



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 17, 2022

By Electronic Mail & UPS Signature Required

robert@lucero4ca.com

Robert George Lucero, Jr.
9523 Lucerne Avenue
Culver City, CA 90232

RE: MUR 7905

Dear Mr. Lucero:

On May 18, 2021, the Federal Election Commission (the “Commission”) notified you in your personal capacity of a complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the “Act”). A copy of the complaint was forwarded to you at that time.

Upon review of the available information, the Commission, on May 12, 2022, found reason to believe that you in your personal capacity violated 52 U.S.C. §§ 30102(c), 30102(d), and 30104(b), provisions of the Act, and 11 C.F.R. §§ 102.9, 104.3(a), 104.3(b) and 104.14, provisions of the Commission’s regulations, by failing to keep complete records and file accurate reports with the Commission. The Factual and Legal Analysis, which provides the basis for the Commission’s findings, is enclosed for your information.

Please note that you 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.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law. Enclosed is a

¹ See 18 U.S.C. § 1519.

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conciliation agreement for your consideration,

If you are interested in engaging in pre-probable cause conciliation, or have any questions, please contact Richard Weiss, the attorney assigned to this matter, at (202) 694-1021 or rweiss@fec.gov, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days.². Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at https://www.fec.gov/resources/cms-content/documents/respondent_guide.pdf.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.³

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

² See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A).

³ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,



Allen Dickerson
Chairman

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Robert George Lucero, Jr. **MUR 7905**

4

5

6 **I. INTRODUCTION**

7 The Complaint alleges that Robert George Lucero Jr., in his personal capacity, failed to
8 keep complete records and file accurate reports with the Commission while he was treasurer of
9 UtePAC (“the Committee”), a nonconnected political committee, in violation of the Federal
10 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The
11 Complaint also alleges that Lucero impermissibly commingled Committee funds when he
12 transferred money from the Committee to American Systems Group, LLC (“ASG”), a company
13 that Lucero founded and controlled. Lucero generally acknowledges the reporting and
14 documentation issues, but denies any wrongdoing with regards to the transfer of Committee
15 funds into the ASG account.¹

16 As set forth below, because Lucero appears to have recklessly failed to fulfill duties
17 imposed by law, the Commission finds reason to believe that Lucero, in his personal capacity,
18 violated 52 U.S.C. §§ 30102(c), 30102(d), and 30104(b) and 11 C.F.R. §§ 102.9, 104.3(a),
19 104.3(b) and 104.14 by failing to keep complete records and file accurate reports with the
20 Commission. The Commission finds no reason to believe that Lucero commingled Committee
21 funds because there is no information indicating that UtePAC’s funds were commingled with
22 Lucero’s personal funds.

¹ Lucero & American Systems Group, LLC Resp. at 1-2 (Aug. 16, 2021) (“Resp.”).

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1 **II. FACTUAL BACKGROUND**

2 The Ute Indian Tribe (the “Tribe”) established UtePAC, a nonconnected political
 3 committee, in September 2016 and hired Lucero as UtePAC’s treasurer and director.² The
 4 Complaint alleges, and Lucero does not dispute, that Lucero established ASG to run and manage
 5 UtePAC.³ An exhibit attached to the Complaint reflects that on March 3, 2017, the Tribe signed
 6 a contract with ASG to be the “PAC Manager” and to engage in the “formation, management,
 7 advertising and fundraising” of UtePAC.⁴

8 The Complaint is primarily based on the Commission’s audit of UtePAC for the 2017-18
 9 election cycle and a private audit of Lucero’s management of UtePAC finances covering a
 10 portion of the 2019-20 election cycle conducted by an independent accounting firm, Wipfli LLP
 11 (“Wipfli”), engaged by the Tribe.⁵

12 The Complaint cites to the Commission’s Preliminary Audit Findings, alleging that the
 13 Commission “concluded on a preliminary basis that Mr. Lucero’s management and
 14 misappropriations of UtePAC funds resulted in [] violation[s],” including misstatement of
 15 financial activity; misreporting of increased financial activity; excessive cash disbursements;
 16 failure to maintain records for receipts and disbursements; failure to maintain records for
 17 communications; and failure to disclose disbursement information.⁶ The Complaint relies on the

² Compl. at 2. (May 17, 2021); UtePAC Statement of Organization, Sept 29, 2016, <https://docquery.fec.gov/pdf/976/201609299032144976/201609299032144976.pdf>.

³ Compl. at 9.

⁴ See *id.*, Ex. L.

⁵ See Compl. at 3 (“The information contained in this complaint comes from the Tribe’s and FEC’s audits that cover almost the entire time period Mr. Lucero was employed as the treasurer and director of UtePAC.”)

⁶ *Id.* at 4. The Complaint included a number of Audit Division spreadsheets. See *id.*, Exs. A and B.

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1 Commission's August 28, 2020 Preliminary Audit Findings,⁷ some of which were subsequently
 2 included in the Commission's Interim Audit Report, which was issued shortly after the
 3 Complaint. Spreadsheets from the Preliminary Audit Findings, attached to the Complaint,
 4 indicate that the Committee may have:

- 5 1. Violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by
 understating total receipts by \$248,162 and total disbursements by
 \$259,018 in 2017 and 2018 reports;⁸
- 6 2. Violated 52 U.S.C. § 30102(c) and (d) by failing to have contribution
 documentation to support the receipt of \$202,912;⁹
- 7 3. Violated 52 U.S.C. § 30102(c) and (d) by failing to have invoices or
 receipts to support \$93,742.85 of disbursements;¹⁰
- 8 4. Violated 52 U.S.C. § 30102(c) and (d) by failing to keep records for
 \$140,675.84 of disbursements;¹¹ and
- 9 5. Violated 52 U.S.C. § 30104(b) by failing to properly disclose the correct
 payee or correct memo text indicating disbursement was from a non-
 contribution account of \$94,998.32 of disbursements.¹²

12 According to the Complaint, the Tribe engaged Wipfli on January 4, 2020, to conduct an
 23 audit of Lucero's management of UtePAC finances covering the period from December 2018 to

⁷ *Id.* at 4.

⁸ Interim Audit Report, LRA 1104 (UtePAC) ("IAR") at 8-9; Compl., Ex A at 10-11.

⁹ Compl., Ex. A at 14. This allegation did not become a formal finding in the IAR because the Committee provided this documentation in response to the Audit by seeking invoices and records from vendors. *See generally* IAR. Therefore, the fact that this finding did not become a formal finding is not a reflection on Lucero's failure to maintain records as he was required to do under the Act.

¹⁰ Compl., Ex. A at 16-17. This amount was reduced to \$18,640 by the IAR through the work of the Committee providing documentation in response to the Audit. *See* IAR at 16-17.

¹¹ Compl., Ex. A at 18. This amount was reduced to \$69,822 by the IAR through the work of the Committee providing documentation in response to the Audit. *See* IAR at 17-18.

¹² Compl., Ex. A at 19.

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1 February 2020.¹³ The Complaint alleges that the Wipfli audit determined that there were
 2 excessive payments made to ASG, Lucero's LLC, significant cash withdrawals without
 3 documentation, checks to unknown payees, and a lack of supporting documentation for more
 4 than \$300,000 in transactions.¹⁴ The Complaint attaches a copy of Wipfli's audit report, which
 5 concluded that “[o]verall, there was a pervasive lack of control and supporting documentation
 6 over how contributions made to the [Committee] . . . were spent during the time period [of the
 7 audit].”¹⁵ The Wipfli audit report identified \$317,619.98 in disbursements between December
 8 2018 and February 2020,¹⁶ whereas the Committee disclosed only \$20,943.61 in total
 9 disbursements during the entire 2019-2020 election cycle.¹⁷ The Complaint asserts that these
 10 findings mirror the findings of the Commission's audit of UtePAC for the previous election
 11 cycle.¹⁸

12 The Complaint also broadly alleges that Lucero commingled Committee funds and
 13 Lucero's personal funds by transferring funds to ASG and, further, that he failed to comply with
 14 the Act's recordkeeping and reporting requirements.¹⁹ For example, the Complaint identifies a

¹³ Compl. at 11.

¹⁴ *Id.* at 12, Ex. T. The Complaint also alleges significant personal use violations. Compl. at 1. However, because the Committee is not a candidate committee, the Act's personal use prohibition does not apply. *See* 52 U.S.C. § 30114(b). Therefore, this report does not further analyze the Complaint's personal use allegations.

¹⁵ Compl., Ex. T.

¹⁶ *Id.*

¹⁷ FEC Receipts, Filtered Results, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=raising&cycle=2020> (last visited Mar. 14, 2022) (reflecting UtePAC's total receipts of from January 1, 2019 to December 31, 2020); FEC Disbursements, Filtered Results, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=spending&cycle=2020> (reflecting total disbursements by UtePAC from January 1, 2019 to December 31, 2020).

¹⁸ Compl. at 12, Ex. T.

¹⁹ *Id.* at 4.

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1 \$35,000 expenditure that Lucero allegedly disclosed improperly.²⁰ In UtePAC’s reports filed
 2 with the Commission, Lucero originally disclosed the \$35,000 expenditure from UtePAC to
 3 UtePAC on the 2017 April Quarterly Report for the purpose of “1st quarter local budget.”²¹
 4 Lucero later amended the purpose to “Outdoor Retailer Advertising.”²² The Complaint provides
 5 an email from Lucero acknowledging that this \$35,000 disbursement actually consisted of a
 6 payment of \$15,000 for Lucero’s fee and another \$20,000 expenditure for a vehicle for Lucero to
 7 drive in order “to conduct his PAC duties.”²³

8 According to the Complaint, Lucero “became unresponsive” during the Wipfli audit and
 9 therefore the Tribe terminated its relationship with Lucero on February 26, 2020.²⁴

10 Lucero’s Response does not dispute the reporting or recordkeeping allegations in the
 11 Complaint, but rather asserts that Lucero worked diligently to document the expenditures and
 12 contributions of UtePAC.²⁵ The Response further asserts that Lucero was “working with FEC
 13 auditors . . . to clear up all reporting issues subject to the 2017 and 2018 audit,”²⁶ and asserts that
 14 he has provided documentation of on-going communication with Commission audit staff to

²⁰ *Id.* at 6-8.

²¹ UtePAC 2017 April Quarterly Report at 12 (Apr. 13, 2017),
<https://docquery.fec.gov/pdf/516/201704139052148516/201704139052148516.pdf>.

²² UtePAC Amended 2017 April Quarterly Report at 12 (Aug. 22, 2017),
<https://docquery.fec.gov/pdf/948/201708229071115948/201708229071115948.pdf>.

²³ Compl. at 6-8, Ex. J (an email from Lucero explaining that the \$35,000 was not in fact for the “Outdoor Retailer Advertising” but for his fee and the vehicle); *see also* Resp. at 6. In response to the Audit, the Committee filed a Form 99 to disclose the correct purpose and correct amounts associated with this \$35,000 at issue. *See* FEC Form 99, UtePAC (Nov. 3, 2020), <https://docquery.fec.gov/pdf/428/202011039336741428/202011039336741428.pdf>.

²⁴ Compl. at 3.

²⁵ Resp. at 1, 3, 6.

²⁶ *Id* at 1.

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1 address any issues and comply with the audit.²⁷ The Response acknowledges the
 2 aforementioned vehicle purchase referenced in the Complaint, asserting it was for Committee
 3 use.²⁸ The Response also asserts that all transfers between the Committee and ASG were proper
 4 transfers; although it does not specifically address the commingling allegation, the Response
 5 provides correspondence between Lucero and Wells Fargo appearing to indicate that there were
 6 no cash withdrawals from the account, rather only transfers between the Committee account and
 7 the ASG account.²⁹

8 As for the Tribe terminating Lucero from his positions of treasurer and director with
 9 UtePAC, the Response asserts that the real reason for Lucero's termination was not related to the
 10 audits, but rather due to Lucero's firing of the grandson of Tribal Council Chairman from the
 11 position of Regional Director of UtePAC for failing to complete work.³⁰ In support of this
 12 assertion, the Response attaches a copy of Lucero's termination letter, which does not reference
 13 the audit or any claims of financial misappropriation.³¹

14 III. LEGAL ANALYSIS

15 Under the Act, each treasurer is required to keep an accurate account of and disclose,
 16 among other things, committee receipts, disbursements, and cash-on-hand balances.³² To
 17 accomplish this, the Act imposes on committees a series of recordkeeping and reporting

²⁷ *Id.* at 1-3, Ex. 8 (Email from Christina Crussiah, Lead Auditor, FEC, to Robert Lucero (Aug. 6, 2021, 09:44 EST) (requesting additional information and documentation)).

²⁸ *Id.* at 6.

²⁹ *Id.* at 1, Ex. 1.

³⁰ *Id.* at 3-4.

³¹ *Id.*, Ex. 3.

³² 52 U.S.C. §§ 30102(c), 30104(a), (b).

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1 requirements to be executed by the committee’s treasurer. Among other requirements, the
 2 treasurer shall file reports of receipts and disbursements that must specifically identify the cash-
 3 on-hand balance at the beginning of the reporting period, the total amount of receipts, and the
 4 total amount of disbursements, including the name and address of each person to whom an
 5 expenditure exceeding \$200 is made, along with the date, amount, and purpose of the particular
 6 expenditure.³³ The Act also requires that a committee’s funds “shall be segregated from, and
 7 may not be commingled with the personal funds of any individual.”³⁴

8 The Commission has determined that it may deem a current or former treasurer to be
 9 party to an enforcement action in his or her personal capacity where the available information
 10 suggests that the treasurer “knowingly and willfully violated an obligation that the Act or
 11 regulations specifically impose on a treasurer or where a treasurer recklessly failed to fulfill
 12 duties imposed by law, or where the treasurer has intentionally deprived himself or herself of
 13 operative facts giving rise to the violation.”³⁵ The Act and Commission regulations allow a
 14 treasurer to show that “best efforts have been used to obtain, maintain and submit the
 15 information required” with respect to the reports and records of a political committee.³⁶ When

³³ 2 U.S.C. § 30104(b)(1), (2), (4), (5), (6)(B); 11 C.F.R. § 104.3(a), (b); 11 C.F.R. § 104.14.

³⁴ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

³⁵ See Statement of Policy Regarding Treasurers in Enforcement Proceedings, 70 Fed. Reg. 3, 4 (Jan. 3, 2005) (the “Treasurer Policy”); see also Factual & Legal Analysis at 4, MUR 5652 (Susan Arceneaux) (finding reason to believe assistant treasurer violated the Act in her personal capacity where she recklessly failed to fulfill the duties the Act and regulations which gave rise to the Committee’s violations in treasurer’s absence).

³⁶ See 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7.

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1 the Committee treasurer uses such best efforts, any reports filed by such committee “shall be
 2 considered in compliance with [the] Act.”³⁷

3 **A. Recordkeeping and Reporting Violations**

4 The Complaint alleges that Lucero violated the recordkeeping and reporting requirements
 5 of the Act for UtePAC’s reports filed between April 2017 and December 2018 based on the
 6 Preliminary Audit Findings of the Commission’s audit of UtePAC, and for UtePAC’s reports
 7 filed between December 2018 and January 2020 based on the findings of the Wipfli audit.³⁸

8 The spreadsheets from the Preliminary Audit Findings attached to the Complaint
 9 addressed a number of potential violations, including understating total receipts by \$248,162 and
 10 total disbursements by \$259,018 in UtePAC’s 2017 and 2018 reports; failing to have
 11 contribution documentation to support the receipt of \$202,912;³⁹ failing to have invoices or
 12 receipts to support \$93,742.85 of disbursements; failing to keep records for \$140,675.84 of
 13 disbursements; and failing to properly disclose the correct payee or correct memo text indicating
 14 disbursement was from a non-contribution account of \$94,998.32 of disbursements.⁴⁰

15 For the 2019-20 cycle, a comparison of the amounts of disbursements identified by the
 16 Wipfli audit to the amounts of disbursements disclosed on UtePAC’s reports during that time
 17 period indicates that the Committee appears to have substantially underreported its activity. The
 18 Committee disclosed \$10,606.30 in total receipts and \$20,943.61 in total disbursements between

³⁷ *Id.*

³⁸ Compl. at 3.

³⁹ This finding was not included in the IAR. *See supra* n.9.

⁴⁰ The Commission’s Interim Audit Report, which was issued shortly after the Complaint was filed included all of these violations except for one, yet at reduced amounts in violation, due to the Committee’s corrective actions taken in response to the Audit. *See* IAR at 8-9; Compl., Exs. A-B; *see also supra* pages 3-4 above.

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1 January 1, 2019 and December 31, 2020, whereas Wipfli's audit indicates that UtePAC actually
 2 made at least \$317,619.98 in disbursements during this time period.⁴¹ The Complaint provides a
 3 summary report from Wipfli, which does not provide substantial detail regarding other aspects of
 4 misreporting or recordkeeping, but appears to present sufficiently reliable information, not
 5 contravened by Lucero, to conclude that the total disbursements that Lucero caused to be
 6 reflected on UtePAC's reports were significantly underreported.⁴²

7 Based on the Commission's Preliminary Audit Findings, the Complaint alleges that there
 8 was a pervasive lack of recordkeeping by Lucero, alleging that the Committee "did not maintain
 9 adequate documentation" regarding many aspects of the recordkeeping requirements of the
 10 Act.⁴³ Similarly, the Wipfli audit concluded that "supporting documentation/invoices" were
 11 missing and that "[o]verall, there was a pervasive lack of control and supporting documentation
 12 over how contributions made to the [Committee] . . . were spent during the time period."⁴⁴
 13 Wipfli further concluded that "[n]o supporting documentation was provided for all of the
 14 \$317,619.98 spent by the [Committee] during the time period covered by the [audit]."⁴⁵

15 Additionally, the available information indicates that Lucero misreported the purpose of
 16 the \$35,000 expenditure by having UtePAC's reports state that it for the purpose of "outdoor

⁴¹ Compl., Ex. T at 3, 7. ("Wipfli Audit Report"); *see also FEC Receipts, Filtered Results*, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=raising&cycle=2020> (last visited Mar. 14, 2022) (reflecting UtePAC's total receipts of from January 1, 2019 to December 31, 2020); *FEC Disbursements, Filtered Results*, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=spending&cycle=2020> (reflecting total disbursements by UtePAC from Jan. 1, 2019 to Dec. 31, 2020).

⁴² Wipfli Audit Report at 1-2 ; *see also* Factual & Legal Analysis at 2, MUR 6867 (Robert M. Telhorst) (relying on analysis from an independent auditor).

⁴³ Compl. at 18; *see also* IAR at 16, 18-21.

⁴⁴ Wipfli Audit Report at 8.

⁴⁵ *Id.*

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1 retail advertising.”⁴⁶ The emails from Lucero, attached to the Complaint, state that the \$35,000
 2 was comprised of an administrative fee payable to Lucero and the purchase of a vehicle.⁴⁷
 3 Neither of those expenditures is properly reported as “outdoor retail advertising.”⁴⁸

4 As UtePAC’s treasurer, Lucero bears responsibility for what the Wipfli audit credibly
 5 describes as a “pervasive lack” of supporting documentation.⁴⁹ Lucero was “commissioned . . .
 6 to set up and run [UtePAC] and handle all FEC reports” and was the “director and treasurer” of
 7 the Committee.⁵⁰ Lucero prepared and signed all of the Committee’s disclosure reports from
 8 April 2017 through January 2020.⁵¹ Lucero appears to have held himself out as an experienced
 9 and qualified non-profit manager and director,⁵² yet Lucero filed disclosure reports that were
 10 materially deficient in terms of accurately disclosing financial activity and providing required
 11 purpose and memo texts for disbursements. It is undisputed that Lucero was solely responsible
 12 for the filing of disclosure reports with the Commission and the maintenance of all associated
 13 records, circumstances that can be contrasted with prior matters in which committee treasurers

⁴⁶ See *supra* pages 5-6.

⁴⁷ See *supra* n.23.

⁴⁸ See 11 C.F.R. § 104.3(b)(3)(i)(A), (B); *id.* § 104.3(b)(4)(i)(A); *see also* Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007).

⁴⁹ Wipfli Audit Report at 8; *see also* 52 U.S.C. §§ 30102(c), 30104(a), (b).

⁵⁰ Resp. at 1.

⁵¹ See *FEC Committee Filings 2017-2018*, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=filings&cycle=2018> (last visited Mar. 14, 2022) (reflecting UtePAC filings for 2017-2018); *FEC Committee Filings 2019-2020*, FEC.GOV, <https://www.fec.gov/data/committee/C00626671/?tab=filings&cycle=2020> last visited Mar. 14, 2022 (reflecting UtePAC filings for 2019-2020); *see also* UtePAC Amended Statement of Organization (Mar. 26, 2020) (replacing Lucero as UtePAC’s treasurer with Skyler Massy). The Commission has found the signing of reports relevant to liability for reporting violations. *See* Factual & Legal Analysis at 6, MUR 7225 (Jack Wu).

⁵² Compl. at 16 (alleging that Lucero represented to the Tribe that he had experience managing political action committees); *accord* Resp., Ex. 3 (letter from Lucero to the Tribe detailing his experience as a professional non-profit manager).

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1 had themselves relied on other professionals to file disclosure reports.⁵³ Furthermore, the
 2 Response does not contest that Lucero made reporting and recordkeeping errors, but rather
 3 asserts he was working diligently with the auditors to resolve the issues.⁵⁴

4 Considering the circumstances outlined above and the number of apparent reporting and
 5 recordkeeping violations, it appears that Lucero recklessly failed to fulfill the duties imposed on
 6 treasurers by provision of the Act and the Commission's regulations.⁵⁵ Furthermore, it also
 7 appears that Lucero failed to use best efforts to obtain, maintain, and submit the missing
 8 information.⁵⁶ Accordingly, the Commission finds reason to believe that Lucero, in his personal
 9 capacity, violated 52 U.S.C. §§ 30102(c), 30102(d), and 30104(b) and 11 C.F.R. §§ 102.9,
 10 104.3(a), 104.3(b) and 104.14 by failing to keep complete records and file accurate reports with
 11 the Commission as found with regards to the Committee in the Preliminary Audit Findings and
 12 the Wipfli audit.

13 **B. Commingling of Funds**

14 The Complaint alleges that Lucero "commingled" Committee funds by: (1) transferring
 15 UtePAC funds to ASG; (2) withdrawing cash from the Committee accounts; and (3) approving

⁵³ See Factual & Legal Analysis at 5, MUR 6889 (Michael Delk) (dismissing allegations against a treasurer in his personal capacity partly because the treasurer was "inexperienced" and "relied on the erroneous guidance of politically experienced, professional [political committee] staff"); *see also* Factual & Legal Analysis at 4-6, MUR 7223 (Applegate for Congress) (finding no reason to believe that the treasurer personally violated the Act in part because a consulting firm was hired to handle recordkeeping and accounting tasks).

⁵⁴ See *supra* n.27.

⁵⁵ See Treasurer Policy; *see also* Factual & Legal Analysis at 2-3, MUR 5652 (Susan Arceneaux) (finding that "such a large number" of prohibited contributions on the report indicate a lack of attention by the assistant treasurer as one factor in finding the assistant treasurer recklessly failed to fulfill the duties imposed by the Act).

⁵⁶ See 52 U.S.C. § 30102(i); 11 C.F.R. § 104.7; *see also* Factual & Legal Analysis at 3, MUR 5652 (Susan Arceneaux) (finding assistant treasurer did not use best efforts when she failed to itemize contributions on disclosure reports she was responsible for filing).

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1 payments to himself for media and consulting work.⁵⁷ However, the available information does
 2 not support a reason to believe finding that funds were commingled with personal funds in the
 3 ASG account.⁵⁸ In fact, according to the Complaint itself, Lucero “confirmed that there were *no*
 4 *other funding sources* for ASG aside from UtePAC funding.”⁵⁹ The available information
 5 likewise does not indicate that any of Lucero’s personal funds were in the ASG account. And
 6 the Wipfli audit concluded that “UtePAC had two bank accounts and they are both related to the
 7 UtePAC and there was no commingling of funds with other PAC’s managed by the PAC
 8 Manager.”⁶⁰ In the Response, Lucero provided documentation from Wells Fargo appearing to
 9 show that what were alleged to be “cash withdrawals” were not in fact cash withdrawals but
 10 instead “in-branch transfers between” UtePAC and ASG.⁶¹

11 In contrast to the present circumstances, the Commission has found treasurers to be in
 12 violation of the Act’s commingling provisions when there has been evidence of the deposit of
 13 personal funds with committee funds.⁶² The available information in the record contains no such
 14 evidence with respect to Lucero. Accordingly, the Commission finds no reason to believe that
 15 Lucero commingled Committee funds and personal funds in violation of 52 U.S.C. § 30102(b)(3)
 16 and 11 C.F.R. § 102.9.

⁵⁷ Compl. at 18.

⁵⁸ The Complaint alleges that Lucero commingled UtePAC and personal funds in order to hide his impermissible personal use of UtePAC funds. Compl. at 18. The Act’s personal use prohibition only applies to candidate committees, however, and thus does not apply to Lucero’s actions regarding UtePAC. *See supra* n.14.

⁵⁹ Compl. at 9 (emphasis added).

⁶⁰ Wipfli Audit Report at 7.

⁶¹ Resp. at 1, Ex. 1.

⁶² See Factual & Legal Analysis at 12-13, MUR 6179 (Christopher Ward) (finding reason to believe that a treasurer unlawfully commingled funds “by writing checks from his personal bank account and depositing them into committee accounts”); Factual & Legal Analysis at 7, MUR 7225 (Jack Wu) (same).