

1 GALENA WEST
2 Enforcement Chief
3 DAVE BAINBRIDGE
4 Asst. Enforcement Chief
5 Fair Political Practices Commission
6 428 J Street, Suite 620
7 Sacramento, CA 95814
8 Telephone: (916) 322-5660
9 Facsimile: (916) 322-1932

10 Attorneys for Complainant

11 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

12 STATE OF CALIFORNIA

13 In the Matter of:

14 JOSE ESTEVES, ESTEVES FOR
15 MAYOR 2012, and ARSENIO ILORETA

16 Respondents.

17 FPPC No. 15/147

18 STIPULATION, DECISION, AND ORDER

19 **STIPULATION**

20 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
21 respondents Jose Esteves, Esteves for Mayor 2012, and Arsenio Ilreta (Respondents) hereby agree that
22 this Stipulation will be submitted for consideration by the Fair Political Practices Commission
23 (Commission) at its next regularly-scheduled meeting.

24 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
25 matter and to reach a final disposition without the necessity of holding an additional administrative hearing
26 to determine the liability of Respondents.

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

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by making
5 campaign expenditures from accounts other than the campaign bank account in violation of Government
6 Code section 85201, subdivision (e), and failing to maintain campaign records in violation of Government
7 Code section 84104 and California Code of Regulations, title 2, section 18401 subdivision (a)(4), all as
8 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth
9 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of Six
12 Thousand Dollars (\$6,000). Respondents submitted with this Stipulation a cashier's check in said amount,
13 made payable to the "General Fund of the State of California," as full payment of the administrative
14 penalty that shall be held by the State of California until the Commission issues its Decision and Order
15 regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation,
16 it shall become null and void, and within fifteen (15) business days after the Commission meeting at which
17 the Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall
18 be reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
19 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
20 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
21 consideration of this Stipulation.

22
23 Dated: _____

24
25 Galena West, Chief, on behalf of the Enforcement
26 Division Fair Political Practices Commission
27
28

Dated: _____

Jose Esteves, individually and on behalf of Esteves for Mayor 2012

Dated: _____

Arsenio Illoreta

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Jose Esteves, Esteves for Mayor 2012, and Arsenio Illoreta,” FPPC No. 15/147, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated:

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Jose Esteves is the former mayor of the City of Milpitas. Respondent Esteves for Mayor 2012 (“Committee”) was his candidate-controlled committee and respondent Arsenio Illoreta was the Committee’s treasurer. To ensure campaign funds are only used for campaign purposes, the Political Reform Act (the “Act”)¹ requires a committee to make all campaign expenditures from the campaign’s bank account and maintain detailed records of its expenditures. Esteves, the Committee, and Illoreta violated the Act by making campaign expenditures from Esteves personal bank account and failing to maintain records of expenditures.

SUMMARY OF THE LAW

A candidate-controlled committee must make all campaign expenditures from the committee’s designated bank account.² Any personal funds a candidate intends to spend on campaign-related expenses must first be deposited in the campaign bank account before the expenditure is made.³

Candidates and treasurers have a duty to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements and establish campaign statements were properly filed.⁴ For any expenditure of \$25 or more, a committee must maintain source documentation such as copies of checks, credit card charge slips, bills, receipts, invoices and any other documents reflecting expenditures made by the committee.⁵ The committee must maintain copies of the records for four years from the date the campaign statement reflecting the expenditures is filed.⁶

SUMMARY OF THE FACTS

Esteves served as mayor of Milpitas from 2002 to 2008 and from 2010 to 2016. Prior to being mayor, he was on the Milpitas city council.

Between September 2012 and December 2014, the Committee made 24 payments to Esteves and his wife, Susan Esteves, totaling approximately \$19,750. According to Esteves, the payments were reimbursements for campaign expenses Esteves and his wife paid from their personal joint funds. The following table details those payments.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and 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, and all regulatory references are to this source.

² §85201, subd. (e).

³ Regulation 18524, subd. (a).

⁴ §84104.

⁵ Regulation 18401, subd. (a)(4).

⁶ Regulation 18401, subd. (b).

Payee on Check	Date of check	Check #	Amount	Memo on Committee check
Susan R Esteves	9/30/2012	1114	\$ 600.03	Reimburse Food Supplies
Jose Esteves	9/30/2012	1116	\$ 180.00	City rental \$60+\$120
Jose Esteves	9/30/2012	1117	\$ 538.33	Reimburse copyworld printing
Susan R Esteves	10/20/2012	1115	\$ 588.98	Reimbursement - Food Supplies
Susan R Esteves	11/15/2012	1122	\$ 250.00	T-Shirt
Susan R Esteves	11/15/2012	1124	\$ 300.00	Telephone Metro PCS
Susan R Esteves	11/15/2012	1125	\$ 1,234.41	Misc, Food 11/6, Campaign Expenses
Susan R Esteves	12/31/2013	1145	\$ 504.03	Giveaways - Holidays
Susan R Esteves	12/31/2013	1146	\$ 404.69	Birthday Celebration - 10/20/13
Jose Esteves	12/31/2013	1148	\$ 119.00	Birthday - flyers
Susan R Esteves	5/17/2014	1149	\$ 722.72	May 3 Food, Other
Jose Esteves	6/30/2014	1004	\$ 300.00	Rental - Campaign office
Jose Esteves	6/30/2014	1005	\$ 118.60	Flyer-July 27 Event
Jose Esteves	8/16/2014	1008	\$ 118.18	Flyer Oct 5/14 event
Susan R Esteves	8/31/2014	1009	\$ 1,199.41	Food Supplies....
Susan R Esteves	9/20/2014	1015	\$ 250.00	Deposit - \$250 - T-shirt
Susan R Esteves	9/20/2014	1016	\$ 454.00	Door Hanger-Copyworld Inc
Susan R Esteves	9/20/2014	1017	\$ 597.00	Door hanger
Susan R Esteves	10/15/2014	1025	\$ 4,413.15	Milpitas Post
Susan R Esteves	10/15/2014	1026	\$ 915.60	Copyworld 2nd mailer / flyer
Susan R Esteves	10/15/2014	1045	\$ 1,601.24	Jade China, Kalesa, Crazy Wireless, Reimburse food, misc.
Susan R Esteves	11/17/2014	1032	\$ 1,222.10	Milpitas Post
Jose Esteves	12/22/2014	1042	\$ 2,092.35	iContact (\$376), PG&E (\$916.35), Nonato (\$800)
Susan R Esteves	12/27/2014	1039	\$ 1,026.00	Reimbursement Oct 5 expense, other
Total:	\$ 19,749.82			

To confirm the reimbursements detailed above were for campaign expenditures, the Enforcement Division requested source documentation, such as receipts and invoices, for the expenditures for which Esteves was reimbursed by the Committee. The Committee did not provide most of these records.

In fact, the Committee had very few source documents for any of its expenditures. The Committee's campaign statements for 2012 through 2014 reported a total of 98 expenditures. The Committee had a receipt or invoice for only 19 of those 98 expenditures. Many of the

expenditures by Susan Esteves for which the Committee reimbursed Esteves were made in cash. So the Enforcement Division could not confirm that each payment from the Committee to Esteves was a reimbursement for a campaign expenditure. Conversely, the Enforcement Division found insufficient evidence to conclude the reimbursements were not for campaign expenditures either.

The reimbursement payments to Esteves represented a significant percentage of the Committee's total expenditures during those statement periods. The Committee's reported total expenditures during the relevant periods were as follows:

Statement Period	Type of Statement	Total Reported Expenditures	Total Expenditures from Esteves' Personal Accounts
7/1/12 – 9/30/12	pre-election	\$5,902.19	\$1,318.36
10/1/12 – 10/20/12	pre-election	\$8,923.05	\$588.98
10/21/12 – 12/31/12	semi-annual	\$14,118.07	\$1,784.41
7/1/13 – 12/31/13	semi-annual	\$2,425.72	\$1,027.72
1/1/14 – 6/30/14	semi-annual	\$3,406.16	\$1,141.32
7/1/14 – 9/30/14	pre-election	\$8,383.99	\$1,301.00
10/1/14 – 10/18/14	pre-election	\$14,216.56	\$6,929.99
10/19/14 – 12/31/14	pre-election	\$14,358.36	\$4,340.45
Total:		\$71,734.10	\$19,749.82

VIOLATIONS

Count 1: Making Committee Expenditures from a Personal Bank Account

By reimbursing Esteves for campaign purchases made with personal funds, the Committee, Esteves and Illoreta made campaign expenditures from an account other than the campaign bank account in violation of section 85201, subdivision (e).

Count 2: Failure to Maintain Campaign Records

The Committee, Esteves, and Illoreta failed to maintain adequate source documentation for Committee expenditures in violation of section 84104 and regulation 18401, subdivision (a)(4).

CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission 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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers penalties it levied in prior cases. *In the Matter of Gary Kreep and Citizens to Elect Gary Kreep to the Superior Court 2012*, FPPC No. 14/850 concerned a candidate who made campaign expenditures totaling \$41,796 from his personal bank account. The committee in that case did not reimburse the candidate for the expenditures. The Commission imposed a penalty of \$3,500 for the violation at a meeting held on September 17, 2015. In comparison, the amount of expenditures not made from the campaign account by Esteves is about half as much as in the *Kreep* case. But the respondent in *Kreep* only spent his own money whereas Esteves reimbursed himself with campaign funds.

In the Matter of Pat Washington for Assembly 2012 and Pat Washington, FPPC No. 14/111 is a similar case concerning failure to maintain campaign records. In that case, the Commission levied a penalty of \$2,000 on May 21, 2015 for the respondents' failure to maintain campaign records. The missing records were for a single pre-election campaign statement period during which the committee received contributions totaling \$18,174 and made expenditures totaling \$20,801. This violation is similar to those by the Committee, although the Committee's failure to maintain records went on for multiple statement periods and involved more money than in the *Washington* case.

The requirement that all expenditures be made from a single campaign account and the Act's accounting requirements exist to ensure committees accurately disclose their contributions and expenditures. These requirements also serve to deter personal use of campaign funds and aid in the discovery of illegal use of campaign funds when such abuse occurs. In this case, Esteves asserts he was unaware that making expenditures from a personal account and reimbursing himself with campaign funds violated the Act. He also asserts that all payments made from Committee funds to him or his wife were for campaign expenditures. Without source documents, it is impossible to corroborate Esteves' assertion. But the payments by the Committee to Esteves were reported on the Committee's campaign statements so there was no evidence of intent to conceal. Also, there was no evidence proving personal use resulted from these expenditures. Further, Esteves and Illoreta cooperated with the investigation and do not have a history of violating the Act.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, we propose a penalty of \$3,500 for count 1 and \$2,500 for count 2 for a total penalty of \$6,000.