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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6865
COMPLAINT FILED: Sept. 8, 2014
SUPP. COMPLAINT FILED: Dec. 18, 2014
NOTIFICATIONS: Sept. 12 and 15, 2014,
Nov. 7, 2014, and Jan. 8, 2015
LAST RESPONSE RECEIVED: Feb. 5, 2015
ACTIVATED: Jan. 27, 2015

ELECTION CYCLE: 2012
EXPIRATION OF STATUTE OF LIMITATIONS:
(Earliest) Dec. 29, 2016
(Latest) Oct. 29, 2017

COMPLAINANT: Stephen Meade

RESPONDENTS: U.S. Representative Juan Vargas
Vargas for Congress and Nancy Haley in her
official capacity as treasurer
Jose Susumo Azano Matsura
Marc Alan Chase
Ernesto Encinas

RELEVANT STATUTES
AND REGULATIONS: 52 U.S.C. § 30121
52 U.S.C. § 30122
11 C.F.R. § 110.4
11 C.F.R. § 110.20

INTERNAL REPORTS CHECKED: Disclosure reports

OTHER AGENCIES CHECKED: City of San Diego Ethics Commission
California Secretary of State

I. INTRODUCTION

This matter involves allegations that Jose Susumo Azano Matsura ("Azano"), a Mexican foreign national, acting through his agents — Ernesto Encinas, the manager of Azano's security detail, and Marc Alan Chase, a business associate — made one \$30,000 federal contribution and

1 over \$575,000 in direct and in-kind local political donations in the names of other persons.
2 Azano's single federal contribution, \$30,000 to the Democratic Congressional Campaign
3 Committee ("DCCC"), made in Chase's name on or about September 30, 2012, is alleged to
4 have been for the benefit of Juan Vargas, the U.S. Representative for California's 51st
5 Congressional District.¹

6 In criminal actions pending before the United States District Court for the Southern
7 District of California, Azano, Encinas, Chase, and others have been charged with violating or
8 helping Azano to violate sections 30121 and 30122 of the Federal Election Campaign Act (the
9 Act"), among other laws. Both Encinas and Chase have pleaded guilty to various criminal
10 charges.² Azano is currently awaiting trial.

11 There is sufficient information in the record currently before the Commission to support a
12 finding of reason to believe that Azano, with the assistance of Encinas and Chase, contributed to
13 the DCCC and donated to two candidates in the 2012 San Diego mayoral race, to a local political
14 party committee, and to two local independent expenditure committees. Accordingly, we
15 recommend that the Commission find reason to believe that Azano, Encinas, and Chase
16 knowingly and willfully violated 52 U.S.C. §§ 30121 and 30122. We propose to conduct an
17 investigation to obtain additional relevant information concerning the contribution and donations
18 at issue.

¹ The DCCC — which disgorged the \$30,000 contribution made in Chase's name to the United States Treasury on January 28, 2014, apparently after learning that the true source of the contribution was in question, *see* Democratic Congressional Campaign Committee, Amend. 2014 Feb. Monthly Rpt. at 1488 (May 7, 2014) — is not currently a respondent in this matter.

² Chase has also executed a Stipulation with the San Diego Ethics Commission admitting that he made donations in Azano's name in violation of the San Diego Municipal Code. *See infra* note 9.

1 There is no information in the record to indicate that Vargas or Vargas's principal
2 campaign committee, Vargas for Congress and Nancy Haley in her official capacity as treasurer
3 (the "Committee"), received anything of value from the DCCC, or that Vargas or the DCCC had
4 reason to suspect that Chase's contribution originated from anyone other than Chase himself.
5 Given that additional information may be produced in an investigation of Azano's conduct,
6 however, we recommend that the Commission take no action at this time with respect to Vargas
7 or the Committee, and make no recommendation at this time with respect to the DCCC.

8 **II. RELEVANT FACTS**

9 **A. The Complaint, Supplemental Complaint, and Parallel Criminal Proceedings**

10 The Complaint and Supplemental Complaint allege that Vargas and the Committee knew
11 that Azano unlawfully provided funds for and directed Chase to contribute \$30,000 to the DCCC
12 for Vargas's and the Committee's benefit in the 2012 election.³ To support this allegation, the
13 Complaint and Supplemental Complaint rely on a 26-count 2014 criminal indictment pending in
14 the United States District Court for the Southern District of California charging Azano and others
15 with violating sections 30121 and 30122 of the Act and other laws.⁴ Azano and the other
16 defendants pleaded not guilty to all counts.⁵ A trial has not yet been scheduled.

³ Compl. (Sept. 8, 2014); Supp. Compl. at 1 (Dec. 18, 2014).

⁴ The Complaint and Supplemental Complaint cite the Superseding Indictment, *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Aug. 12, 2014) (Dkt. No. 42) ("Superseding Indictment"). Compl.; Supp. Compl. at 2. The Responses submitted by Azano and by Vargas and the Committee each also attach a copy of the Superseding Indictment.

⁵ Minute Entry: Arraignment on Superseding Indictment and Initial Appearance, *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. Aug. 21, 2014) (Dkt. No. 55).

1 Encinas and Chase were also charged in separate criminal actions.⁶ Encinas pleaded
2 guilty to a two-count criminal Information charging conspiracy to knowingly and willfully
3 violate sections 30121 and 30122 of the Act and to falsify a record to obstruct justice, as well as
4 filing a false tax return.⁷ And Chase pleaded guilty to an eight-count Information charging
5 knowing and willful violations of sections 30121 and 30122 of the Act, as well as conspiracy.⁸
6 Chase also executed an agreement with the San Diego Ethics Commission admitting violations
7 of the San Diego Municipal Code for the same local conduct at issue in the criminal matter, and
8 requiring Chase to pay an \$80,000 fine.⁹

9 **B. Azano's Alleged Conduit Contributions and Donations**

10 According to the Superseding Indictment referenced in the Complaint, Azano effected
11 various unlawful campaign donations, including conduit donations to the campaign of Bonnie
12 Dumaris, a candidate in the 2012 San Diego mayoral primary and the District Attorney for San
13 Diego County, the San Diego County Democratic Party, and a conduit contribution to the
14 DCCC.

⁶ Complaint, *United States v. Encinas*, 3:14-cr-00344 (S.D. Cal. Jan. 21, 2014) (Dkt. No. 1); Information, *United States v. Chase*, 3:14-cr-00926 (S.D. Cal. Apr. 10, 2014) (Dkt. No. 1).

⁷ Information, *United States v. Encinas*, 3:14-cr-00344 (S.D. Cal. Feb. 13, 2014) (Dkt. No. 24); Plea Agreement, *United States v. Encinas*, 3:14-cr-00344 (S.D. Cal. Mar. 18, 2014) (Dkt. No. 34) ("Encinas Plea"). Encinas's sentencing hearing is scheduled for September 21, 2015. Notice of Change of Hearing, *United States v. Encinas*, 3:14-cr-00344 (S.D. Cal. Apr. 15, 2015) (Dkt. No. 47).

⁸ Information, *United States v. Chase*, 3:14-cr-00926 (S.D. Cal. Apr. 10, 2014) (Dkt. No. 1); Plea Agreement, *United States v. Chase*, 3:14-cr-00926 (S.D. Cal. Apr. 10, 2014) (Dkt. No. 10) ("Chase Plea"). Chase's sentencing hearing is scheduled for January 7, 2016. Notice of Hearing, *United States v. Chase*, 3:14-cr-00926 (S.D. Cal. Apr. 6, 2015) (Dkt. No. 17).

⁹ San Diego Ethics Comm'n, Stipulation, Decision, and Order, *In re Matter of Marc Chase*, No. 2013-26(MC) (Apr. 10, 2014), available at <http://www.sandiego.gov/ethics/pdf/stips/stip13-26.MC.pdf> ("Chase Ethics Commission Order").

1 In late December 2011, Azano allegedly provided \$10,000 cash to Chase and instructed
2 him to recruit employees and friends to act as straw donors for donations to Dumanis.¹⁰ It
3 appears that on December 29 and 31, 2011, and January 2, 2012, Chase and sixteen individuals¹¹
4 each donated \$500 to Bonnie Dumanis for Mayor 2012, Dumanis's candidate controlled
5 committee, using the cash that Azano had provided to Chase.¹² Chase has admitted that he told
6 many of the recruited straw donors that Azano provided the \$500 that he gave them.¹³

¹⁰ Superseding Indictment ¶¶ 22.a.-b.; Chase Plea ¶¶ B.5.-7.

¹¹ The Superseding Indictment, Chase's Plea Agreement, and Chase's Ethics Commission Order each provide non-exhaustive lists of donations by Chase and other individuals to Dumanis's campaign, but they differ as to the number of donations and how they identify the individual donors. *See, e.g.*, Superseding Indictment ¶ 31 (listing \$500 donations to Dumanis's campaign by Chase and thirteen individuals, identified by their initials); Chase Plea ¶ B.7. (listing \$500 donations to Dumanis's campaign by Chase and eleven individuals, identified by description); Chase Ethics Comm'n Order ¶ 14 (listing \$500 donations to Dumanis's campaign by Chase and twelve individuals, identified by name). The disclosure reports that Dumanis's campaign filed with the San Diego Ethics Commission show three other donations that appear to have been made at Chase's direction and potentially were reimbursed by Chase, since they were made by employees of Chase's companies or their spouses on December 29 and 31, 2011, as were the reimbursed donations. Bonnie Dumanis for Mayor 2012, Semi-Annual Stmt. at 32, 69 (Jan. 31, 2012) ("Dumanis Semi-Annual Statement") (showing \$500 donations from Bernard Chase, salesman at Symbolic Motor Car Co., on Dec. 31, 2011, and from Erik Grochowaik, president of Symbolic Watch Int'l, and his wife, Christine Grochowaik, on Dec. 29, 2011). It is unclear whether these donations are identified in the list included in Chase's Plea Agreement, whether they do not appear on any list of reimbursed donations but were nonetheless reimbursed by Chase, or whether these donations were not reimbursed by Chase.

The disclosure reports filed by candidates in San Diego's 2012 mayoral race are available through the City of San Diego Public Portal for Campaign Finance Disclosure at <http://nf4.netfile.com/pub2/Default.aspx?aid=CSD>.

¹² Superseding Indictment ¶¶ 22.c., 31; Chase Plea ¶ B.7.; Chase Ethics Comm'n Order ¶¶ 11, 14-16; Dumanis Semi-Annual Statement at 4, 32, 53, 69, 81, 132, 133, 141, 196 (showing \$500 contributions from Chase, Chase's family, Chase's personal assistant, and employees and employees' spouses of Chase's companies, South Beach Acquisitions, Inc., Symbolic Watch Int'l, and Symbolic Motor Car Co., on Dec. 29 and 31, 2011); Bonnie Dumanis for Mayor 2012, Amend. Pre-Election Stmt. at 56 (May 24, 2012) ("Dumanis Pre-Election Statement") (showing \$500 contributions from a salesman at Symbolic Motor Car Co. and his wife).

The San Diego Ethics Commission has executed a separate Stipulation, Decision, and Order for eight of the individuals who donated to Dumanis's mayoral campaign at Chase's direction with Azano's funds. The Orders stipulate that Chase asked each individual to donate to Dumanis's campaign with the understanding that the individual would be reimbursed in full for the donation, and that Azano was the source of the funds that Chase used to reimburse the donations. The Orders are available in the Voting Ballot Matters folder.

It also appears that around the same time, Encinas provided cash to employees and friends, directing them to donate it to Dumanis, and then told Azano that he had done so. Encinas Plea ¶¶ B.5.-7.; San Diego Ethics Comm'n, Stipulation, Decision, and Order, *In re Matter of Milan Bakic*, No. 2013-25(MB) (Nov. 13, 2014), available at www.sandiego.gov/ethics/pdf/stips/stip13-25.MB.pdf; San Diego Ethics Comm'n, Stipulation, Decision, and Order, *In re Matter of Cheryl Nichols*, No. 2013-25(CN) (Nov. 13, 2014), available at www.sandiego.gov/ethics/pdf/stips/stip13-25.CN.pdf; San Diego Ethics Comm'n, Stipulation, Decision, and Order,

1 In his plea agreement, Chase acknowledges that on September 27, 2012, again at Azano's
2 direction, Chase wrote two checks totaling \$30,000 to the San Diego County Democratic Party,
3 which then made expenditures to support the mayoral candidacy of Bob Filner, then U.S.
4 Representative for California's 51st District.¹⁴ Chase further acknowledges that on September
5 24, 2012, he wrote a \$30,000 check to the DCCC, also at Azano's direction with input from
6 Encinas and others.¹⁵

7 Although it appears that Azano, Encinas, Chase, and others intended for this contribution
8 to the DCCC to benefit Vargas and the Committee,¹⁶ there is no information in the record to
9 indicate that Vargas or the Committee received any benefit from the DCCC, or that Vargas or the
10 DCCC knew that the contribution was illegal because Azano was its true source, as the
11 Complaint and Supplemental Complaint allege.¹⁷

12 The Superseding Indictment further alleges that Azano also supported Dumanis and
13 Filner by effecting donations to local independent expenditure committees. On or about May 2,

In re Matter of Ryan Zylus, No. 2013-25(RZ) (Nov. 13, 2014), available at www.sandiego.gov/ethics/pdf/stips/stip13-25.RZ.pdf.

¹³ Chase Plea ¶ B.7.; Chase Ethics Comm'n Order ¶ 15.

¹⁴ Superseding Indictment ¶¶ 22.q., 27.e.; Chase Plea ¶ B.11.; Encinas Plea ¶¶ B.17.-18.; Chase Ethics Comm'n Order ¶ 13; San Diego County Democratic Party, Pre-Election Stmt. (filed Oct. 24, 2012), available at <http://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=1702439&amend=0> ("San Diego County Democratic Party Pre-Election Statement") at 11, 15, 18-22, 24-29 (showing receipt of contributions totaling \$30,000 from West Coast Acquisitions, LLC, one of Chase's companies, on October 4, 2012, and expenditures made on behalf of Filner).

¹⁵ Superseding Indictment ¶¶ 22.o., 25.e., 27.c., 29, 31; Chase Plea ¶ B.11.; Encinas Plea ¶¶ B.14.-16., 20.a. (describing Encinas's participation in arranging Chase's contribution to the DCCC, including Encinas's knowledge that contributions made by foreign nationals or in the name of another are prohibited under the Act, based on his discussions with Marco Polo Cortes — a San Diego-based lobbyist also named in the Superseding Indictment — and a representative of the Committee); Democratic Congressional Campaign Committee, Third Amend. 2012 Oct. Monthly Rpt. at 2217 (July 19, 2013) (disclosing receipt on September 30, 2012 of \$30,000 contribution from Marc Chase).

¹⁶ Superseding Indictment ¶¶ 22.m.-o.; Chase Plea ¶¶ B.9., B.11.; Encinas Plea ¶¶ B.14.-15., B.20.a.

¹⁷ See Compl.; Supp. Compl. at 1.

1 2012, Azano donated \$100,000 to a local independent expenditure committee that he established
2 to support Dumanis.¹⁸ On or about September 27, 2012, at Azano's direction, Chase wrote a
3 \$120,000 check to a local independent expenditure committee supporting Filner, and Cortes
4 personally delivered the check to that committee's representative.¹⁹

5 The Superseding Indictment also alleges that Azano subsequently reimbursed Chase
6 \$180,000 for the campaign contribution and donations that Chase had made to the DCCC, the
7 San Diego County Democratic Party, and a local independent expenditure committee supporting
8 Filner.²⁰

9 In addition, the Superseding Indictment alleges that Azano funded in-kind donations to
10 Dumanis's and Filner's mayoral campaigns by paying Electionmall, Inc. ("Electionmall") to
11 provide social media services to them.²¹ Azano is alleged to have ultimately funded \$128,000 of
12 Electionmall's services to Dumanis's campaign.²² And on or about October 15, 2012, and
13 October 29, 2012, Azano caused one of his Mexico-based companies to transmit \$96,980 and
14 \$94,975 to Electionmall to fund social media services supporting Filner. Neither Dumanis's nor

¹⁸ Superseding Indictment ¶¶ 22.e.-f., 27.a., 31; Encinas Plea ¶ B.11.; see also San Diegans for Bonnie Dumanis for Mayor 2012, Pre-Election Stmt. at 4 (filed May 24, 2012) ("San Diegans for Dumanis Pre-Election Statement") (reporting May 9, 2012 receipt of \$100,000 from Airsam N492RM, LLC). Airsam N492RM, LLC appears to be one of Azano's United States-based companies. Encinas also contributed \$3,000 to San Diegans for Bonnie Dumanis for Mayor on or about May 16, 2012. San Diegans for Dumanis Pre-Election Stmt. at 4; Encinas Plea ¶ B.11.

¹⁹ Superseding Indictment ¶¶ 22.p.-r., 27.d., 31; Chase Plea ¶ B.11.; Encinas Plea ¶ B.20.b.; Chase Ethics Comm'n Order ¶ 12; San Diegans in Support of Bob Filner for Mayor – 2012, Pre-Election Stmt. at 5 (filed Oct. 25, 2012), at 5 (reporting Sept. 27, 2012 receipt of \$120,000 from South Beach Acquisitions).

²⁰ Superseding Indictment ¶¶ 22.s.-t. (stating that on or about October 2, 2012, Azano paid Chase \$380,000, \$180,000 of which involved reimbursement for campaign contributions and donations); Chase Plea ¶¶ B.13.-14. (similar).

²¹ Superseding Indictment ¶ 6.

²² *Id.* ¶¶ 22.g.-h. (Electionmall e-mailed an invoice, copying Azano and Ravneet Singh, Electionmall's President, stating, "Enclosed is the invoice for the betty boo [sic] project for 100k it was originally 75 but Mr [sic] Singh explained the need for the additional 25 during his last visit to San Diego and Mr [sic] A verbally agreed"), 27.b., 31.

1 Filner's campaigns, nor any local independent expenditure committee appears to have reported
2 receipt of Electionmall's services.²³

3 **C. Responses to the Complaint**

4 Vargas and the Committee, Azano, and Chase submitted Responses to the Complaint.

5 Vargas and the Committee were the only Respondents to submit a Supplemental Response to the
6 Supplemental Complaint.

7 Vargas and the Committee deny that they have any knowledge about whether the source
8 of the contribution to the DCCC made in Chase's name was illegal.²⁴ They assert that there is no
9 information to indicate that Vargas or the Committee had any knowledge that the contribution
10 may have been made by anyone other than Chase, as the DCCC reported.²⁵ While Vargas was
11 the Democratic Party's candidate to represent California's 51st Congressional District in the
12 2012 election, neither Vargas nor the Committee had any connection to the DCCC.²⁶ Moreover,
13 according to the disclosure reports that both the Committee and the DCCC filed with the
14 Commission regarding their 2012 activity, the Committee did not receive anything of value from
15 the DCCC, and the DCCC did not expend any resources on Vargas's behalf during the 2012
16 election cycle.²⁷

²³ *Id.* ¶¶ 22.x.-y., 31; Encinas Plea ¶¶ B.22.-23.

²⁴ Vargas and Committee Resp. at 2 (Oct. 10, 2014).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* In addition, the Committee refunded contributions totaling \$4,500 that Encinas and Cortes made in 2011 and 2012. Vargas for Congress, 2011 July Quarterly Rpt. (July 28, 2011) at 11, 14 (reporting receipt of Cortes's \$500 contribution on June 29, 2011, and Encinas's \$2,500 contribution on June 30, 2011); Vargas for Congress, 2011 Year-End Rpt. (Jan. 31, 2012) at 12 (reporting receipt of Cortes's \$250 contribution on Nov. 11, 2011); Vargas for Congress, 2012 July Quarterly Rpt. (July 13, 2012) at 14 (reporting receipt of Encinas's \$1,000 contribution on May 24, 2012); Vargas for Congress, 2012 Oct. Quarterly Rpt. (Oct. 15, 2012) at 15 (reporting receipt of Encinas's \$1,000 contribution on Aug. 16, 2012). Although these contributions are not alleged to have been reimbursed by or made at the direction of Azano, out of an abundance of caution, the Committee voluntarily

1 Azano denies the Complaint's allegations, and asserts that Chase donated money when
2 told to do so by Encinas, and not Azano.²⁸ In light of the pending parallel criminal case in the
3 Southern District of California, discovery for which is subject to a protective order, Azano
4 requests that the Commission stay any action until the criminal case is resolved.²⁹ Chase's
5 Response does not address the Complaint's allegations, but also refers to the protective order that
6 prohibits the dissemination of information or discovery to the public.³⁰

7 **III. Legal Analysis**

8 **A. There Is Reason to Believe that Azano, Chase, and Encinas Violated the**
9 **Foreign National and Conduit Contribution Provisions of the Act and**
10 **Regulations**

11 The Act imposes limitations and restrictions on who may contribute or donate to an
12 election. Only U.S. citizens and permanent residents may contribute or donate funds or anything
13 of value³¹ in connection with a federal, state, or local election, or make a contribution or
14 donation to a committee of a political party.³² Likewise, it is unlawful to solicit, accept, or

refunded those contributions in January 2014. Vargas for Congress, Amend. 2014 April Quarterly Rpt. (July 14, 2014) at 46 (reporting refund of Cortes's \$1,000 contribution on Jan. 23, 2014, and refund of Encinas's \$1,000 and \$2,500 contributions on Jan. 22, 2014); Vargas and Committee Supp. Resp. at 2 (Feb. 5, 2015).

²⁸ Azano Resp. at 4-5 (Oct. 10, 2014); Letter from Knut S. Johnson (Oct. 10, 2014) ("Johnson Letter") (citing an interview by the Federal Bureau of Investigation ("FBI") of Chase provided in discovery in the criminal action, and stating that both Chase and Encinas have pleaded guilty to criminal charges and are cooperating with the FBI).

²⁹ Azano Resp. at 1, 5; Johnson Letter.

³⁰ Chase Resp. (Oct. 20, 2014).

³¹ Commission regulations define "anything of value" to include in-kind contributions — the provision of goods or services without charge or at a charge that is less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1).

³² 52 U.S.C. § 30121(a)(1), (b); 11 C.F.R. §§ 110.20(b), (f). Unlike other provisions of the Act, section 30121 applies to donations to state and local elections in addition to contributions to federal elections. *See, e.g.,* Advisory Op. 2006-16 (TransCanada) at 2; MUR 6093 (Transurban Group) (Commission unanimously approved recommendation to find reason to believe that Transurban Group, an Australian-based international company, violated 2 U.S.C. § 441e (recodified at 52 U.S.C. § 30121) when it donated \$174,000 to candidates and political committees in Virginia state and local elections).

1 receive a contribution or donation from a foreign national, or provide substantial assistance in the
2 making of a contribution or donation by a foreign national.³³ The Act also prohibits
3 contributions in the name of another, including the making of the contribution, permitting one's
4 name to be used to effect such a contribution, or helping or assisting any person in making a
5 contribution in the name of another.³⁴

6 Based on the information charged in the Superseding Indictment and represented under
7 oath in the related guilty plea proceedings of Encinas and Chase, Chase's Ethics Commission
8 Order, and the Orders that individual donors executed with the San Diego Ethics Commission,
9 the record presently before the Commission reflects that Azano, Encinas, Chase, and others may
10 have violated the Act and Commission regulations by knowingly using funds obtained from
11 Azano, a foreign national, to make a contribution to the DCCC and donations to the San Diego
12 County Democratic Committee, Dumanis's campaign, and local independent expenditure
13 committees supporting Dumanis's and Filner's campaigns. In addition, Azano appears to have
14 violated the Act and Commission regulations by effecting an in-kind donation when he paid for
15 Electionmall's services for Filner's campaign by transferring funds from one of his Mexican
16 companies. We therefore recommend that the Commission find reason to believe that Azano
17 violated 52 U.S.C. §§ 30121(a)(1)(A)-(B) and 30122, and 11 C.F.R. §§ 110.4(b)(i) and
18 110.20(b)-(c), (f); that Chase violated 52 U.S.C. § 30121(a)(2) and 30122, and 11 C.F.R.
19 §§ 110.4(b)(ii)-(iii) and 110.20(g)-(h); and that Encinas violated 52 U.S.C. § 30121(a)(2) and
20 30122, and 11 C.F.R. §§ 110.4(b)(iii) and 110.20(g)-(h).³⁵

³³ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g)-(h).

³⁴ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(i)-(iii).

³⁵ Notwithstanding Azano's request to stay, we recommend that the Commission find reason to believe and authorize an investigation because the current record supports those threshold determinations, and Azano is not

1 The current record provides no basis to conclude that either Vargas or the Committee
2 knew that Azano was the true source of Chase's contribution to the DCCC, or that either assisted
3 in making the contribution or received any benefit from the contribution. But because our
4 proposed investigation may yield additional relevant information concerning the Complaint's
5 allegations against these Respondents, we recommend that the Commission take no action at this
6 time as to Vargas and the Committee.

7 **B. There Is Reason to Believe that the Violations Were Knowing and Willful**

8 The Act prescribes additional penalties for violations that are knowing and willful.³⁶
9 A violation of the Act is knowing and willful if the "acts were committed with full knowledge of
10 all the relevant facts and a recognition that the action is prohibited by law."³⁷ A finding of
11 knowing and willful does not require proving knowledge of the specific statute or regulation that
12 the respondent allegedly violated.³⁸ Instead, it is sufficient to demonstrate that a respondent
13 "acted voluntarily and was aware that his conduct was unlawful."³⁹ This may be shown by
14 circumstantial evidence from which the respondents' unlawful intent reasonably may be

prejudiced by such findings. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 at 12,545 (Mar. 16, 2007) ("A 'reason to believe' finding by itself does not establish that the law has been violated."). Indeed, the United States District Court for the Southern District of California has already found that Azano's conduct satisfies the probable cause standard of proof required for an indictment regarding the same conduct at issue here. If we encounter certain witnesses who are reluctant to testify prior to the resolution of the criminal proceedings, or we have difficulty conducting the investigation due to the protective order issued in the criminal cases that prohibits the dissemination of information to the public, we will make any necessary recommendations to the Commission regarding abatement at the appropriate time.

³⁶ See 52 U.S.C. §§ 30109(a)(5)(B), (d).

³⁷ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

³⁸ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n. 23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

³⁹ *Danielczyk*, 917 F. Supp. 2d at 579 (citing jury instructions in *United States v. Edwards*, No. 1:11-CR-161 (M.D.N.C. 2012), *United States v. Acevedo-Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

1 inferred.⁴⁰ For example, a person's awareness that an action is prohibited may be inferred from
2 "the [person's] elaborate scheme for disguising . . . political contributions"⁴¹

3 Azano, Chase, Encinas, and others who helped to effect Azano's campaign contribution
4 and donations all appear to have known that Azano, as a foreign national, is prohibited from
5 contributing or donating funds in federal, state, or local elections in the United States, and
6 structured their activities to hide the fact that Azano was the true source of the funds. For
7 example, on or about June 13, 2012, Electionmall's President replied to an e-mail from Encinas
8 "admonishing him not to discuss their illegal campaign financing in writing: 'I am not
9 responding to this email. Because of the legal ramifications. Please talk to me . . . in
10 person'"⁴² And on or about August 21, 2012, Cortes received and forwarded to Encinas an
11 e-mail from a representative of the Committee that included a link to the Commission's rules
12 governing the prohibition against contributions by foreign nationals.⁴³ These communications
13 establish that Azano, Encinas, and others were aware that their conduct was unlawful, and
14 elucidate why Azano directed Chase to make various donations with his funds instead of making
15 them directly.

⁴⁰ Cf. *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁴¹ *Hopkins*, 916 F.2d at 214-15. As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁴² Superseding Indictment ¶ 22.i.; Encinas Plea ¶ B.13.

⁴³ Superseding Indictment ¶ 22.k.; Encinas Plea ¶ B.16. ("[I]n September 2012, the representative of [the Committee] emailed Cortes a link to the Federal Election Commission's rules prohibiting foreign national contributions. Cortes forwarded the link to [Encinas] writing, 'Ernie - Call me to discuss . . .'; see also Encinas Plea ¶ B.4. (stating that Encinas "inquired with the representatives of certain political campaigns, who informed him that foreign nationals cannot donate to political campaigns in the United States. [Encinas] reported this to Azano."))

1 Indeed, Chase admitted in his plea agreement that he, Azano, Encinas, and others
2 "knowingly and willingly used conduit contributors or 'straw donors' in connection with a
3 federal campaign, as well as straw donors and other techniques in connection with local
4 campaigns, to facilitate illegal donations, contributions and expenditures by Azano, a foreign
5 national."⁴⁴ Azano, Encinas, Chase, and others sought to "hid[e] the source of their illegal
6 campaign financing. In particular, [they] ensured that Azano's name did not appear on public
7 filings concerning their illegal donations, contributions and expenditures."⁴⁵ Accordingly, we
8 recommend that the Commission find reason to believe that Azano, Encinas, and Chase
9 knowingly and willfully violated the Act.

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⁴⁴ Chase Plea, ¶ B.4.(1) (Chase's plea agreement includes two paragraphs numbered "B.4. ").


⁴⁵ *Id.*, ¶ B.4.(2).


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V. RECOMMENDATIONS

1. Find reason to believe that Jose Susumo Azano Matsura knowingly and willfully violated 52 U.S.C. §§ 30121(a)(1) and 30122, and 11 C.F.R. §§ 110.20(b)-(c), (f), and 110.4(b)(i);
2. Find reason to believe that Marc Alan Chase knowingly and willfully violated 52 U.S.C. §§ 30121(a)(2) and 30122, and 11 C.F.R. §§ 110.20(g)-(h) and 110.4(b)(ii)-(iii);
3. Find reason to believe that Ernesto Encinas knowingly and willfully violated 52 U.S.C. §§ 30121(a)(2) and 30122, and 11 C.F.R. §§ 110.20(g)-(h) and 110.4(b)(iii);
4. Take no action at this time with respect to Juan Vargas and Vargas for Congress and Nancy Haley in her official capacity as treasurer;
5. Approve the attached Factual and Legal Analyses;
6. Approve the use of compulsory process, as necessary; and
7. Approve the appropriate letters.

Date: 5/27/2015


Daniel A. Petalas
Associate General Counsel for Enforcement


Mark Shonkwiler
Assistant General Counsel


Emily M. Meyers
Attorney