities Conference in Sacramento to discuss proposed revisions to the conflict of interest regulations of the Act.

On October 9th, 2013 Legal Division attorneys Scott Hallabrin, Heather Rowan and Jack Woodside provided mandatory ethics training for approximately 20 members of the FPPC staff on October 9, 2013. The training covered not only provisions of the Political

Reform Act, but review of other ethics laws applicable to state employees such as conflicts of interest in state contracts (Gov. Code Sec. 1090) and non-work activities that are restricted under the Commission's Statement of Incompatible Activities and satisfied the requirements of Government Code Sections 11146-11146.4. A second live training is scheduled for November 18, 2013.

B. FINDINGS OF PROBABLE CAUSE

A finding of probable cause does not constitute a finding that a violation has actually occurred. Respondents are presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding.

The following case was decided based solely on the papers. The respondent did not request a probable cause hearing.

In the Matter of Milton Mar, FPPC No. 12/933. On October 10, 2013, probable cause was found to believe that Respondent Milton Mar committed two violations of the Political Reform Act, as follows:

Count 1: As a member of the City of McFarland Planning Commission, Respondent Milton Mar failed to file a 2011 annual statement of economic interests by the April 2, 2012 due date, in violation of Sections 87200 and 87203 of the Government Code.

Count 2: As a member of the City of McFarland Planning Commission, Respondent Milton Mar failed to file a 2012 annual statement of economic interests by the April 1, 2013 due date, in violation of Sections 87200 and 87203 of the Government Code.

The following cases were decided after a probable cause conference.

In the Matter of Joe Anderson, FPPC No. 12/764. On October 14, 2013, probable cause was found to believe that Respondent Joe Anderson committed three violations of the Political Reform Act, as follows:

Count 1: Respondent Anderson failed to timely file a statement of organization, in violation of Government Code Section 84101, subdivision (a).

Count 2: Respondent Anderson failed to establish a single campaign bank account for his 2012 Campaign for the Foresthill Public Utilities District Board, in violation of Government Code Section 85201.

Count 3: On or about October 3, 2012, Respondent Anderson caused to be sent a mass mailing in support of his, Ms. Dianne Foster, and Mr. Robert “Nolan” Vroege’s candidacy for the November 2012 Foresthill Public Utilities District Board Election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

In the Matter of Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide, Carl Fogliani, Milton Richards and Mark Hall, FPPC No. 08/814. On October 25, 2013, probable cause was found to believe that Respondents Amy Bublak, Amy Bublak for City Council, Kurt Vander Weide, Friends of Kurt Vander Weide and Milton Richards committed thirteen violations of the Political Reform Act, as follows:

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 the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), 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 said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. (Respondents Amy Bublak and Kurt Vander Weide also were candidates for Turlock City Council at the time.) In this way, Respondents Amy Bublak, Amy Bublak for City Council, 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 the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), 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 said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. In this way, Respondents Amy Bublak, Amy Bublak for City Council, 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 the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), 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 said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. (Respondents Amy Bublak and Kurt Vander Weide also were candidates for Turlock City Council at the time.) In this way, Respondents Amy Bublak, Amy Bublak for City Council, 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 the calls were paid for by Respondents Amy Bublak and Kurt Vander Weide by and through their controlled committees (Amy Bublak for City Council and Friends of Kurt Vander Weide, respectively), 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 said Respondents and by planning, organizing and/or directing the making of the calls for their benefit. (Respondents Amy Bublak and Kurt Vander Weide also were candidates for Turlock City Council at the time.) In this way, Respondents Amy Bublak, Amy Bublak for City Council, 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 Report Payment to Carl Fogliani

Count 5: On or about August 12, 2008, Respondent Amy Bublak for City Council made a payment to Carl Fogliani in the amount of \$1,000. Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards were required to report this expenditure on a pre-election campaign statement for the period ending September 30, 2008. The required campaign statement was filed on or about October 6, 2008, but the foregoing payment to Mr. Fogliani in the amount of \$1,000 was not disclosed. In this way, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the expenditure reporting requirements of Section 84211, subdivisions (b), (i), and (k).

Failure to Maintain Required Committee Records

Count 6: In connection with Respondent Amy Bublak's candidacy for Turlock City Council in 2008, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards 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 payment in the amount of \$1,000 to Carl Fogliani that is the subject of Count 5, 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 Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the recordkeeping requirements of Sections 84104 and 84310, subdivision (c).

Count 7: 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 8: Respondent Amy Bublak for City Council paid Carl Fogliani in excess of \$100 per robocall for the robocalls that are the subjects of Counts 1 through 4. At the latest, Respondents Amy Bublak, Amy Bublak for City Council and Milton Richards were required to report payment for the robocalls on campaign statements filed for the reporting periods when the robocalls were made. The first two robocalls were made during the reporting period ending October 18, 2008, and the last two robocalls were made during the reporting period ending December 31, 2008. On campaign statements that were filed for those reporting periods—and all prior reporting periods for that election year—multiple payments to Carl Fogliani were reported. However, the payments were disclosed as being for slate mailers, signs, letterhead, photo shoot services, website and logo design—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 Amy Bublak, Amy Bublak for City Council and Milton Richards 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 9: 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 10:** Between approximately July 1 and December 31, 2008, Respondent Carl Fogliani made four expenditures to subvendors on behalf of Respondents Amy Bublak and Amy Bublak for City Council, which totaled approximately \$23,518. Each expenditure was made by Respondent Carl Fogliani in his capacity as agent and campaign consultant for Respondents Amy Bublak and Amy Bublak for City Council, and each expenditure was more than \$500. Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards 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 February 2, 2009, respectively. However, the required subvendor information was not disclosed in the statements. In this way, Respondents Amy Bublak, Amy Bublak for City Council, and Milton Richards violated the subvendor reporting requirements of Sections 84211, subdivision (k), and 84303.
- Count 11:** 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 13:** During the reporting period ending September 30, 2008, Respondent Amy Bublak for City Council received contributions from Respondent Mark Hall in excess of \$5,000. (These and other contributions are the subject of Count 12.) Within two weeks of receipt, Respondents Amy Bublak and Amy Bublak for City Council were required to provide notification to Respondent Mark Hall (or the business entities through which he directed the contributions) of the potential need to file major donor campaign statements. However, this required notification was not provided. In this way, Respondents Amy Bublak and Amy Bublak for City Council violated the major donor notification requirements of Section 84105.
- Count 14:** 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. (This and other contributions are the subject of Count 12.) 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.

C. LEGAL ADVICE TOTALS

- ***Email Requests for Advice:*** In September and October, Legal Division attorneys responded to more than 92 email requests for legal advice.
- ***Advice Letters:*** From September 3 to October 31, 2013, the Legal Division received 18 advice letter requests and issued 22 advice letters.

D. ADVICE LETTER SUMMARIES

Campaign

[insert letter name and number]

Bay Meadows is not required to file a special Off-Year Report for the first quarter of 2013 because of contributions it made to “Better Schools and Safer Neighborhoods for Los Angeles Committee to Support Curren Price.” The contributions in question were already disclosed prior to the local election; therefore, disclosure of the same

information, in the same filing period, and in the same jurisdiction would not provide additional useful information to the public and not further the purposes of the Act.

Brian Darby**I-13-114**

The majority of the questions relate to past conduct and the FPPC does not provide advice regarding past conduct. The campaign disclosure provisions require “committees” to file a statement of organization and periodic reports disclosing contributions received and expenditures made. The Libertarian Party of California and its county committees meet the “committee” threshold under Section 82013 and thus are required to file statements of organization and file periodic campaign reports as required by the Act. Unless an exception applies, cash payments or in-kind payments such as staff time or office space, or administrative costs of operating a committee made to the Libertarian Party and its county committees are contributions and subject to the Act’s campaign disclosure requirements. In addition, Regulation 18225 classifies every monetary or nonmonetary payment that a political party makes as an expenditure, unless a specific exception applies.

Conflict of Interest**David L. Zaltsman****A-13-083**

Three members of the a County Board of Supervisors have interests in real property and, absent additional facts, it is reasonably foreseeable that the property will be materially financially affected by the decision to adopt a new ordinance that would place new restrictions on properties located in stream side conservation areas.

Michael Henderson**I-13-093**

Deputy Director of Public Works may not participate in real property decisions regarding a golf course if the governmental decision will have a reasonably foreseeable material financial effect on his real property. Improvements to the golf course may have a reasonably foreseeable material financial effect, unless he can prove that there will be no effect on his real property value.

Dianna Marie Valdez**I-13-100**

An individual consulting a government agency is required to file a statement of economic interests and is covered by the conflict-of-interest rules if the consultant makes governmental decisions as defined in Regulation 18701(a)(2) or serves in a staff capacity and participates in governmental decisions or performs the duties of an individual in the agency’s conflict-of-interest code. Individuals in the human resources firm providing HR services to the local agency will not be considered consultants where the services they are providing consist of payroll, administrative and educational services, administering health benefits insurance, and implementing hiring, overtime and other decisions made by employees of the government agency.

Caio A. Arellano

A-13-109

Councilmember may participate in the city council's decisions involving the Main Street Bridge project despite having a leasehold interest in office space within 500 feet of the boundaries of the project because it is not reasonably foreseeable that the project will materially affect the councilmember's business or lease.

Scott Warren

I-13-112

A public official may hold a position as a director with the Water Replenishment District of Southern California and as a senior engineering geologist with the California Environmental Protection Agency concurrently. However, as a member of either position, he will need to disqualify himself from making, participating in making, or influencing any governmental decision that would have a reasonably foreseeable material financial effect on one or more of his interests.

Joginder Dhillon

A-13-116

A chairman and a commissioner may not accept reimbursement of travel, lodging, and subsistence costs from the Macau Gaming Equipment Manufacturers Association because they constitute limited gifts under Section 82028(a) and no exception applies.

Paras Modha

A-13-116a

Gambling Control Commission Chairman and Commissioner may accept travel, lodging, and subsistence costs provided by the Macau University of Science and Technology because they appear to meet the travel payment exception as a person domiciled outside the United States, which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. However, the university must not be an intermediary for gifts actually made by private donors (such as the Macau casinos) for the exception to apply.

Thomas Hudson

I-13-117

CPTC was required to file an original and one copy of the Supplemental Independent Expenditure Report (Form 465) for two separate payments on May 7, 2013 for slate mail advertising in opposition to the "Safe, Clean, and Reliable Drinking Water Supply Act," a water bond measure scheduled to appear on the statewide November 2014 general election ballot.

Thomas Pellegrino

I-13-118

A public official and members of the board may participate in decisions involving the District's business relationship with Supplemental Online Services, Inc (SOS), because they have no economic interests involved. A public official may not influence or participate in future decisions involving the District's business relationship with SOS, unless he can prove that there is no reasonably foreseeable material economic effect on his company.

Derek Reeve**I-13-120**

Councilmember may attend and participate in future city council hearings regarding a lawsuit filed by Capistrano Taxpayers Association (CTA) against the city even though the former president of the CTA was his former business partner. At this time, the decision will not have a reasonably foreseeable material financial effect on any of the councilmember's interests.

Carey Haughy**I-13-122**

The Act does not prohibit a public official's membership on a board, committee, or commission. The ad hoc committee currently does not possess decision making authority, so the Act's conflict of interest and financial disclosure rules do not apply. However, if in the future the committee gains decisionmaking authority, they might have a disqualifying interest that would prevent them from participating in the decision.

Sarah Carrillo**A-13-125**

County supervisor may participate in discussions, deliberations, and possible actions by the Board of Supervisors regarding the county's position on the U.S. Fish and Wildlife Service's proposal to list the Sierra Nevada yellow-legged frog, as well as the northern distinct populations segment of the mountain yellow-legged frog as endangered and to list the Yosemite Toad as threatened under the Endangered Species Act because she does not have a potentially disqualifying leasehold interest in real property (grazing permit) and the decision will not foreseeably and materially affect her livestock business.

Mary R. Casey**A-13-126**

Director of a municipal water district may take part in decisions regarding contracts involving the County even though she is employed by the County because her potential economic interest (source of income) does not constitute "income" under the Act since it is received from a state, local, or federal government agency.

Robert Boco**A-13-128**

Councilmember may not participate in a city council decision to adopt a new ordinance amending the development review process for certain new and existing development applications within the Specific Plan area because he owns real property within 500 feet of the Specific Plan area. However, he may participate in the decision if he can rebut the presumption of materiality imposed by Regulation 18705.2(a)(1).

David L. Zaltsman**A-13-135**

Follow up to *Zaltsman* Advice Letter, No. A-13-083 based on additional facts regarding Supervisor Adams. The Commission is currently developing new rules for establishing standards for what constitutes a material financial effect on real property since the "one-penny" rule. However, even under the current rule it is not reasonably foreseeable that

the decision on the stream ordinance will have any measureable financial effect on the value of Supervisor Adam's condominium.

Gift Limits

Timothy J. Fennell

A-13-127

The Act's gift limits would not appear to apply if a public official accepts a payment for transportation, food, and lodging from Luden Entertainment, an entity that is the Mexican equivalent of an American entity organized under Section 501(c)(3) of the Internal Revenue Code, in connection with making a speech at the Mexican Fairs and Festival conference in Leon, Mexico to speak about the organization and operations of the San Diego Fair. However, payment for the travel could present a basis for a conflict of interest under the Act if, within 12 months after receiving payment, the official makes, participates in making or uses his official position to influence a government decision that has a reasonably foreseeable material financial effect on Luden Entertainment.

Honoraria

June D. Hayes

A-13-132

The Act's honoraria ban does not prohibit an official from working as an instructor at the Community Center because the center provides a variety of classes, and the numerous persons serviced by the center are diverse in their interests and do not represent a particular interest group. The compensation that will be offered to the official will also be an amount that is the same as or less than that customarily paid for teaching similar courses.

Miscellaneous

Shirley Concolino

A-13-119

Section 84203(b) and 84204 of the Act may be construed to allow email as a method of delivery for late contribution and late independent expenditures reports, but it may not be modified to exclude facsimile transmission. The Statement of Organization Form 410 copy may also be modified to include email as a method of delivery, but facsimile transmission may not be excluded.

Ann Turtle

A-13-133

Assemblymember is not required to disclose her former employer as a source of income on her 2012 Statement of Economic Interests from a settlement she reached with them in 2012.

Ernest J. Dronenburg, Jr.

I-13-123

An elected officer, such as a county clerk, is responsible for reporting to his agency on the Form 803 any services, including free legal services, provided to him for a governmental purpose if the value of the services reaches the \$5,000 annual threshold.