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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12 LUIS CASTRO, COMMITTEE TO  
13 ELECT LUIS CASTRO FOR CALEXICO  
CITY COUNCIL MEMBER 2012, and  
14 ANA CASTRO,

15 Respondents.

FPPC Case No. 13/1200

STIPULATION, DECISION AND ORDER

16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 Respondents Luis Castro, Committee to Elect Luis Castro for Calexico City Council Member 2012, and  
19 Ana Castro, hereby agree that this Stipulation will be submitted for consideration by the Fair Political  
20 Practices Commission at its next regularly scheduled meeting.

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

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
27 appear personally at any administrative hearing held in this matter, to be represented by an attorney at  
28 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents violated the Political Reform Act as set forth  
4 in Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated  
5 by reference as though fully set forth herein.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,  
7 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
8 \$7,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General  
9 Fund of the State of California—is/are submitted with this Stipulation as full payment of the  
10 administrative penalty described above, and same shall be held by the State of California until the  
11 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the  
12 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business  
13 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by  
14 Respondents in connection with this Stipulation shall be reimbursed to Respondents.

15 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation  
16 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

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1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
2 Stipulation.

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5 Dated: \_\_\_\_\_  
6 Galena West, Chief of Enforcement  
Fair Political Practices Commission

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9 Dated: \_\_\_\_\_  
10 Luis Castro, individually and on behalf of Committee to  
Elect Luis Castro for Calexico City Council Member  
11 2012, Respondents

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13 Dated: \_\_\_\_\_  
14 Ana Castro, Respondent

15 **DECISION AND ORDER**

16 The foregoing Stipulation of the parties “In the Matter of Luis Castro, Committee to Elect Luis  
17 Castro for Calexico City Council Member 2012, and Ana Castro,” FPPC Case No. 13/1200, including all  
18 attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices  
19 Commission, effective upon execution below by the Chair.

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21 IT IS SO ORDERED.

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23 Dated: \_\_\_\_\_  
24 Joann Remke, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Luis Castro has served as a Calexico City Councilman since 2008. In 2012, he successfully sought re-election. Committee to Elect Luis Castro for Calexico City Council Member 2012 was his candidate controlled committee, and his wife, Ana Castro, was his treasurer.

This case involves multiple violations of the Political Reform Act (the “Act”),<sup>1</sup> including unlawful use of cash to make campaign expenditures; unlawful acceptance of cash contributions; failure to use a single, designated campaign bank account; and failure to comply with the Act’s campaign reporting requirements. This stipulation only encompasses known violations through the end of 2012.

### SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. The violations in this case occurred in 2012. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they existed at that time.

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

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> To that end, the Act is to be construed liberally to accomplish its purposes.<sup>3</sup> One purpose 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.<sup>4</sup> Along these lines, the Act includes a comprehensive campaign reporting system.<sup>5</sup> Also, the Act imposes certain rules that are designed to aid the audit and enforcement process. These include rules against cash contributions and expenditures of \$100 or more; a rule that requires committee receipts and expenditures to be processed through a single, designated campaign bank account; and recordkeeping requirements.<sup>6</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>7</sup>

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<sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

<sup>2</sup> Section 81001, subdivision (h).

<sup>3</sup> Section 81003.

<sup>4</sup> Section 81002, subdivision (a).

<sup>5</sup> Sections 84200, et seq.

<sup>6</sup> See Sections 84300, subdivisions (a) and (b); 84104; and 85201.

<sup>7</sup> Section 81002, subdivision (f).

## Definition of Controlled Committee

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$1,000 or more in a calendar year.<sup>8</sup> This type of committee commonly is referred to as a “recipient committee.” 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.”<sup>9</sup> 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.<sup>10</sup>

## Mandatory Filing of Campaign Statements and Reports

At the core of the Act’s campaign reporting system is the requirement that committees must file campaign statements and reports for certain reporting periods and by certain deadlines.<sup>11</sup>

For example, in connection with the election held November 6, 2012, city council candidates and their controlled committees were required to file pre-election campaign statements (Form 460’s) with the city clerk for the following reporting periods by the deadlines noted in the chart below:<sup>12</sup>

Reporting Period	Filing Deadline
7/1/12 – 9/30/12	10/5/12
10/1/12 – 10/20/12	10/25/12

## Mandatory Use of a Single, Designated Campaign Bank Account

The Act requires campaign funds to be segregated from non-political, personal accounts and kept in a single, designated campaign bank account.<sup>13</sup> All contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate’s controlled committee must be deposited into this account.<sup>14</sup> Any personal funds that will be utilized to promote the election of the candidate must be deposited into the account prior to expenditure.<sup>15</sup> All campaign expenditures must be made from the account.<sup>16</sup>

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<sup>8</sup> Section 82013, subdivision (a).

<sup>9</sup> Section 82016.

<sup>10</sup> Section 82016, subdivision (a).

<sup>11</sup> Sections 84200, et seq.

<sup>12</sup> Sections 84200.5, subdivision (b); 84200.7, subdivision (b).

<sup>13</sup> Section 85201.

<sup>14</sup> Section 85201, subdivision (c).

<sup>15</sup> Section 85201, subdivision (d).

<sup>16</sup> Section 85201, subdivision (e).

## **Prohibition Against Cash Contributions and Expenditures of \$100 or More**

The Act provides that no campaign contribution of \$100 or more may be made or received in cash.<sup>17</sup> Also, no campaign expenditure of \$100 or more may be made in cash.<sup>18</sup>

## **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 properly were filed, and to otherwise comply with the Act's campaign disclosure provisions.<sup>19</sup> This duty includes maintenance of detailed information and original source documentation for a period of four years following the date the campaign statement to which they relate is filed. Examples of original source documentation that must be maintained include copies of contributor checks of \$25 or more, as well as copies of bills, receipts, and invoices for expenditures of \$25 or more. Also, for contributions received of \$100 or more, accounts and records must include a continuous computation of campaign account balances, a listing that reflects the dates and daily totals of the contributions on the dates of the contributions, the amount of each contribution, the full name and street address of each contributor, the occupation and employer of each contributor, and the cumulative amount received from each contributor.<sup>20</sup>

## **Joint and Several Liability of Candidate, Committee and Treasurer**

It is the duty of a committee treasurer to ensure that the committee complies with the Act.<sup>21</sup> A treasurer may be held jointly and severally liable, along with the candidate and the committee, for violations committed by the committee.<sup>22</sup>

## **SUMMARY OF THE FACTS**

In 2012, Luis Castro sought re-election to the Calexico City Council. Only the top three candidates were elected to the city council that year. The election was held November 6, 2012. Castro won, finishing in third place and beating his fourth place opponent by approximately 141 votes (less than one percent of the vote).

Committee to Elect Luis Castro for Calexico City Council Member 2012 was Castro's candidate controlled committee, and his wife, Ana Castro, was his treasurer. (For ease of reference, Councilman Castro is referred to as Castro, and his wife is referred to as Mrs. Castro.)

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<sup>17</sup> Section 84300, subdivision (a).

<sup>18</sup> Section 84300, subdivision (b).

<sup>19</sup> Section 84104.

<sup>20</sup> See Regulation 18401.

<sup>21</sup> Sections 81004, 84100, and Regulation 18427.

<sup>22</sup> Sections 83116.5 and 91006.

## VIOLATIONS

During the 2012 election year, Castro and his committee accepted and received numerous contributions that never were deposited into the committee's bank account. They used these funds to pay many committee expenditures that should have been paid from the committee account. These contributions and expenditures were in amounts of \$100 or more, and they were made in cash. The full extent of the committee's receipts and expenditures is unknown because the Castros failed to maintain required committee records; they failed to use a single, designated campaign bank account for committee receipts and expenditures; and they unlawfully dealt in cash. Also, they failed to file two pre-election campaign statements that were due before the election.

### Count 1

#### *Failure to Use a Single, Designated Campaign Bank Account*

In 2012, Castro, his committee, and Mrs. Castro accepted and received numerous contributions that never were deposited into the committee's bank account, including, but not limited to, known contributions totaling in excess of \$5,800 that were received from Luis J. Castro, Ana Castro, Alma Castro, Lupe Castro, Miguel Castro, Estela Mendoza, Jouan Castro, Teresa Perez, Silvia Iruegas, and Luis G. Castro. These contributions should have been deposited into the committee's bank account, but they were not.

Castro, his committee, and Mrs. Castro used these funds to pay numerous committee expenditures, including, but not limited to, known payments totaling in excess of \$4,700 to Printo Impression/Daniel Marron, the City of Calexico, Smart and Final, Costco, Chairez Digital Advertising, Canal 66 for television advertising, Von's, Food 4 Less, and Cardentas. These expenditures should have been paid from the committee's bank account, but they were not.

In this way, Castro, his committee, and Mrs. Castro violated Section 85201, which provides that all contributions made to a candidate must be deposited into a single, designated campaign bank account, and all campaign expenditures must be made from this same account.

### Count 2

#### *Unlawful Cash Contributions and Expenditures of \$100 or More*

In 2012, as described in more detail in Count 1, Castro, his committee, and Mrs. Castro accepted and received numerous contributions that never were deposited into the committee's bank account, including, but not limited to, known contributions totaling in excess of \$5,800. These contributions were in amounts of \$100 or more, and they were made in cash.

Also, as described in more detail in Count 1, Castro, his committee, and Mrs. Castro used these funds to pay numerous committee expenditures, including, but not limited to, known payments totaling in excess of \$4,700. These expenditures also were in amounts of \$100 or more, and they were made in cash.

In this way, Castro, his committee, and Mrs. Castro violated Section 84300, subdivisions (a) and (b), which provides that no campaign contribution of \$100 or more may be made or received in cash—and no campaign expenditure of \$100 or more may be made in cash.

### **Count 3**

#### *Failure to Timely File Pre-Election Campaign Statements*

For the period of time spanning July 1 through October 20, 2012, known receipts and expenditures for Castro’s committee total in excess of \$6,200 and \$6,000, respectively. (Exact dates of receipt and expenditure are unknown within this time frame.)

Based on this activity, Castro, his committee, and Mrs. Castro were required to file a pre-election campaign statement with the Calexico City Clerk for the period ending September 30, 2012, by the deadline of October 5, 2012, but they failed to do so. Also, they were required to file a pre-election campaign statement with the Calexico City Clerk for the period ending October 20, 2012, by the deadline of October 25, 2012, but they failed to do so.

In this way, Castro, his committee, and Mrs. Castro violated Sections 84200.5, subdivision (b); and 84200.7, subdivision (b).

### **PROPOSED PENALTY**

This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per count. Thus, the maximum penalty that may be imposed is \$15,000.<sup>23</sup>

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>24</sup> Additionally, the Commission considers penalties in prior cases with comparable violations.

Counts 1 and 2 involve unlawful use of cash to make campaign expenditures; unlawful acceptance of cash contributions; and failure to use a single, designated campaign bank account. These types of violations involve circumvention of important safeguards that are meant to create a paper trail to aid the audit and enforcement process. When these types of violations are committed, it becomes difficult or impossible to track and verify campaign financial activity, to ensure that campaign funds are used for campaign-related purposes, and to identify other potential violations.

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<sup>23</sup> See Section 83116, subdivision (c).

<sup>24</sup> Regulation 18361.5, subdivision (d).

Regarding Count 3, the public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding political contributions and expenditures. Generally, these types of violations are considered to be more serious where the public is deprived of information that was required to be disclosed before an election because this has the potential to affect how votes are cast—so greater public harm is involved, and a higher penalty is warranted. Another factor that influences the amount of the penalty is whether the public harm was mitigated because some of the reportable activity was disclosed to the public on another campaign filing.

Recently, the Commission approved a settlement involving violations that are similar to the current case. See *In the Matter of Patricia López, Patty López for Assembly 2014, and Carolina Perez*; FPCC Case Nos. 15/313 and 15/314 (approved Mar. 17, 2016), which included the following penalties:

<b>Violation</b>	<b>Penalty</b>
Failure to Use a Single, Designated Campaign Bank Account	\$1,500
Unlawful Cash Contributions and Expenditures	\$1,500
Failure to Timely File Campaign Statements	\$2,500

In the *López* case, and in the current case, both treasurers lacked experience dealing with the Act. However, whereas *López* was a first-time candidate for elective office, Castro was an experienced candidate (who first was elected in 2008). For this reason, and for the reasons discussed below, higher penalties are warranted in the current case.

Count 1 involves failure to use a single, designated campaign bank account to a greater extent than in *López*. In the current case, known contributions that were not deposited into the campaign bank account total in excess of \$5,800—compared to \$800 in *López*. (Known committee expenditures that were not made from the committee bank account are roughly equivalent in both cases—at least \$4,700 in the current case, and \$4,698 in *López*.) Under these circumstances, a higher penalty in the amount of \$2,000 is recommended for Count 1.

Also, Count 2 involves a more substantial amount of unlawful cash contributions and expenditures than *López*. In the current case, the known total of unlawful cash contributions exceeds \$5,800—compared to \$1,300 in *López*. The known total of unlawful cash expenditures exceeds \$4,700 in the current case—compared to \$1,220 in *López*. Under these circumstances, a higher penalty in the amount of \$2,000 is recommended for Count 2.

Count 3 involves failure to timely file two pre-election statements that were due before the election. These reporting periods involve more reportable activity than was found in *López*. (In the current case, known receipts and expenditures for the reporting periods in question total in excess of \$6,200 and \$6,000, respectively. In *López*, the failure to timely file a semi-annual statement and two pre-election statements with the Secretary of State was charged as a single count. Receipts and expenditures for all three filings in that case totaled approximately \$3,370 and \$3,297, respectively.) Also, in *López*, it was noted that the failure to timely file with the Secretary of State was mitigated because the statements were filed with the local filing officer for Los Angeles County within a few days or weeks of the filing deadlines—so there was some

disclosure for the public prior to the election. In the current case, nothing was filed with any filing officer prior to the election. The public received no disclosure regarding the committee's financial activity before voting. Under these circumstances, a higher penalty in the amount of \$3,000 is recommended for Count 3.

Lower penalties are not being sought because the committee failed to maintain required records of its activity—which hindered the audit and enforcement process. This could be charged as an additional count, but in the interest of settlement, it is being noted as an aggravating factor instead.

In closing, it is mitigating that the Castros cooperated with the Enforcement Division by agreeing to an early settlement. Also, they do not have a history of prior campaign filing violations under the Act. However, in aggravation, the difference between winning and losing for Castro was only about 141 votes (less than one percent of the vote). The significance of the violations in this case—and the public harm—must be considered in the context of this very close election.

### CONCLUSION

For the foregoing reasons, the following agreed upon penalty is recommended:

<b>Count</b>	<b>Description</b>	<b>Penalty</b>
<b>1</b>	Failure to Use a Single, Designated Campaign Bank Account	\$2,000
<b>2</b>	Unlawful Cash Contributions and Expenditures of \$100 or More	\$2,000
<b>3</b>	Failure to Timely File Pre-Election Statements	\$3,000
		<b>Total: \$7,000</b>