

September 20, 2010

Roman Porter, Executive Director
Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Re: Arlie Ricasa, Board of Education Trustee
1785 Sunny Crest Lane
Bonita, CA 91902

Kinde Durkee, Treasurer
Durkee & Associates
1212 S Victory Blvd
Burbank, CA 91502

Arlie Ricasa for School Board 2010 (ID #1328387)
P.O. Box 253
Bonita, CA 91908

Arlie Ricasa 2008 (ID #1296267)
P.O. Box 253
Bonita, CA 91908

Arlie Ricasa Campaign (ID #981488)

Arlie Ricasa For Assembly (ID #1255514)

Alleged Violation of Government Code Section 82025 (Point of Political Reform Act of 1974, As Amended)

Alleged Violation of Government Code Section 84214 (Point of Political Reform Act of 1974, As Amended)

Alleged Violation of Government Code Section 84307 (Point of Political Reform Act of 1974, As Amended)

Verified Complaint of Jaime Mercado Pursuant to Government Code Section 83115

Dear Mr. Porter

Pursuant to provisions of the Political Reform Act (the Act),¹ on behalf of Jaime Mercado, Complainant, I respectfully request that you commence an investigation regarding and

¹ Government Code Section 81000-91014. Commission regulations appear at Title 2, Section 18109-18997, of the California Code of Regulations.

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taking administrative, civil and/or criminal action against Arlie Ricasa, trustee of the Sweetwater Union High School District Board and former candidate for California State Assembly District 78.

The violation alleged goes to the very essence of the Act, candidates are required to file campaign statements disclosing contributions received and expenditures made (Section 84200-84213.) The definition under the Act for “contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party or an enforceable promise to pay (Section 82015)². The definition of “expenditure” is defined under the Act as any payment made for political purposes (Section 82025). Factors which are at issue in this complaint pertain to “accrued expenditures” the committee owes. In the Warner Opinions, the Commission asserted that if the expense is not paid, the vendor to whom the accrued expense is owing would be making a “contribution” in the amount of the accrued expense unless the vendor had made reasonable efforts to collect the debt, and the decision to forgive the debt is the result of a bona fide business judgment by the vendor that the debt is uncollectible. (Warner Advice Letter, No. I-89-051)

In addition to statutory provisions of the Act which define contributions and expenditures, the Commission has adopted regulations which specify procedures for defeated candidates to terminate candidate controlled committees (Section 84214)³. The Act states, “Committees and candidates **shall terminate** their filing obligation pursuant to regulations adopted by the commission.” [Emphasis added].

The commission has established that a committee with net debts outstanding must be terminated no later than 24 months after the election. A committee with debt must provide 60 days notice to creditors prior to termination. A committee may terminate with debt, but prior to terminating must dispose of all cash and close its bank account. No new contributions may be received and no further expenditures may be made once the committee has been terminated. A committee may request to delay its termination for up to six months if it is continuing to receive contributions or anticipates receiving contributions for the purpose of paying debts, if the candidate or committee is a party to litigation, or for other good cause. The request for extension must be submitted to the Executive Director of the Fair Political Practices commission **no later than 45 days prior** to the due date for the committee’s termination. [Emphasis added]

The Act also provides that “no contribution shall be commingled with the personal funds of the recipient or any other person” (Section 84307). In addition to this provision being codified by statute it has also withstood judicial review in the matter of *The People vs. James Curtis Ballard*, (104 Cal. App. 3d 757; 164 Cal. Rptr. 81; 1980 Cal. App.) The California Court of Appeals, Fourth Appellate District specifically opined “the Political Reform Act meant to make the commingling of campaign funds and personal funds by a candidate a crime.” The justices found that after examining and considering the placement of wording within the Political Reform Act of 1974 it was not constitutionally vague since it prohibited the commingling of campaign contributions and personal funds by candidates, as well as other persons, and gave candidates fair notice of crimes with which they might be charged.

² See also Section 82015(d) which states, “Contribution further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.”

³ See FPPC Campaign Disclosure Manual 1, Page 9-3 “Defeated Candidates” 2/2008

Summary of Alleged Violations

Complainant alleges that Arlie N. Ricasa, Candidate for California State Assembly District 78, has intentionally or negligently violated the Act in that she failed to properly disclose, in her Form 460, accrued expenses as required by law. (Committee ID #1296267)

Complainant alleges that Arlie N. Ricasa, Candidate for California State Assembly District 78, has intentionally or negligently violated the Act in that she failed to terminate her candidate controlled committee in accordance with regulations adopted by the Commission as prescribed by law for the election held on June 3, 2008. (Committee ID #1296267)

Complainant alleges that Arlie N. Ricasa, Candidate for California State Assembly District 78, has intentionally or negligently violated the Act in that she failed to terminate her candidate controlled committee in a timely manner in accordance with regulations adopted by the Commission as prescribed by law for the election held on March 2, 2004. The committee was not terminated until December 31, 2009, nearly six years after the election where she was defeated. (Committee ID #1255514)

Complainant alleges that Arlie N. Ricasa, trustee for Sweetwater Union High School District, has intentionally or negligently violated the Act in that she commingled contributions and resources in violation of state law. (Committee ID #1296267 & #1328387)

Complainant alleges that Arlie N. Ricasa, trustee for Sweetwater Union High School District, has intentionally or negligently violated the Act in that she transferred items of value from one committee to another committee without providing full and adequate consideration for the value thereof. (Committee ID #1296267 & #1328387)

Provisions of the Law

Sections 84200-84213

§84211 Each campaign statement required by this article **shall contain** all of the following information:

- (b) The total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.
- (i) The total amount of expenditures made during the period covered by the campaign statement to persons who have received one hundred dollars (\$100) or more.
- (j) The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than one hundred dollars (\$100).
- (k) For each person to whom an expenditure of one hundred dollars (\$100) or more has been made during the period covered by the campaign statement, all of the following:
 - (1) His or her full name.
 - (2) His or her street address.
 - (3) The amount of each expenditure.

- (4) A brief description of the consideration for which each expenditure was made.
- (5) In the case of an expenditure which is a contribution to a candidate, elected officer, or committee or an independent expenditure to support or oppose a candidate or measure, in addition to the information required in paragraphs (1) to (4) above, the date of the contribution or independent expenditure, the cumulative amount of contributions made to a candidate, elected officer, or committee, or the cumulative amount of independent expenditures made relative to a candidate or measure; the full name of the candidate, and the office and district for which he or she seeks nomination or election, or the number or letter of the measure; and the jurisdiction in which the measure or candidate is voted upon.
- (6) The information required in paragraphs (1) to (4), inclusive, for each person, if different from the payee, who has provided consideration for an expenditure of five hundred dollars (\$500) or more during the period covered by the campaign statement. For purposes of subdivisions (i), (j), and (k) only, the terms "expenditure" or "expenditures" mean any individual payment or **accrued expense**, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product. [Emphasis added]

Section 84214

§84214 Committees and candidates **shall terminate** their filing obligation pursuant to regulations adopted by the commission which insure that a committee or candidate will have no activity which must be disclosed pursuant to this chapter subsequent to the termination. [Emphasis added]

Section 84307

§84307 No contribution shall be commingled with the personal funds of the recipient **or any other person**. [Emphasis added]

The Act authorizes persons to file complaints with the Fair Political Practices Commission when there appears to be violations of the Act. Thus,

Section 83115 provides:

“Upon the sworn complaint of any person or on its own initiative, the commission [Fair Political Practices Commission] shall investigate possible violations of this tile [Political Reform Act of 1974, as amended] relating to any agency, official, election, lobbyist or legislative or administrative action. Within 14 days after the receipt of the complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, the commission has taken or plans to take on the complaint, together with the reason for such action or non-action. If no decision has been made within 14 days the person who made the complaint shall be notified of the reason for the delay and shall subsequently receive notification as provided above.”

The Act provides an array of remedies to the Fair Political Practices Commission to ensure compliance with the Act.

Section 83116 provides:

“When the Commission [Fair Political Practices Commission] determines there is probable cause for believing that this title [Act] has been violated, it may hold a hearing to determine if such violation has occurred. Notice shall be given and the hearing conducted in accordance with the administrative Procedures Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Commission shall have all the powers granted by that Chapter. When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- a. Cease and desist violation of this title;
- b. File any reports, statements or other documents or information required by this title; and
- c. Pay a monetary penalty of up to five thousand dollars (\$5,000) to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.”

Section 91000 provides:

- (a) Any person who knowingly or willfully violates any provision of this title is guilty of a misdemeanor.
- (b) In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation.
- (c) Prosecution for violation of this title must be commenced within four years after the date on which the violation occurred.

Section 91001(b) provides, in applicable part:

“Upon written authorization from a district attorney, the Commission [Fair Political Practices Commission] may bring any civil action under the title which could be brought by a voter or resident of the jurisdiction.”

Section 91004 provides:

“Any person who intentionally or negligently violates any of the reporting requirements of this act [Political Reform Act of 1974, as amended] shall be liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount not more than the amount or value not properly reported.”

Section 91006 provides:

If two or more persons are responsible for any violation, they shall be jointly and severally liable.

Parties

The Complainant in this action is Jaime Mercado. Complainant is a “person” within the meaning of Section 82047, and “resides” within the jurisdiction of the Sweetwater Union High School District.

Respondents in this matter are Arlie Ricasa and Kinde Durkee. Ms. Arlie Ricasa is a Board of Education Trustee, Sweetwater Union High School District and former candidate for California State Assembly District 78. Kinde Durkee is treasurer for each of the committees involved in this complaint and a principal of Durkee & Associates located at 1212 South Victory Blvd., Burbank, California 91502.

Allegations of Fact

Fact No. 1

During the 2008 election cycle Arlie Ricasa was a Board of Education Trustee with the Sweetwater Union High School District and a candidate for California State Assembly to represent the 78th District. Her campaign bid for State Assembly was unsuccessful. In accordance with Section 84211 of the Act, Ms. Ricasa was required to file Form 460 disclosing expenditures that were made on her behalf by the candidate controlled committee Arlie Ricasa 2008 (ID #1296267). On February 2, 2010 an amended Form 460 was filed indicating that accrued expenses as itemized on Schedule F were changed to reflect that Ms. Ricasa’s committee had accrued expenses in the total amount of \$18,822.50. The report indicates that \$18,000.00 of these expenses were accrued from a prior reporting period as noted in Form 460 Schedule F column (a). Upon a review of the prior reporting period, Form 460 which was filed on July 29, 2008, the outstanding debts and accrued expenses for the committee indicated a zero dollar balance.

Fact No. 2

Ms. Ricasa was a candidate for California State Assembly to represent the 78th District during the 2008 election cycle. As required by the Act, Ms. Ricasa formed a candidate controlled committee, Arlie Ricasa 2008 (ID #1296267). On June 3, 2008, Ms. Ricasa lost her bid for State Assembly and was defeated in the direct primary election. Section 84214 of the Act states, “Committees and candidates **shall terminate** their filing obligation pursuant to regulations adopted by the commission.” The commission has established that a committee with net debts outstanding must be terminated **no later** than 24 months after the election. The committee Arlie

Ricasa 2008 is currently an active committee in violation of regulations adopted by the Commission as authorized by Section 84214 of the Act.

Fact No. 3

Ms. Ricasa was a candidate for California State Assembly to represent the 78th District during the 2004 election cycle. As required by the Act, Ms. Ricasa formed a candidate controlled committee, Arlie Ricasa For Assembly (ID # 1255514) On March 2, 2004, Ms. Ricasa lost her bid for State Assembly and was defeated in the direct primary election. Section 84214 of the Act states, "Committees and candidates **shall terminate** their filing obligation pursuant to regulations adopted by the commission." The commission has established that a committee with net debts outstanding must be terminated **no later** than 24 months after the election. The committee Arlie Ricasa For Assembly was not terminated until December 31, 2009, nearly six years after her election defeat. Form 410 was filed with the California Secretary of State on April 2, 2010 indicating the committee's date of termination was December 31, 2009.

Fact No. 4

Ms. Arlie Ricasa is currently a Board of Education Trustee with the Sweetwater Union High School District and is presently running for re-election. She was also a former candidate for California State Assembly on two separate occasions, once during the 2004 election cycle and once during the 2008 election cycle. During each of these campaigns for school board and assembly, Ms. Ricasa has maintained a campaign website at www.votericasa.com. The campaign website is set up to solicit online contributions from supporters. The homepage of the website indicates that the site is for supporting Arlie Ricasa for Sweetwater Union High School District Board, Seat #5. The committee identification on this homepage is Arlie Ricasa for School Board 2010 (ID #1328387). The donation page of the website indicates that donations are for Arlie Ricasa 2008 (ID #1296267). Arlie Ricasa 2008 is the committee for Ms. Ricasa's failed campaign for California State Assembly during the 2008 election cycle. A note on the page for those wishing to make donations states, "Charges will appear as *Contributions* on your credit card statement. Both committees use the same mailing address of P.O. Box 253, Bonita, CA 91908 for contribution purposes.

Fact No. 5

Ms. Ricasa maintains a campaign website at www.votericasa.com. This website has been used for both school board and state assembly campaigns since the website was registered on September 11, 2006.

Alleged Violations

Complainant is informed and believes, and thereon alleges, as follows:

Count One

Arlie Ricasa, Candidate for California State Assembly District 78 and Kinde Durkee, Treasurer for the committee Arlie Ricasa 2008 (ID #1296267) intentionally or negligently failed to disclose in Arlie Ricasa 2008 Form 460 for the period of 5/18/2008 – 6/30/2008, a reportable expenditure, to wit: Accrued expenses payable to Durkee & Associates. The accrued expense was reported as an outstanding balance in Arlie Ricasa 2008 Form 460 for the period of 7/1/2008 – 12/31/2008 (as amended); however, the initial indebtedness was never reported in any prior filings.

All expenditures during the pre-election reporting period must be disclosed, in compliance with Government Code Sections 84200-84213 and defined by Government Code Section 82024 & 84211(k)(6) (Point of Political Reform Act of 1974, As Amended).

During the pre-election cycle and post election amendments that were filed, Arlie Ricasa, Candidate for California State Assembly District 78 and Kinde Durkee, Treasurer for the committee Arlie Ricasa 2008, failed to disclose expenditures for office expenses in the amount of \$18,000.00 payable to Durkee & Associates. The expenditure was reported on Form 460 for the period 7/1/2008 – 12/31/2008 as an outstanding balance from the prior period; however, the prior period indicated a zero balance for outstanding debts and accrued expenses.

Count Two

Arlie Ricasa, Candidate for California State Assembly District 78 and Kinde Durkee, Treasurer for the committee Arlie Ricasa 2008 intentionally or negligently failed to terminate the committee Arlie Ricasa 2008 (ID #1296267) as required by regulations adopted by the Commission as authorized by Section 84214 of the Act. On June 3, 2008, Ms. Ricasa lost her campaign bid for State Assembly and was defeated in the direct primary. Regulations adopted by the Commission require that committees with net outstanding debts be terminated no later than 24 months after the election. Section 84214 of the Act states, "Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the commission." Provisions for a six month extension may be granted by the commission provided that certain requirements and obligations are met by the candidate; however, no such request for an extension does not appear to be on file nor have the requirements which would allow an extension of time been met. The committee Arlie Ricasa 2008 is in violation of Section 84214 which requires a termination of the committee. (Point of Political Reform Act of 1974, As Amended).

Count Three

Arlie Ricasa, Candidate for California State Assembly District 78 and Kinde Durkee, Treasurer for the committee Arlie Ricasa For Assembly intentionally or negligently failed to terminate the committee Arlie Ricasa For Assembly (ID #1255514) as required by regulations adopted by the Commission as authorized by Section 84214 of the Act. On March 2, 2004, Ms. Ricasa lost her campaign bid for State Assembly and was defeated in the direct primary. Regulations adopted by the Commission require that committees with net outstanding debts be terminated no later

than 24 months after the election. Section 84214 of the Act states, "Committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the commission." Provisions for a six month extension may be granted by the commission provided that certain requirements and obligations are met by the candidate; however, no such request for an extension appears to have been requested or granted in this instance. The committee Arlie Ricasa For Assembly was terminated on December 31, 2009, nearly six years after the election and well beyond the six month extension that may have been available. Arlie Ricasa For Assembly violated Section 84214 of the Act. (Point of Political Reform Act of 1974, As Amended).

Count Four

Arlie Ricasa, Board of Education Trustee for Sweetwater Union High School District and Kinde Durkee, Treasurer for the committee Arlie Ricasa For School Board 2010 (ID #1328387) intentionally or negligently misled supporters who financially donate to her school board campaign by commingling funds and resources. Section 84307 of the Act prohibits commingling of personal funds with the recipient or any other person. Arlie Ricasa currently maintains a website at www.voterिकास.com for campaign purposes and to solicit campaign contributions through online methods and by regular mail. Contributions which are mailed are to be sent to P.O. Box 253 Bonita, CA 91908 as directed by the website. The address used for mail purposes is the same address shared by Arlie Ricasa For School Board 2010 (ID #1328387) and Arlie Ricasa 2008 (ID #1296267) The contribution page of the website directs individuals to a website maintained by Durkee & Associates and solicits donations for Arlie Ricasa 2008. The committee Arlie Ricasa 2008 is the committee that supported Ms. Ricasa for her failed bid for State Assembly in 2008. Wording on the website states, "charges will appear as *Contribution* on your credit card statement.

Arlie Ricasa and Kinde Durkee appear to be engaged in activities that deceive individuals into believing they are financially donating to Ms. Ricasa's school board campaign or vice versa to her failed State Assembly campaign. Notations that contributions will simply appear on credit card statements as "*Contribution*" without distinguishing which campaign the individual is contributing to is designed to deceive individuals who may financially contribute. Additionally, funds which are mailed to the same post office box may not be properly applied to the correct committee due to the misleading information on the website. At the very least, school board campaign funds appear to be used to maintain a website for the failed assembly campaign or vice versa, assembly campaign funds are being used to support her school board campaign. Based on the campaign website being used to solicit funds for two separate committees, both committees are in violation of Section 84307 of the Act and Section 82015(d) since full and adequate consideration has not been made for use or transfer of the website from one committee to another. (Point of Political Reform Act of 1974, As Amended).

Request for Action

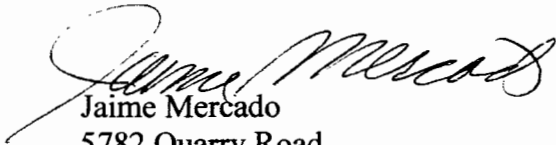
Wherefore Complainant, pursuant to Government Code Section 82015(d), 82025, 84214 and 84307 (Point of Political Reform Act of 1974, As Amended) respectfully requests that the Fair Political Practices Commission investigate the alleged violations of the Political Reform Act of 1974, as amended, and appropriate administrative, civil and/or criminal action be taken.

Verification

I declare under penalty of perjury under the laws of the State of California as follows:

I have read the complaint of which this verification is part. I am affirmed and I believe that the information contained in this complaint is true and correct based on the information and my belief. I declare under penalty of perjury under the laws of The State of California that the information is true and correct.

Respectfully

A handwritten signature in cursive script that reads "Jaime Mercado".

Jaime Mercado
5782 Quarry Road
Bonita, CA 91902

Exhibits Attached

Cc: Bonnie Dumanis, San Diego County District Attorney