



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 22, 2014

**MEMORANDUM**

To: The Commission

Through: Alec Palmer  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Thomas E. Hintermister *TH*  
Assistant Staff Director  
Audit Division

*for* Doug Kodish *DK*  
Audit Manager

By: *for* Rhonda Gillingwater *RG*  
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Canseco for Congress (CFC)  
(A11-03)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendations below and discusses the findings in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

**Finding 1. Receipt of Apparent Prohibited Contributions**

The Audit staff recommends that the Commission find that CFC accepted prohibited contributions from a foreign national corporation in the amount of \$100,000, of which \$44,605 remains unresolved, and amended disclosure reports have not been filed.<sup>1</sup>

CFC requested an audit hearing before the Commission to dispute that two contributions totaling \$100,000 were prohibited contributions from a foreign national corporation, Inmuebles Caza SA de CV (Caza).<sup>2</sup> These contributions consist of \$86,000 erroneously

<sup>1</sup> In response to the Interim Audit Report, Counsel stated that in order to avoid multiple filings of reports, CFC would comply with all the recommendations once the Commission had finalized the audit.

<sup>2</sup> Inmuebles Caza SA de CV is a Mexican corporation that is a subsidiary of Canseco Investments, LTD., an American owned limited liability partnership co-owned by the Candidate and his seven siblings. FMC Developers, Inc. is the managing partner of Canseco Investments and according to Counsel, is also 100% owned by the Candidate and his siblings.

reported as a Candidate loan and \$14,000 which was not disclosed. Repayments were made for \$55,395; the remaining \$44,605 has not yet been repaid.

At the hearing, Counsel disagreed with the classification of these loans as prohibited contributions from a foreign national corporation. Counsel stated that the funds, totaling \$100,000, represented the Candidate and his sister's personal funds because they were drawn from their respective equitable interests in Canseco Investments.<sup>3</sup>

Counsel said that Canseco Investments preferred not to make a personal funds distribution to the Candidate and his sister for tax reasons; and therefore, preferred to distribute the funds as a loan. Counsel said that while these loans might not have met the technical requirements of 11 CFR §100.83, they were fundamentally different than contributions for two reasons. First, the funds were derived from an asset for which the Candidate had a legal ownership share or equitable interest. Moreover, that these loans were identical to loans where an individual borrows from a retirement plan or whole life insurance policy in which the individual has invested funds in those plans. Second, the loans were not a "sweetheart" deal because they were collateralized by the Candidate's equitable interest in Canseco Investments (and therefore less risky than other loans), the terms were commercially reasonable, and the interest rates charged were above market rates.

Documentation provided to the Audit staff showed only partial repayments of loan principle amounts, totaling \$55,395; no interest was paid. Payments were made by CFC after the loan due dates, and were paid to Caza and not Canseco Investments. Also, CFC did not report any interest payments on its disclosure reports.

Counsel also stated during the audit hearing, that the promissory notes securing the \$100,000 in loans reflected agreements between the Candidate and Canseco Investments. Furthermore, Counsel stated that the Candidate did not know that the funds he loaned to CFC were from Caza. However, documents provided to the Audit staff during fieldwork showed the following:

- A promissory note dated January 28, 2010, signed by the Candidate for a \$30,000 loan, shows both Caza and Canseco Investments as the lenders;
- A promissory note dated April 12, 2010, signed by the Candidate for a \$28,000 loan, shows Caza as the lender;
- A promissory note dated April 12, 2010, from the Candidate's sister for a \$58,000 loan, shows Caza as the lender;
- A promissory note dated April 12, 2010, signed by the Candidate for a \$58,000 loan, shows the Candidate's sister as the lender;
- A cashier's check for \$86,000 dated April 12, 2010, payable to the Candidate and deposited in CFC's bank account, shows that the check was remitted by Caza.

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<sup>3</sup> See footnote 2.

Based on the information above, the Audit staff concludes that Caza, not the Candidate's personal funds or Canseco Investments, was the source of the \$100,000 that the Candidate loaned to CFC. As such, CFC accepted prohibited contributions from a foreign national corporation in the amount of \$100,000.

**Finding 2. Receipt of Contributions that Exceed Limits**

The Audit staff recommends that the Commission find that CFC accepted excessive contributions in the amount of \$170,343, of which \$10,050 remains unresolved, and amended disclosure reports have not been filed.<sup>4</sup>

At the audit hearing, Counsel disputed the Audit staff's conclusion that \$10,050 remains unresolved. Counsel said sufficient documentation had been provided to demonstrate that excessive contributions totaling \$10,050 were repaid to the original contributors. Counsel stated that the Commission was provided a signed affidavit<sup>5</sup> by the individual contributor who coordinated raising funds to make the loan to the Candidate and that the affidavit showed that the contributor repaid the other excessive contributors. In addition, Counsel said the Audit staff did not provide an adequate reason in the DFAR for not accepting the affidavit in light of no evidence to the contrary showing that the excessive contributors were not repaid. Also, Counsel said that the Audit staff should have sought additional information directly from the contributors involved.

In concluding this issue, Counsel stated that amounts considered unresolved by the Audit staff were already repaid to the original contributors and that if the Commission determines that CFC must repay another \$10,050, then double payments will have been made with campaign funds in violation of the personal use regulations at U.S.C. §439(b)(1).

When questioned at the audit hearing about the purported repayments to the original contributors and why records were not available to support the repayments to the original contributors, Counsel stated that it was his understanding that Mr. Beckelhymer (the contributor raising funds and making the loan to the Candidate) was repaid with a cashier's check for \$28,000<sup>6</sup> from the Candidate because Mr. Beckelhymer was responsible for the repayment to the other original contributors. Counsel also said he had never spoken to the original contributors repaid by Mr. Beckelhymer and did not have their personal banking records which made it a challenge to provide adequate documentation to the Audit staff.

Counsel also explained why the original contributors were repaid via Mr. Beckelhymer and not CFC. Counsel stated that the excessive contributions were returned to the original contributors in the same manner in which they were received and recorded by CFC; that is, the funds were received from the Candidate, recorded and reported as a loan from the Candidate; and therefore, refunded to the Candidate. The Candidate then refunded Mr. Beckelhymer, who in turn purportedly refunded the remaining original contributors.

<sup>4</sup> See footnote 1.

<sup>5</sup> The document submitted was a signed declaration that stated it was made, "under penalty of perjury."

<sup>6</sup> A copy of the Cashier's check was provided to the audit staff.

Based on the lack of bank documentation to show the excessive contributions were repaid to the original contributors, the Audit staff concludes \$10,050 remains unresolved.

**Finding 3. Misstatement of Financial Activity**

The Audit staff recommends that the Commission find that CFC misstated its financial activity for calendar years 2009 and 2010, and amended disclosure reports have not been filed.<sup>7</sup>

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote. Should an objection be received, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Rhonda Gillingwater or Doug Kodish at 694-1200.

**Attachment:**

- Draft Final Audit Report of the Audit Division on Canseco for Congress

cc: Office of General Counsel

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<sup>7</sup> See footnote 1.



## Draft Final Audit Report of the Audit Division on Canseco for Congress (January 1, 2009 - December 31, 2010)

### Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

### Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

### About the Campaign (p. 2)

Canseco for Congress is the official campaign committee for Francisco R. Canseco, Republican candidate for the U.S. House of Representatives from the State of Texas, 23<sup>rd</sup> District, headquartered in San Antonio, Texas. For more information, see the chart on the Campaign Organization, p. 2.

### Financial Activity (p. 3)

• Receipts	
○ Contributions from Individuals	\$ 972,233
○ Contributions from Other Political Committee	316,035
○ Candidate Loans	321,880
○ Other Receipts	9,794
Total Receipts	\$ 1,619,942
• Disbursements	
○ Operating Expenditures	\$ 1,481,985
○ Repayment of Candidate Loans	58,505
Total Disbursements	\$ 1,540,490

### Findings and Recommendations (p. 3)

- Receipt of Apparent Prohibited Contributions (Finding 1)
- Receipt of Contributions that Exceed Limits (Finding 2)
- Misstatement of Financial Activity (Finding 3)

<sup>1</sup> 2 U.S.C. §438(b).

**Draft Final Audit Report of the  
Audit Division on  
Canseco for Congress**

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(January 1, 2009 - December 31, 2010)

**Draft**



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**Draft**

# Part I

## Background

### Authority for Audit

This report is based on an audit of Canseco for Congress (CFC), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine whether the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other campaign operations necessary to the review.



## Part II Overview of Campaign

### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	January 7, 2004
• Audit Coverage	January 1, 2009 - December 31, 2010
<b>Headquarters</b>	San Antonio, Texas
<b>Bank Information</b>	
• Bank Depositories	Two
• Bank Accounts	Two Checking Accounts
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Randy Blair
• Treasurer During Period Covered by Audit	Randy Blair
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2009</b>	\$ 0
<b>Receipts</b>	
o Contributions from Individuals	972,233
o Contributions from Other Political Committees	316,035
o Candidate Loans	321,880
o Other Receipts	9,794
<b>Total Receipts</b>	<b>\$1,619,942</b>
<b>Disbursements</b>	
o Operating Expenditures	1,481,985
o Repayment of Candidate Loans	58,505
<b>Total Disbursements</b>	<b>\$1,540,490</b>
<b>Cash-on-hand @ December 31, 2010</b>	<b>\$ 79,452</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Receipt of Apparent Prohibited Contributions**

During audit fieldwork, the Audit staff identified two contributions totaling \$100,000 that appear to be prohibited contributions from a foreign national corporation. CFC Counsel (Counsel) stated that these transactions were loans from the candidate; however, the funds appear to have originated from the account of a foreign national corporation. Counsel later stated these funds represent draws from partnership capital accounts of the candidate and his sister.

In response to the Interim Audit Report, Counsel disputed this finding and disagreed with the classification of these loans as contributions from a foreign national corporation. However, on May 1, 2013, CFC issued a check for \$55,395 to refund the contribution received from the foreign national corporation. The remaining \$44,605 is a prohibited contribution that has not been resolved. (For more detail, see p. 4.)

##### **Finding 2. Receipt of Contributions that Exceed Limits**

During audit fieldwork, the Audit staff identified three transactions that Counsel stated were loans from the candidate. However, these transactions appear to be excessive contributions from four individuals who loaned the candidate funds. The total amount in excess of the individual contribution limit is \$170,343.

In response to the Interim Audit Report, Counsel provided documentation demonstrating that \$160,293 was refunded to the appropriate contributors in an untimely manner. However, the documentation was not sufficient to demonstrate that CFC had repaid the remaining \$10,050 to the appropriate contributors ( $\$170,343 - \$160,293 = \$10,050$ ). The Audit staff considers the remaining \$10,050 to be excessive contributions from two individuals that are not resolved. (For more detail, see p. 9.)

##### **Finding 3. Misstatement of Financial Activity**

During audit fieldwork, a comparison of CFC's reported financial activity with its bank records revealed misstatements of beginning and ending cash-on-hand, as well as, misstatements of receipts and disbursements for calendar years 2009 and 2010. For 2009, CFC overstated beginning cash-on-hand by \$32,344, understated receipts by \$13,161, understated disbursements by \$31,048, and overstated ending cash-on-hand by \$50,231. For 2010, CFC overstated beginning cash-on-hand by \$50,231, overstated receipts by \$324,404, overstated disbursements by \$313,123, and overstated ending cash-on-hand by \$61,512.

In response to the Interim Audit Report, Counsel stated that, in order to avoid multiple filings of amendments, CFC would comply with all the recommendations once the Commission had finalized the audit. (For more detail, see p. 12.)

## Part IV

# Findings and Recommendations

### **Finding 1. Receipt of Apparent Prohibited Contributions**

#### **Summary**

During audit fieldwork, the Audit staff identified two contributions totaling \$100,000 that appear to be prohibited contributions from a foreign national corporation. CFC Counsel (Counsel) stated that these transactions were loans from the candidate; however, the funds appear to have originated from the account of a foreign national corporation. Counsel later stated these funds represent draws from partnership capital accounts of the candidate and his sister.

In response to the Interim Audit Report, Counsel disputed this finding and disagreed with the classification of these loans as contributions from a foreign national corporation. However, on May 1, 2013, CFC issued a check for \$55,395 to refund the contribution received from the foreign national corporation. The remaining \$44,605 is a prohibited contribution that has not been resolved.

#### **Legal Standard**

**A. Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions, or loans):

- In the name of another;
- From the treasury funds of the following sources:
  - Corporations (i.e., any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
  - Labor Organizations; and
  - National Banks;
- From Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); or
- From Foreign nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §§441b, 441c, 441e, and 441f.

**B. Contribution.** A gift, subscription, loan (except a loan made in accordance with 11 CFR §§100.82 and 100.83), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan that exceeds the contribution limitations of 2 U.S.C. §441a and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that

individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110 and 11 CFR §100.52(a) and (b).

**C. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,400 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

**D. Partnership Contributions.** In addition to counting against the partnership's limits, a contribution from a partnership must be attributed to individual partners:

- According to each partner's share of the partnership's profits; or
- On another basis agreed to by the partners.

If the partnership attributed contributions on the basis of option 2 above, it must reduce only the contributing partners' profits (or increase their losses) and the profits must be reduced in proportion to the contribution attributed to the partner. Under both options listed above, the portion attributed to each partner must not, when aggregated with other contributions from that person, exceed his or her contribution limit. 11 CFR §110.1(e).

**E. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

- Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below).  
11 CFR §103.3(b)(1).
- If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund it. Therefore sufficient funds to make the refunds must be maintained or a separate account in a campaign depository must be established for possibly illegal contributions. 11 CFR §103.3(b)(4).
- The committee must keep a written record noting the basis for the appearance of illegality, and it must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
- Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum.  
11 CFR §103.3(b)(1).
- Within the 30-day period, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made.  
11 CFR §103.3(b)(1), (5).

**F. Personal Funds.** Personal funds of a candidate consist of assets, income, or jointly owned spousal assets. Assets are amounts derived from any asset that, under applicable state law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had legal and rightful

title or an equitable interest. Personal funds may also be income received during the current election cycle of the candidate, including salary and other earned income from bona fide employment and income from stocks or investments, including interest, dividends or proceeds from the sale of such stocks or investments. 11 CFR §100.33.

**G. Expenditures by Candidates.** Candidates for Federal office may make unlimited expenditures from personal funds as defined in the paragraph above. 11 CFR §110.10.

**H. Reporting Loans.** All loans received by a committee must be itemized and continuously reported until repaid. All repayments made on a loan must also be itemized. 11 CFR §§104.3(a)(4)(iv), (b)(4)(iii) and 104.11.

## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff identified two transactions totaling \$100,000 (\$14,000 + \$86,000), which Counsel stated were loans the candidate made to CFC. The source of these funds appears to be prohibited contributions from a foreign national corporation and not the candidate's personal funds.

#### **Prohibited Contribution-\$14,000**

On January 29, 2010, \$14,000 was transferred into a CFC bank account. This transaction was not disclosed on CFC's reports (See Finding 3- Misstatement of Financial Activity, Loans Not Reported). Counsel stated that this amount was a loan to the candidate from his partnership. In support of this statement, Counsel provided a letter stating that the loan was made to the candidate from Inmuebles Caza, S.A. de C.V. ("Caza").<sup>2</sup> Caza is 99 percent owned by Canseco Investments, Ltd. ("Canseco Investments"), while 1 percent is owned by Jorge Canseco, a brother of the candidate. In addition, the candidate is a limited partner of Canseco Investments.<sup>3</sup> Counsel also provided several e-mails between other partners and from the president of Caza, which taken together explain that this amount was borrowed from Caza, based on the candidate's capital account in the partnership. The Audit staff did not review bank documentation relating to the source of these funds because it came from an account that was not owned by CFC. CFC did not make any repayments on this loan prior to the audit.

#### **Prohibited Contributions-\$86,000**

On April 13, 2010, a check for \$86,000 was deposited into a CFC bank account. This transaction was disclosed as a loan from the candidate on CFC's reports. A copy of the deposit documentation shows that this was a cashier's check remitted by Caza. Counsel provided two signed promissory notes showing that \$58,000 was a loan to the candidate from his sister, and \$28,000 as a loan to the candidate from Canseco Investments. The e-mails described in the preceding paragraph also explain that these amounts represent the balance of each partner's capital account in Caza.

<sup>2</sup> Caza is a foreign national corporation registered in Mexico.

<sup>3</sup> According to its filings with The Texas Secretary of State, Canseco Investments, Ltd. is a domestic limited partnership with FMC Developers, Inc., a corporation, as its general partner.

CFC reported repayments totaling \$44,605 to the candidate on its disclosure reports. However, Counsel did not provide documentation demonstrating that these payments were paid to either the candidate or Caza. Additionally, the Audit staff could not trace payments, as reported, to CFC's bank account.

The Audit staff concludes that the amounts of \$14,000 and \$86,000 represent apparent prohibited contributions from a foreign national corporation. Counsel maintains that these amounts represent personal investments in the partnership;<sup>4</sup> however, Counsel did not provide documentation to support that these were distributions to partners from Canseco Investments. Furthermore, the business registration of Canseco Investments does not indicate whether any of these individuals are partners; the only listed partner is a corporation.

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff presented these apparent prohibited contributions to CFC. Counsel said that CFC would take another look at this matter.

The Interim Audit Report recommended that CFC demonstrate that the sources of funds for the amounts deposited were made with the candidate's personal funds or other permissible funds. Absent such a demonstration, it was recommended that CFC refund the \$14,000 apparent prohibited contribution and the \$41,395<sup>5</sup> remaining of the \$86,000 apparent prohibited contribution. Additionally, the Audit staff recommended that CFC amend its reports to correctly disclose the source of these funds.

#### **C. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report, Counsel disagreed with the classification of these loans as prohibited contributions from a foreign national corporation. Counsel said that the loans represent the candidate and his sister's equitable interest in Canseco Investments and, therefore, represent their personal funds. Furthermore, Counsel said that Canseco Investments acts as a holding company for its only investment, Caza, and Canseco Investments relies on Caza to provide for its banking needs. All transactions for Canseco Investments are processed by Caza and through Caza's accounts. Specifically, Counsel said that (1) "all of the expenses and payments on behalf of Canseco Investments are made directly by Caza in the ordinary course of business; (2) Caza pays dividends directly to the owners of Canseco Investments, which are treated for tax purposes as dividends from Canseco Investments and not Caza; and (3) tax payments and expenses incurred by Canseco Investments are paid for by Caza." Counsel said the loans made to the candidate and his sister were paid by Caza, akin to other expenses paid on behalf of Canseco Investments. Moreover, the loans represent the candidate's and his sister's

<sup>4</sup> If the funds received from Caza are deemed permissible and not prohibited contributions from a foreign national corporation, the amount of funds from the candidate's sister and/or the partnership may be considered an excessive contribution.

<sup>5</sup> Information provided by Counsel in response to the Interim Audit Report showed that a \$30,000 repayment and two repayments totaling \$14,600 were erroneously applied to the \$86,000 the CFC reported as a candidate loan. The \$30,000, was in fact a repayment of excessive contributions from individuals noted in Finding 2. Repayments totaling \$14,600 have not been applied to the prohibited contribution amounts in either finding because Counsel has not provided documentation to verify receipt by the appropriate payee.

proportional interests in the assets of Canseco Investments, less an estimated tax liability.<sup>6,7</sup>

Counsel stated that, "while these loans may not meet the technical requirements set forth in 11 CFR §100.83, they are fundamentally different than a contribution for two key reasons." First, Counsel considered the loans derived from an asset for which the candidate had a legal ownership share and an equitable interest. He compared the loans to borrowing against a retirement plan or a life insurance policy. Second, Counsel stated that the interest rates charged by Caza on these loans to the candidate and his sister were above commercially available lending rates; hence, the candidate was not given an unfair lending advantage or a "sweetheart deal."

While CFC's explanation expanded on previous statements made during fieldwork, the information does not establish that the funds at issue constitute the candidate's personal funds (11 CFR §100.33(b)). Funds originating from Caza, a foreign national corporation, do not lose their character merely because the company is an asset held by a U.S. limited partnership, i.e., Canseco Investments. The Audit staff concluded that Caza was the source of funds for the candidate's \$100,000 loan to CFC.

Subsequently, on May 1, 2013, Counsel submitted documentation demonstrating that CFC made untimely repayments of the loan to Caza totaling \$55,395. CFC has not filed amended reports to correctly disclose the loan indicating the source of the loan as Caza. Counsel stated that, in order to avoid multiple filings of reports, CFC would comply with all the recommendations, once the audit had been finalized. Below are details explaining the resolution of these repayments.

**Prohibited Contribution-\$14,000**

On May 1, 2013, CFC issued a check to Caza repaying what Counsel had said was a \$14,000 loan. The Audit staff considers this amount a repayment of a prohibited contribution that was resolved in an untimely manner.

**Prohibited Contributions-\$86,000**

On May 1, 2013, CFC issued a check to Caza repaying \$41,395 of what was disclosed by CFC as an \$86,000 loan. The Audit staff considers this amount a prohibited contribution that was resolved in an untimely manner.

On June 5, 2013, Counsel stated that a portion (\$30,000) of the \$44,605 reported as a repayment to the candidate was attributable to another candidate loan (See Finding 2). The Audit staff requested documentation to substantiate that the remaining \$44,605 was repaid to the candidate or Caza. Counsel has not provided this documentation. As such, the Audit staff considers the remaining \$44,605 to be a prohibited contribution that has not been resolved.

<sup>6</sup> Counsel provided a redacted K-1 for the candidate showing his partnership interest in Canseco Investments. Counsel also stated that the funds were loaned to the candidate and not distributed due to various tax concerns.

<sup>7</sup> Counsel asserted that the borrowers' percentage of ownership interest is at risk for non-payment of loans that are secured by their ownership interest in Canseco Investments.

## **Finding 2. Receipt of Contributions that Exceed Limits**

### **Summary**

During audit fieldwork, the Audit staff identified three transactions that Counsel stated were loans from the candidate. However, these transactions appear to be excessive contributions from four individuals who loaned the candidate funds. The total amount in excess of the individual contribution limit is \$170,343.

In response to the Interim Audit Report, Counsel provided documentation demonstrating that \$160,293 was refunded to the appropriate contributors in an untimely manner. However, the documentation was not sufficient to demonstrate that CFC had repaid the remaining \$10,050 to the appropriate contributors ( $\$170,343 - \$160,293 = \$10,050$ ). The Audit staff considers the remaining \$10,050 to be excessive contributions from two individuals that are not resolved.

### **Legal Standard**

**A. Contribution Limits.** During the 2009-2010 cycle, no individual or group (other than a multicandidate committee) was permitted to contribute more than a total of \$2,400 per election to a federal candidate's campaign (the campaign includes the candidate and his or her agents and authorized committees). 2 U.S.C. §441a (a)(1)(A).

**B. Contribution.** A gift, subscription, loan (except a loan made in accordance with 11 CFR §§ 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term *loan* includes a guaranteed endorsement, and any other form of security. A loan that exceeds the contribution limitations of 2 U.S.C. §441a and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR parts 110. 11 CFR §100.52(a) and (b).

**C. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable contribution to the donor; or
- Deposit the contribution into a campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

**D. Personal Funds.** Personal funds include salary and other earned income from bona fide employment and income from stocks or investments, including interest, dividends or proceeds from the sale of such stocks or investments. 11 CFR §100.33(b).

**E. Reporting Loans.** All loans received by a committee must be itemized and continuously reported until repaid. All repayments made on a loan must also be itemized. 11 CFR §§104.3(a)(4)(iv), (b)(4)(iii) and 104.11.



## **Facts and Analysis**

### **A. Facts**

During audit fieldwork, the Audit staff identified three transactions that Counsel stated were loans from the candidate; however, they appear, to be excessive contributions from four individuals. The total amount that exceeds the individual contribution limit is \$170,343.

#### **Excessive Contribution-\$150,000**

On April 27, 2010, a deposit of \$150,000 was made to the CFC bank account. The deposit documentation shows that this was a check from an individual written to the candidate, but deposited directly into CFC's bank account.

The \$150,000 transaction was disclosed as a loan from the candidate on CFC's reports. The Audit staff requested documentation showing that this loan was made with the candidate's personal funds. Counsel responded that the funds were derived from the sale of the candidate's stock. Later, Counsel stated that this was a personal loan made to the candidate from an individual and provided a copy of a signed promissory note.

The Audit staff concludes that, in accordance with 2 U.S.C. §432(e)(2), the candidate is considered to have received the personal loan as an agent of the CFC. Therefore, absent further explanation and documentation, this transaction results in an excessive contribution of \$147,600<sup>8</sup> from the individual.

CFC disclosed a repayment of \$10,000 to the candidate on April 28, 2010 in connection with the reported \$150,000 loan. However, CFC has not provided sufficient documentation to substantiate that the funds were repaid to the original contributor. Although CFC disclosed the repayment transaction on a report to the Commission, the only document provided Audit staff was a bank statement showing a \$10,000 check. No documentation was provided to identify the payee.

#### **Excessive Contributions-\$30,000**

On December 10 and 18, 2009, \$22,000 and \$8,000, respectively, were transferred into CFC's bank account from the candidate's personal bank account. The \$22,000 was incorrectly disclosed on CFC's reports as a loan; the \$8,000 loan was not reported. (The misreporting of these loans are included in Finding 3, Misstatement of Financial Activity, under Loans Not Reported of \$15,330.) Counsel stated that these amounts represented loans from the candidate. However, additional documentation provided by CFC showed that the funds used to make these transfers did not come from the candidate's personal funds. The funds were personal loans from different individuals made to the candidate and deposited into the candidate's personal account. Since these funds were used for campaign activity, the personal loans resulted in contributions to CFC. The Audit staff performed a cash balance analysis on the candidate's personal account and determined that the funds transferred to CFC (\$22,000 and \$8,000) could only have come from three individuals. Absent further documentation and explanation,

<sup>8</sup> This amount was derived by subtracting \$2,400, the contribution limit for an individual, from the contribution amount, \$150,000.

CFC's receipt of these funds results in contributions by three individuals that exceed contribution limits by \$22,743.<sup>9</sup>

#### **B. Interim Audit Report & Audit Division Recommendation**

During an interim fieldwork meeting, the Audit staff requested further information to support that the contributions described above were permissible. At the exit conference, Counsel stated that the candidate had already repaid some of the contributions that comprised the \$22,000 and \$8,000 contributions. The Audit staff commented that CFC may need to make further refunds. CFC has not reported repayments to these individuals and the Audit staff has not received documentation to support the repayments.

The Interim Audit Report recommended that CFC demonstrate that the contributions were not excessive or that they originated from the candidate's personal funds. Absent such a demonstration, the Audit staff recommended that CFC refund the excessive contributions, \$147,600 and \$22,743, to the original contributors or provide documentation showing that refunds had already been made and that the refund checks were negotiated. Furthermore, the Audit staff recommended that CFC amend its reports to correctly disclose the source of funds for these loans.

#### **C. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report, Counsel submitted documentation demonstrating that CFC made repayments totaling \$160,293, as outlined below. CFC did not file amended reports. Counsel stated that, in order to avoid multiple filings of reports, CFC would comply with all the recommendations once the Commission had finalized the audit.

In a subsequent meeting held with Counsel to discuss report changes made since the issuance of the Interim Audit Report, Counsel expressed concern regarding the repayment of the two excessive contributions for \$10,050. Counsel felt that an affidavit submitted by the intermediary payee supporting the repayment should be sufficient documentation and that CFC should not have to make a second repayment. In addition, Counsel thought this might be an issue CFC would want to raise with the Commission.

#### **Excessive Contribution-\$150,000**

On May 1, 2013, CFC issued a check<sup>10</sup> to the contributor for \$147,600 to repay the excessive contribution amount. The Audit staff considers the \$147,600 an excessive contribution that was refunded untimely.

#### **Excessive Contributions-\$30,000**

Counsel submitted documentation showing that CFC issued a cashier's check for \$28,000 on September 22, 2010, to one of the individuals who made an excessive contribution. According to an email from Counsel, CFC made a payment to one contributor who then

<sup>9</sup> The excessive amount reflects contributions of \$15,093, \$7,157, and \$7,693, minus a \$2,400 contribution limit for three individuals (\$7,200).

<sup>10</sup> The Audit staff was provided a copy of the canceled check and the corresponding bank statement that supported the contributor's repayment.

paid other individuals who had loaned the candidate funds or whom CFC owed interest on their loans. Counsel did not provide sufficient documentation to demonstrate repayment to the other two contributors who made excessive contributions. The Audit staff considers \$12,693 to one of the three contributors as an excessive contribution that was refunded in an untimely manner and the remaining \$10,050 from two contributors to be excessive contributions that CFC has not refunded.<sup>11</sup>

### **Finding 3. Misstatement of Financial Activity**

#### **Summary**

During audit fieldwork, a comparison of CFC's reported financial activity with its bank records revealed misstatements of beginning and ending cash-on-hand, as well as, misstatements of receipts and disbursements for calendar years 2009 and 2010. For 2009, CFC overstated beginning cash-on-hand by \$32,344, understated receipts by \$13,161, understated disbursements by \$31,048, and overstated ending cash-on-hand by \$50,231. For 2010, CFC overstated beginning cash-on-hand by \$50,231, overstated receipts by \$324,404, overstated disbursements by \$313,123, and overstated ending cash-on-hand by \$61,512.

In response to the Interim Audit Report, Counsel stated that, in order to avoid multiple filings of amendments, CFC would comply with all the recommendations once the Commission had finalized the audit.

#### **Legal Standard**

**Contents of Reports.** Each report must disclose:

- The amount of cash-on-hand at the beginning and end of the reporting period;
- The total amount of all receipts for the reporting period and for the election cycle;
- The total amount of all disbursements for the reporting period and for the election cycle; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

#### **Facts and Analysis**

##### **A. Facts**

During audit fieldwork, the Audit staff reconciled CFC's reported financial activity with its bank records for calendar years 2009 and 2010. The following chart outlines the discrepancies for the beginning cash balance, receipts, disbursements, and ending cash balance for 2009. Succeeding paragraphs address the reasons for the misstatements.

<sup>11</sup> CFC should provide documentation for the remaining \$10,050 to support that the two other contributors received refunds.

<b>2009 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2009	\$ 32,344	\$ 0	\$ 32,344 Overstated
Receipts	\$160,551	\$173,712	\$ 13,161 Understated
Disbursements	\$101,630	\$132,678	\$ 31,048 Understated
Ending Cash Balance @ December 31, 2009	\$ 91,265	\$ 41,034	\$ 50,231 Overstated

The beginning cash balance on January 1, 2009, was overstated by \$32,344. The Audit staff's analysis could not explain this overstatement but it likely resulted from prior period discrepancies.

The understatement of receipts resulted from the following:

• Receipts not reported	\$ 1,000
• Loans received by CFC not reported or incorrectly reported (Net)	15,330
• Reported contributions from individuals not supported by deposits	(2,025)
• Unexplained difference	(1,144)
<b>Net Understatement of Receipts</b>	<b><u>13,161</u></b>

The understatement of disbursements resulted from the following:

• Disbursements not reported	\$41,912
• Reported disbursements not supported by a check or debit	(10,864)
<b>Net Understatement of Disbursements</b>	<b><u>\$ 31,048</u></b>

CFC overstated the ending cash balance on December 31, 2009, by \$50,231 as a result of the misstatements described above.

<b>2010 Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2009	\$ 91,265	\$41,034	\$ 50,231 Overstated
Receipts	\$1,770,634	\$1,446,230	\$ 324,404 Overstated
Disbursements	\$1,720,935	\$1,407,812	\$ 313,123 Overstated
Ending Cash Balance @ December 31, 2009	\$ 140,964	\$ 79,452	\$ 61,512 Overstated

The overstatement of receipts resulted from the following:

• Receipts not reported	\$ 1,676
• Return deposit items reported as loans	(305,000)
• Loans received by CFC not reported	14,000
• Duplicate reporting of contributions	(22,121)
• Unexplained difference	(12,959)
<b>Net Overstatement of Receipts</b>	<b><u>\$ (324,404)</u></b>

The overstatement of disbursements resulted from the following:

• Disbursements not reported	\$ 36,250
• Return deposit items reported as loan repayments	(305,000)
• Reported disbursements not supported by a check or debit	(44,369)
• Unexplained different	( 4)
<b>Net Overstatement of Disbursements</b>	<b><u>\$ (313,123)</u></b>

As a result of the above discrepancies, CFC overstated the ending cash balance on December 31, 2010, by \$61,512.

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff provided Counsel with a list of discrepancies and report adjustments. Counsel acknowledged the adjustments. The Audit staff informed Counsel that it would recommend these adjustments in the Interim Audit Report.

The Interim Audit Report recommended that CFC should amend its FEC filings to correct misstatements and amend its most recently filed report to correct its cash-on-hand balance.<sup>12</sup> The Audit staff also recommended that CFC reconcile the cash balance of its most recent report to identify any subsequent discrepancies that might affect its adjustments.

#### **C. Committee Response to the Interim Audit Report**

In response to the Interim Audit Report, CFC did not file amended reports. Counsel stated that, in order to avoid multiple filings of reports, CFC would comply with all the recommendations once the Commission had finalized the audit.

<sup>12</sup> Some of the adjustments changed based on subsequent information received from CFC and the Audit staff's determination of the proper handling of these misstatements. CFC was subsequently notified of these adjustments and informed that the changes would be incorporated in the Draft Final Audit Report.