



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 19 2015

Knut S. Johnson, Esq.
Law Office of Knut S. Johnson
1010 Second Avenue, Suite 1850
San Diego, CA 92101

RE: MUR 6865
Jose Susumo Azano Matsura

Dear Mr. Johnson:

On September 12, 2014, the Federal Election Commission notified your client, Jose Susumo Azano Matsura, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to him at that time. On January 8, 2015, the Commission notified you that it received additional information from the complainant pertaining to the allegations in the complaint, and forwarded to you a copy of that additional information.

Upon further review of the allegations contained in the complaint, information that you provided, and information that the Commission obtained in the normal course of carrying out its supervisory responsibilities, the Commission, on August 11, 2015, found that there is reason to believe that your client may have made a contribution or donation as a foreign national, and a contribution in the name of another in violation of 52 U.S.C. §§ 30121(a)(1) and 30122 (formerly 2 U.S.C. §§ 441e(a)(1) and 441f)¹ and 11 C.F.R. §§ 110.20(b)-(c), (f) and 110.4(b)(i). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you and your client have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

¹ On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Jose Susumo Azano Matsura **MUR: 6865**

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

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

For the reasons discussed below, the Commission finds reason to believe that Azano violated 52 U.S.C. §§ 30121(a)(1)(A)-(B) and 30122, and 11 C.F.R. §§ 110.4(b)(i) and 110.20(b)-(c), (f).

¹ The DCCC 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).

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 **II. RELEVANT FACTS**

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

3 The Complaint and Supplemental Complaint allege that Vargas and the Committee knew
4 that Azano unlawfully provided funds for, and directed Chase to, contribute \$30,000 to the
5 DCCC for Vargas's and the Committee's benefit in the 2012 election.³ To support this
6 allegation, the Complaint and Supplemental Complaint rely on a 26-count 2014 criminal
7 indictment pending in the United States District Court for the Southern District of California
8 charging Azano and others with violating §§ 30121 and 30122 of the Act and other laws.⁴
9 Azano and the other defendants pleaded not guilty to all counts.⁵ A trial has been scheduled to
10 begin February 9, 2016.⁶

11 Encinas and Chase were also charged in separate criminal actions, and each entered a
12 guilty plea.⁷ Encinas pleaded guilty to a two-count criminal Information charging conspiracy to
13 commit "at least one of . . . three crimes" — the knowing and willful violation of § 30121 of the
14 Act, the knowing and willful violation of § 30122 of the Act, and the knowing falsification of a
15 record to obstruct justice — as well as the filing of a false tax return.⁸ Chase pleaded guilty to an

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).

⁶ Minute Entry: Motion Hearing, *United States v. Matsura*, 3:14-cr-00388 (S.D. Cal. July 17, 2015) (Dkt. No. 170).

⁷ 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).

⁸ 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").

1 eight-count Information charging knowing and willful violations of §§ 30121 and 30122 of the
2 Act, as well as conspiracy to “knowingly and willfully commit at least one of” those crimes.⁹

3 Furthermore, Chase also executed an agreement with the San Diego Ethics Commission
4 by which he admitted to violations of the San Diego Municipal Code for the same local conduct
5 at issue in the criminal matter and was required to pay an \$80,000 fine.¹⁰

6 **B. Azano’s Alleged Conduit Contributions and Donations**

7 According to the Superseding Indictment referenced in the Complaint, Azano effected
8 various unlawful campaign donations, including conduit donations to the campaign of Bonnie
9 Dumanis, a candidate in the 2012 San Diego mayoral primary and the District Attorney for San
10 Diego County; the San Diego County Democratic Party; and the DCCC.

11 In late December 2011, Azano allegedly provided \$10,000 cash to Chase and instructed
12 him to recruit employees and friends to act as straw donors for donations to Dumanis.¹¹ It
13 appears that on December 29 and 31, 2011, and January 2, 2012, Chase and sixteen individuals¹²

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).

⁹ 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).

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

¹¹ Superseding Indictment ¶¶ 22.a.-b.; Chase Plea ¶¶ B.5.-7.

¹² 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

1 each donated \$500 to Bonnie Dumanis for Mayor 2012, Dumanis's candidate controlled
2 committee, using the cash that Azano had provided to Chase.¹³ Chase has admitted that he told
3 many of the recruited straw donors that Azano provided the \$500 that he gave them.¹⁴

4 In his plea agreement, Chase acknowledges that on September 27, 2012, again at Azano's
5 direction, Chase wrote two checks totaling \$30,000 to the San Diego County Democratic Party,
6 which then made expenditures to support the mayoral candidacy of Bob Filner, then U.S.
7 Representative for California's 51st District.¹⁵ Chase further acknowledges that on September

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>.

¹³ 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, *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.

¹⁴ Chase Plea ¶ B.7.; Chase Ethics Comm'n Order ¶ 15.

¹⁵ 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&amendid=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

1 24, 2012, he wrote a \$30,000 check to the DCCC, also at Azano's direction with input from
2 Encinas and others.¹⁶

3 The Superseding Indictment further alleges that Azano also supported Dumanis and
4 Filner by effecting donations to local independent expenditure committees. On or about May 2,
5 2012, Azano donated \$100,000 to a local independent expenditure committee that he established
6 to support Dumanis.¹⁷ On or about September 27, 2012, at Azano's direction, Chase wrote a
7 \$120,000 check to a local independent expenditure committee supporting Filner, and Cortes
8 personally delivered the check to that committee's representative.¹⁸

9 The Superseding Indictment also alleges that Azano subsequently reimbursed Chase
10 \$180,000 for the campaign contribution and donations that Chase had made to the DCCC, the
11 San Diego County Democratic Party, and a local independent expenditure committee supporting
12 Filner.¹⁹

Coast Acquisitions, LLC, one of Chase's companies, on October 4, 2012, and expenditures made on behalf of Filner).

¹⁶ 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).

¹⁷ 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.

¹⁸ 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).

¹⁹ 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).

1 In addition, the Superseding Indictment alleges that Azano funded in-kind donations to
2 Dumanis's and Filner's mayoral campaigns by paying Electionmall, Inc. ("Electionmall") to
3 provide social media services to them.²⁰ Azano is alleged to have ultimately funded \$128,000 of
4 Electionmall's services to Dumanis's campaign.²¹ And on or about October 15, 2012, and
5 October 29, 2012, Azano caused one of his Mexico-based companies to transmit \$96,980 and
6 \$94,975 to Electionmall to fund social media services supporting Filner. Neither Dumanis's nor
7 Filner's campaigns, nor any local independent expenditure committee appears to have reported
8 receipt of Electionmall's services.²²

9 C. Response to the Complaint

10 Azano denies the Complaint's allegations, and asserts that Chase donated money when
11 told to do so by Encinas, and not Azano.²³ In light of the pending parallel criminal case in the
12 Southern District of California, discovery for which is subject to a protective order, Azano
13 requests that the Commission stay any action until the criminal case is resolved.²⁴

14 III. LEGAL ANALYSIS

15 The available information in the record before the Commission is sufficient to support a
16 finding of reason to believe that Azano, a foreign national, with the assistance of Encinas and
17 Chase, violated 52 U.S.C. § 30121's prohibition on donations by foreign nationals in connection

²⁰ Superseding Indictment ¶ 6.

²¹ *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.

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

²³ 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).

²⁴ Azano Resp. at 1, 5; Johnson Letter.

1 with federal, state, and local elections, and also violated 52 U.S.C. § 30122's prohibition on
2 contributions in the name of another through the single contribution to the DCCC.

3 Section 30121 of the Act makes it unlawful for foreign nationals (*i.e.*, those who are
4 neither U.S. citizens nor permanent residents) to contribute or donate funds or anything of
5 value²⁵ in connection with a federal, state, or local election, or to make a contribution or donation
6 to a committee of a political party.²⁶ It is also unlawful to knowingly solicit, accept, or receive a
7 contribution or donation from a foreign national, or provide substantial assistance in the making
8 of a contribution or donation by a foreign national.²⁷

9 Section 30122 of the Act prohibits contributions in the name of another person, including
10 the making of the contribution, knowingly permitting one's name to be used to effect such a
11 contribution, or knowingly helping or assisting any person in making a contribution in the name
12 of another.²⁸

13 Based on the information charged in the Superseding Indictment and represented under
14 oath in the related guilty plea proceedings of Encinas and Chase, Chase's Ethics Commission
15 Order, and the Orders that individual donors executed with the San Diego Ethics Commission,
16 the record presently before the Commission provides reason to believe that Azano, a foreign
17 national, may have violated § 30121's prohibition on contributions and donations by foreign

²⁵ 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).

²⁶ 52 U.S.C. § 30121(a)(1), (b); 11 C.F.R. §§ 110.20(b), (f). Unlike other provisions of the Act, § 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).

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

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

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1 nationals in connection with federal, state, and local elections — including by effecting an in-
2 kind donation when he paid for Electionmall’s services for Filner’s campaign by transferring
3 funds from one of his Mexican companies — and also may have violated § 30122’s prohibition
4 on contributions in the name of another through the single contribution to the DCCC.

5 Furthermore, there may prove to be a fair basis to support a finding that Azano’s
6 violations were knowing and willful, and thus to impose additional penalties under the Act.²⁹
7 The facts indicate that Azano may have known that he, as a foreign national, is prohibited from
8 contributing or donating funds in federal, state, or local elections in the United States, and
9 structured his activities with Encinas, Chase, and others to hide the fact that Azano was the true
10 source of the funds. For example, on or about June 13, 2012, Electionmall’s President replied to
11 an e-mail from Encinas “admonishing him not to discuss their illegal campaign financing in
12 writing: ‘I am not responding to this email. Because of the legal ramifications. Please talk to me
13 . . . in person’”³⁰ And on or about August 21, 2012, Cortes received and forwarded to
14 Encinas an e-mail from a representative of the Committee that included a link to the
15 Commission’s rules governing the prohibition against contributions by foreign nationals.³¹
16 These communications suggest that Azano was aware that his conduct was unlawful, and may
17 elucidate why he directed Chase to make various donations with his funds instead of making

²⁹ See 52 U.S.C. §§ 30109(a)(5)(B), (d).

³⁰ Superseding Indictment ¶ 22.i.; Encinas Plea ¶ B.13.

³¹ 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 them directly.³² Nonetheless, the Commission has refrained at this time from making a formal
- 2 finding that the violations may have been knowing and willful.

³². In his plea agreement, Chase admitted that he, Azano, Encinas, and others "knowingly and willingly used conduit contributors or 'straw donors' in connection with a federal campaign, as well as straw donors and other techniques in connection with local campaigns, to facilitate illegal donations, contributions and expenditures by Azano, a foreign national." Chase Plea ¶ B.4.(1) (Chase's plea agreement includes two paragraphs numbered "B.4."). Azano, Encinas, Chase, and others sought to "hid[e] the source of their illegal campaign financing. In particular, [they] ensured that Azano's name did not appear on public filings concerning their illegal donations, contributions and expenditures." *Id.* ¶ B.4.(2).

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