



chris k. gober
gober hilgers pllc

2101 cedar springs road
suite 1050
dallas, tx 75201

214. 842.6825 direct
877.437.5755 fax
gober@goberhilgers.com

September 12, 2012

Tim Hintermister
Assistant Staff Director, Audit Division
Federal Election Commission
999 E Street, NW
Washington, DC 22210

Re: Interim Audit Report of the Audit Division on Canseco for Congress

Dear Mr. Hintermister:

Canseco for Congress in is receipt of the Federal Election Commission's Interim Audit Report regarding the audit of Canseco for Congress's records from January 1, 2009 – December 31, 2010. Canseco for Congress (the "Committee"), through counsel, hereby responds to the findings and recommendations of the Audit Division staff resulting from the audit.

Compliance with Recommendations

The Committee does not dispute all findings and recommendations listed in the Interim Audit Report; however, in order to prevent the Committee from filing multiple amendments to the same reports, it is the Committee's preference to comply with all recommendations once the disputed findings have been resolved and the audit has been finalized.

Among other findings and recommendations, the Interim Audit Report recommends in Finding 1 that the Committee provide documentation demonstrating that the Candidate made the loans from his personal funds or that the Committee refund the remaining \$55,395. The Interim Audit Report recommends in Finding 2 that the Committee refund \$147,600 from a personal loan made

100 CONGRESS AVE
SUITE 2000
AUSTIN, TX 78701
T | 512.354.1787

2101 CEDAR SPRINGS RD
STE 1050
DALLAS, TX 75201
T | 214.842.6829

1028 G ST
LINCOLN, NE 68508
T | 402.218.2106

14301 FNB PKWY
STE 100
OMAHA, NE 68154
T | 402.218.2106

1155 F ST. NW
STE 1050
WASHINGTON, DC 20004
T | 202.417.3529

by an individual to the Candidate. While the Committee is waiting for the disputed finding to be resolved and for the audit to be finalized before it complies with Interim Audit Report's recommendations, please note that the Committee is segregating \$202,995 from the Committee's operating account and placing these funds in a separate account. The Committee does not intend to utilize these funds in connection with the 2012 general election, and they will be preserved by the Committee until this matter has been resolved.

Finding 1

In Finding 1 of the Interim Audit Report, the Audit Division staff finds that personal loans to the Candidate totaling \$100,000 constituted a prohibited contribution from a foreign national. The Committee disputes this finding.

Canseco Investments, Ltd. ("Canseco Investments") is a U.S. company owned by the Candidate and his seven siblings. The Candidate owns 12.125% of the company, which is evidenced by a redacted copy of the 2010 Schedule K-1 attached hereto as Attachment A.

While Canseco Investments previously owned multiple companies, it sold various assets until Inmuebles Caza, S.A. de C.V. ("Caza") was left as Canseco Investment's only remaining asset. In its current state, Canseco Investments does not maintain funds in its own bank account and essentially operates as nothing more than a holding company for Caza. It appears, for example, 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.

Under 11 C.F.R. §100.33(a), personal funds of a candidate include "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 (1) legal and rightful title; or (2) an equitable interest." The source of funds for \$58,000 of the personal loans represents the Candidate's equitable share of the assets held by Canseco Investments, Ltd., less tax liability, which was advanced to him by the company.

The intention of the partners was to provide the Candidate with access to his equitable share of Canseco Investment's assets less the company's projected tax liability upon distribution;

however, due to various tax concerns, the company ultimately made two separate loans to the Candidate with funds maintained in Caza's bank account. *See Attachments B and C.*¹ For both loans, the company charged interest at a rate high enough to eliminate any advantage that the Candidate may have had by maintaining his ownership share. While these loans may not meet the technical requirements set forth in 11 C.F.R. § 100.83, they are fundamentally different than a contribution for two key reasons.

First, because the funds "derive from" an asset over which the Candidate had a legal ownership share and equitable interest in, they should be treated as personal funds. In many ways, these loans are identical to loans in which an individual borrows against the assets in their own 403(b) retirement plan or whole life insurance policy. In those circumstances, an individual invests in their retirement plan or whole life insurance policy, and the assets in that plan or policy remain that person's personal assets at all times. The circumstances are no different here, as the funds that were loaned to the Candidate represented his personal assets at all times. They should be recognized as such by the Commission.

Second, these loans may be analyzed under 11 C.F.R. § 100.83. First, the loans are secured by the Candidate's ownership interest in Canseco Investments and its cash value. Second, the terms of the loans are commercially reasonable. Indeed, the interest rate set forth in each loan exceeds the commercial interest rates that were available in the open market at the time the loans were made. Furthermore, these loans were far less risky than a traditional commercial bank loan because the value of the secured collateral was equal to or exceeded the loan principle; in other words, this was a low-risk opportunity for Canseco Investments to earn 10-14% on funds that they otherwise could not distribute. This was no "sweetheart deal," and it is certainly not the kind of transaction that the drafters of these rules sought to prevent as a means to circumvent the contribution limits and prohibitions.

As stated above, the source of funds for \$58,000 of the personal loans represents the Candidate's equitable share of the assets held by Canseco Investments less tax liability. The remaining source of the personal loans referenced in Finding 1 was Patricia Bruce, one of the Candidate's siblings and a co-owner of Canseco Investments. According to Ms. Bruce, she obtained a \$58,000

¹ The Committee recently obtained final executed versions of the loan agreements from a co-owner of Canseco Investments. The Committee previously provided unsigned drafts of the loan agreements in response to the Commission's inquiries regarding these loans.

Chris K. Gober
September 12, 2012
Page 4 of 4

personal loan under the same conditions as the Candidate, and she then loaned those funds to the Candidate under a separate loan agreement. *See Attachments D and E.*

Please note that affidavits regarding this loan may be sent to the Commission under separate cover.

Conclusion

Thank you for your consideration of this response. If you require additional information, or if I can be of any assistance, then I can be reached at (214) 842-6825.

Sincerely,

A handwritten signature in black ink, appearing to read "C.K.G.", with a horizontal line extending to the right.

Chris K. Gober
Counsel, Canseco for Congress