STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

January 14, 2022

Mr. Michael Bracamontes, Esq.
Bracamontes for Governor 2018
[redacted]

Ms. Susan Reyes (treasurer)
[redacted]

<u>Warning Letter re: FPPC Case No. 21/640; Bracamontes for Governor 2018; Michael Bracamontes; Susan Reyes</u>

Gentlepersons:

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act.[1] This case was opened in response to an audit performed by the Political Reform Audit Program of the Franchise Tax Board ("FTB")—with respect to the controlled committee of Mr. Bracamontes known as Bracamontes for Governor 2018. The period covered by the audit was January 1, 2017 through June 30, 2018. Please be advised that we are closing this case with this warning letter.

At the core of the Act's campaign reporting system is the requirement that candidates and their controlled committees must file campaign statements and reports for certain reporting periods and by certain deadlines. For example, a candidate and his controlled committee must file two semi-annual campaign statements each year. Generally, the first is for the reporting period of January 1 through June 30—and this statement must be filed by the deadline of July 31. The second is for the reporting period of July 1 through December 31—and this statement must be filed by January 31. (See Section 84200.)

Among other things, such campaign filings are required to include itemized and accurate information about campaign expenditures of $100 or more. (Section 84211, subd. (k).) Also, when campaign expenditures are paid with a credit card, the following information must be reported: name of the credit card company, street address, city, state, zip code, and the amount of payment. With respect to the credit card charges, themselves, similar information must be provided for each vendor who received $100 or more, plus a description of the payment (or code) must be provided. (See Regulation 18421.9.)

Additionally, when reporting an itemized expenditure for travel, including lodging and meals, the committee must briefly describe the political, legislative, or governmental purpose of the expenditure. The following information must be provided, as well: the date or dates of travel, the destination, any goods or services purchased, the number of individuals for whom the payment was

[1] The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in California Code of Regulations, title 2, sections 18110 through 18998. Unless otherwise noted, all statutory references are to the Government Code, and all regulatory references are to Title 2, Division 6 of the California Code of Regulations—as they were in effect during calendar years 2017 and 2018 (at the time of the violations in this case).

made, whether the trip included the candidate, a member of the candidate's household, or an individual with the authority to approve expenditures of campaign funds. (See Regulation 18421.7.)

Another type of campaign filing may be required during the period of time that is more than 90 days before the election. During this time, if a candidate for elective state office receives a contribution in the amount of $5,000 or more—and if the candidate is an electronic or online filer with the Secretary of State—then the candidate must disclose receipt of the contribution by filing a Form 497 10-day contribution report within 10 business days. (See Sections 84605 and 85309, subd. (c).)

Also, the Act imposes important safeguards that are meant to create a paper trail to aid the audit and enforcement process. This includes "the one bank account rule." Among other things, this rule requires that campaign expenditures must be made from the committee's single designated bank account—and any personal funds of a candidate, which will be utilized to promote the election of the candidate, must be deposited into the campaign account prior to expenditure. (Section 85201, subds. (d) and (e).)

In this case, the FTB audit report found that there was substantial compliance with the Act's disclosure and recordkeeping provisions—except for the following material findings:

1. In September 2017, Mr. Bracamontes, the committee, and Ms. Reyes failed to file a Form 497 10-day contribution report disclosing a loan in the amount of $9,000 from the law firm of Bracamontes & Vlasak, P.C. to the committee. Also, in November 2017 and February 2018, there was a failure to file similar reports disclosing two loans (of $5,000 or more), totaling $60,000, from Mr. Bracamontes. Failure to file these reports was a violation of Section 85309, subdivision (c).
2. In and between September and November 2017, Mr. Bracamontes paid campaign expenditures (for travel/events/office expenses) totaling $3,044 with personal funds, and/or with his personal credit card, in violation of Section 85201, subdivisions (d) and (e).
3. Of the expenditures noted above, approximately $2,422 included payments to vendors (aggregating $100 or more). Each of these payments to vendors should have been reported/itemized on the semi-annual campaign statement that was filed for the period ending December 31, 2017, but they were not. (Instead, they were disclosed as part of a lump sum non-monetary contribution from Mr. Bracamontes.) Also, of these expenditures, approximately $1,422 was for airline expenditures, for which additional travel information was required to be reported on the campaign statement, but the additional information was not included. Failure to report this required information was a violation of 84211, subdivision (k); Regulations 18421.7 and 18421.9.

However, with respect to the failure to file Form 497 10-day contribution reports, all of the loans noted above were timely reported on Form 460 campaign statements.

With respect to the use of personal funds to pay campaign expenses—and the related reporting issues that are noted above—the expenses comprised a small percentage of overall activity; the activity occurred during the calendar year prior to the election; and the expenditures were timely reported on the applicable semi-annual campaign statement (albeit as a lump sum non-monetary contribution from the candidate and without the required level of detail).

Also, the committee is terminated, and it reported raising and spending less than $100,000 during the audit period. Considering the office sought, this was not a large amount. Additionally, Mr. Bracamontes withdrew from the race prior to the primary election, and more than one-half of the committee's reported receipts were loans from Mr. Bracamontes and his law firm.

We are closing this matter without further action. This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

If you need guidance regarding your obligations in the future, please visit our website at www.fppc.ca.gov/advice.html or call the Commission's Toll-Free Advice Line at 1-866-ASK-FPPC (1-866-275-3772).

Thank you for your attention to this matter. Please do not hesitate to call if you have any questions.

Very truly yours,

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