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WASHINGTON, D.C. 20463

June 4, 2014

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *[Signature]*
Staff Director

From: Patricia C. Orrock *[Signature]*
Chief Compliance Officer

for Thomas E. Hintermister *[Signature]*
Assistant Staff Director
Audit Division

for Doug Kodish *[Signature]*
Audit Manager

By: Rhonda Gillingwater *[Signature]*
Lead Auditor

Subject: Audit Hearing for Canseco for Congress (A11-03)

For Hearing of 6-12-14

Attached for your information is a copy of the Draft Final Audit Report (DFAR) and the Office of General Counsel's legal analyses that was mailed to Canseco for Congress (CFC) on January 31, 2014. On February 19, 2014, CFC Counsel (Counsel) requested a hearing before the Commission to present its case relative to DFAR Finding 1 (Receipt of Apparent Prohibited Contributions) and Finding 2 (Receipt of Contributions that Exceed Limits). The hearing was granted on February 21, 2014 and has been scheduled for June 12, 2014.

Finding 1 (Receipt of Apparent Prohibited Contributions) is based on CFC receiving prohibited contributions as defined in 11 CFR §110.20. In CFC's request for a hearing, Counsel did not offer an argument for disputing the finding. As such, the Audit staff reiterates its position, presented in the attached DFAR, for concluding the loans were impermissible.

Finding 2 (Receipt of Contributions that Exceed Limits) is based on CFC receiving excessive contributions as defined in 11 CFR §110.1. In CFC's request for a hearing, Counsel stated that the remaining excessive contributions (\$10,050) have already been repaid and additional refunds are not needed.

The Audit staff requested copies of canceled checks and bank statements to demonstrate that the refunds had been made to the contributors. Counsel provided an email stating that CFC had made a payment to one contributor (Contributor A), who then paid other individuals who had loaned the candidate funds. CFC also provided a declaration from Contributor A stating that the other individuals were paid in accordance with the amounts they were owed. According to that declaration, the detailed records of these transactions were accidentally deleted when Contributor A switched computers.

The Audit staff does not consider that CFC has provided sufficient documentation, as noted above, to demonstrate that the excessive contributions (\$10,050) were repaid to the original contributors.

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.

Attachments:

- Draft Final Audit Report on Canseco for Congress
- Office of General Counsel Legal Analysis, dated February 7, 2013
- Office of General Counsel Legal Analysis, dated November 25, 2013
- Canseco for Congress - Request for Hearing, dated February 19, 2014

cc: Office of General Counsel



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.¹ 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 principal campaign committee for Francisco R. Canseco, Republican candidate for the U.S. House of Representatives from the State of Texas, 23rd District, headquartered in San Antonio, Texas. For more information, see the chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 972,233
○ Contributions from Other Political Committees	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)

¹ 2 U.S.C. §438(b).

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

(January 1, 2009 - December 31, 2010)

Draft



Table of Contents

Page

Part I. Background

Authority for Audit	1
Scope of Audit	1

Part II. Overview of Campaign

Campaign Organization	2
Overview of Financial Activity	2

Part III. Summaries

Findings and Recommendations	3
------------------------------	---

Part IV. Findings and Recommendations

Finding 1. Receipt of Apparent Prohibited Contributions	4
Finding 2. Receipt of Contributions that Exceed Limits	9
Finding 3. Misstatement of Financial Activity	12

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

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

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 0
Receipts	
○ Contributions from Individuals	972,233
○ Contributions from Other Political Committees	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
Cash-on-hand @ December 31, 2010	\$ 79,452

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").² 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.³ 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.

² Caza is a foreign national corporation registered in Mexico.

³ 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;⁴ 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 \$41,395⁵ 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

⁴ 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.

⁵ 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.^{6,7}

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.

⁶ 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.

⁷ 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 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 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 \$147,600⁸ 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,

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

CFC's receipt of these funds results in contributions by three individuals that exceed contribution limits by \$22,743.⁹

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 check¹⁰ 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

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

¹⁰ 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.¹¹

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.

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

2009 Activity			
	Reported	Bank Records	Discrepancy
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)
Net Understatement of Receipts	<u>13,161</u>

The understatement of disbursements resulted from the following:

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

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

2010 Activity			
	Reported	Bank Records	Discrepancy
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	<u>(12,959)</u>
Net Overstatement of Receipts	<u>\$ (324,404)</u>

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	<u>(4)</u>
Net Overstatement of Disbursements	<u>\$ (313,123)</u>

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.¹² 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.

¹² 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.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 7, 2013

MEMORANDUM

TO: Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson *LJS*
Deputy General Counsel - Law

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Danita C. Alberico *dca*
Attorney

SUBJECT: Draft Final Audit Report – Canseco for Congress
(LRA 878)

I. INTRODUCTION

The Office of the General Counsel reviewed the proposed Draft Final Audit Report (“DFAR”) on Canseco for Congress (“Committee”) as well as the response to the Interim Audit Report (“IAR”) submitted by the Committee. We concur with any findings not discussed herein. In this memorandum, we address the receipt of apparent prohibited contributions issue (Finding 1) and concur with the Audit Division. If you have any questions, please contact Danita C. Alberico, the attorney assigned to this audit.

II. THE SOURCE OF FUNDS FOR LOANS TO THE COMMITTEE WAS NOT THE CANDIDATE’S PERSONAL FUNDS

A. Legal and Factual Background

The DFAR examines two transactions totaling \$100,000. The immediate apparent source of the funds is Inmuebles Caza, S.A., de C.V., (“Caza”), a foreign national corporation registered in Mexico. The funds were deposited in the Committee’s bank account in two installments. One

deposit totaling \$14,000 was made by an electronic funds transfer from a Caza account to the Committee's account on January 29, 2010. The Candidate made the second deposit to the Committee's account, totaling \$86,000, using a cashier's check remitted by Caza and payable to the Candidate. The DFAR concludes that the transactions are contributions from a foreign national and therefore prohibited by 2 U.S.C. § 441e.

The Committee contends that the \$100,000 deposited in the Committee's account consisted of loans made by the Candidate to the Committee from his personal funds. The Committee states that \$42,000 of that sum represents the Candidate's "equitable share of assets held by Canseco Investments, Ltd. ("Canseco, Ltd."), less tax liability, which was advanced to him by the company [Canseco, Ltd., presumably]." Letter from Chris K. Gober, Counsel, Canseco for Congress, to T[om] Hintermister dated September 12, 2012 ("Committee Response"). The Committee also indicates that the remaining \$58,000 represents the proceeds of a personal loan that the Candidate received from his sister. The Committee asserts that the funds lent to him by his sister represented her share of assets held by Canseco, Ltd. and that she received the loan against her equitable interest in Canseco, Ltd. under the same conditions as the Candidate. *Id.* at 3-4. The Committee represents that the Candidate and his sister own Canseco, Ltd. along with their other siblings. *Id.* at 2. Canseco, Ltd. is registered in Texas as a domestic limited partnership. The Committee explains that Canseco, Ltd. owns Caza but that because Canseco Ltd. "does not maintain funds in its own bank account . . . all of the expenses and payments on behalf of Canseco [Ltd.] are made directly by Caza in the ordinary course of business." *Id.*

The Committee states that the partners in Canseco, Ltd. intended "to provide the Candidate with access to his equitable share of Canseco [Ltd.'s] assets less the company's projected tax liability upon distribution." Committee Response at 2. The Committee asserts, however, that "due to various tax concerns, the company ultimately made two separate loans to the Candidate with funds maintained in Caza's bank account." *Id.* at 3. The Committee contends that "the funds 'derive from' an asset over which the Candidate had a legal ownership share and equitable interest in [and therefore] they should be treated as personal funds." *Id.* The Committee stated that the loans the Candidate received were secured by his ownership interest in Canseco, Ltd. and that Canseco, Ltd. earned "10-14 [percent] on funds that they otherwise could not distribute." *Id.* The Committee submitted an Internal Revenue Service Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) which identified the Candidate as a partner of Canseco, Ltd., listed his ownership percentage and reflected his ending capital balance in Canseco, Ltd. totaling \$56,772. *Id.* at Attachment A. The K-1 line item ordinarily reflecting a distribution was redacted, and thus we are unable to determine whether Canseco, Ltd. made any distributions to the Candidate. *Id.*

The K-1 did not include any information on Caza. The Committee submitted an affidavit from the President of Caza, Jorge Canseco (the Candidate's brother). The affidavit states that the Candidate owns 12.125% of Canseco Ltd. and that Canseco Ltd. owns 99% of Caza. Affidavit of Jorge Canseco dated September 25, 2012 ("Affidavit"). The Affidavit also states that "loan proceeds were paid [to the Candidate] from Caza's bank account because Canseco [Ltd.] did not maintain the funds in its own bank account." Affidavit at 1. Jorge Canseco attests that the

Candidate was obligated to repay the loan and if he did not do so he would "forfeit his ownership interest in Canseco [Ltd.]" *Id.* at 2. The Affidavit said that Caza made a similar loan payout to the Candidate's sister on behalf of Canseco, Ltd. *Id.*

The issue presented here is whether the actual source of the loan from the Candidate and his sister to the Committee is the Candidate's personal funds when the funds were paid directly by a foreign national corporation, Caza, an asset of a U.S. limited partnership (Canseco, Ltd.) of which the Candidate and his sister are partners. We conclude that the \$100,000 in funds was not a loan from the Candidate to the Committee using his personal funds. Rather, the funds are either foreign national contributions or partnership contributions.

A candidate for Federal office may make unlimited expenditures from personal funds. 11 C.F.R. § 110.10. Personal funds of a candidate consist of assets, income, or jointly owned spousal assets. 11 C.F.R. § 100.33. Assets are "[a]mounts 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) [l]egal and rightful title; or (2) [a]n equitable interest." 11 C.F.R. § 100.33(a). Personal funds may also consist of income received by the Candidate during the current election cycle and includes, among other things, income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments. 11 C.F.R. § 100.33(b)(2).

It is unlawful, however, for a foreign national, directly or indirectly, to make a contribution or donation of money or other value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State or local election. 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). It is also unlawful for a person to solicit, accept, or receive a contribution or donation from a foreign national. 2 U.S.C. § 441e(h). The term "person" includes a corporation or a committee. 2 U.S.C. § 431(11). The term "foreign national" includes a "foreign principal" as defined by 22 U.S.C. § 611(b). *See* 2 U.S.C. § 441e(b)(1). Section 611(b) defines a "foreign principal" to include a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country. *Id.*

A partnership may contribute to a political committee, but a contribution by a partnership shall not exceed the limitations on contributions. 11 C.F.R. § 110.1(e). A contribution by a partnership shall be attributed to the partnership and to each partner in direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate or by agreement of the partners. 11 C.F.R. § 110.1(e). Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and these partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. No portion of such a contribution may be made from the profits of a corporation that is a partner. 11 C.F.R. § 110.1(e).

B. The Candidate's Personal Funds Were Not the Source of the \$100,000 Contribution to the Committee

The IAR sought information from the Committee showing that all or a portion of the \$100,000 deposited in the Committee's account was composed of the Candidate's personal funds consistent with 11 C.F.R. § 100.33. Specifically, the IAR sought evidence such as accounting and/or bank records demonstrating that the true source of the funds was the Candidate's capital account in Canseco, Ltd. *and* that under applicable law and the partnership agreement the Candidate's capital account met the definition of an "asset" in 11 C.F.R. § 100.33(a). Alternatively, the IAR sought evidence demonstrating that the funds paid to the Candidate represented interest, dividends, a profit-sharing distribution, or proceeds from the sale or liquidation of the *Candidate's* assets or other information demonstrating that the funds at issue were the Candidate's personal funds.

The Committee's response describes the flow of funds enabling the Candidate to make the \$100,000 loan to the Committee. The Committee's response also shows that Canseco, Ltd. owns Caza. The Committee's information, however, does not establish that the funds at issue constituted the Candidate's personal funds. The Committee provided a copy of the Candidate's K-1 but did not submit any evidence showing that the payments to the Candidate were drawn from funds in his capital account at Canseco, Ltd., or that the payments represented interest, dividends, a profit-sharing distribution, or proceeds from the sale or liquidation of the Candidate's assets. 11 C.F.R. § 100.33(b)(2).

Rather, the Committee's response and Jorge Canseco's affidavit emphasized that the funds provided to the Candidate were loans. Indeed, the Committee attached promissory notes to its response, reflecting the nature of these funds as loans to the Candidate. Attachment B-E to Committee Response. A loan made by any person, including a partnership or corporation, for the purpose of influencing any election for Federal office is a contribution. 11 C.F.R. § 100.52(a). A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 11 C.F.R. § 100.52(b)(2). Since the \$100,000 in funds that the Candidate received was a loan from either Canseco, Ltd. or Caza, it constitutes a contribution from one of those two entities. Consequently, the funds cannot be considered the Candidate's personal funds within the meaning of 11 C.F.R. § 100.33.¹

¹ With respect to the funds the Candidate received from his sister, if it could be established that \$58,000 loaned to the Candidate from his sister constituted her personal funds, rather than the funds of one of the two entities, our analysis might lead us to conclude that the Committee received an excessive contribution from the Candidate's sister. Although the sister's loan was structured as a personal debt owed by the Candidate to his sister, the funds were deposited directly to the Committee's account after being endorsed by the Candidate. Any candidate who receives a loan for use in connection with his or her campaign is deemed, by operation of law, to do so as an agent of the authorized committee. 2 U.S.C. § 432(e)(2). Accordingly, even if the Commission accepted that the transaction was a loan from the Candidate's sister, the Candidate would have received the loan as the Committee's agent. The loaned funds were directly deposited in the Committee's account and used in connection with the Candidate's election campaign. The funds, therefore, could not be considered the Candidate's personal funds but rather would be an excessive contribution from his sister.

C. Caza, A Foreign National Corporation, Is the Prohibited Source of the Candidate's \$100,000 Contribution to the Committee

We conclude that Caza is the source of the Candidate's \$100,000 loan to the Committee because the funds were, in fact, paid directly from Caza's bank account and Caza is listed as the lender (or co-lender) on the underlying promissory notes.² The Committee claims that the funds paid out of Caza's account are actually Canseco, Ltd. funds because: (1) Canseco, Ltd. owns 99% of Caza; and (2) Caza transacts financial business for Canseco, Ltd. because the partnership does not "maintain funds" in its bank account. The percentage of ownership by an American parent company of a foreign subsidiary and where the companies maintain their funds are not factors in determining foreign national status. *See* 2 U.S.C. § 441e(b)(1) and 22 U.S.C. §611(b). Caza is organized under the laws of Mexico, and it provided \$100,000 to the Candidate and his sister in connection with the Candidate's U.S. Congressional election campaign. Since Section 441e prohibits contributions by a foreign national through any other person, and since Caza is both a person, 2 U.S.C. § 431(11), and a foreign national by application of 22 U.S.C. § 611(b)(3), it follows that funds loaned by Caza to the Candidate and his sister, directly or indirectly, constituted an impermissible contribution in connection with a Federal election. We conclude that the \$100,000 in funds originating from Caza and deposited in the Committee's account did not lose their character as foreign national contributions merely because Caza is an asset held by a U.S. limited partnership. Therefore, we concur with the Audit Division that Caza, as a foreign national company, made a \$100,000 contribution to the Committee in violation of 2 U.S.C. § 441e.

The Committee's response, however, contends that the source of the \$100,000 was loans made to the Candidate and his sister from their partnership – Canseco, Ltd – and not Caza. Even if we accept as true that the funds constituted loans from Canseco, Ltd., we would conclude that the partnership made a prohibited excessive contribution to the Committee, as discussed in Section D, below.

D. If Canseco, Ltd. Funded the Loans then the Partnership Made an Apparent Excessive Contribution to the Committee

As discussed in Section B, above, a contribution is defined to include a loan and a loan is a contribution at the time it is made. *See* 2 U.S.C. § 431(8)(A)(1) and 11 C.F.R. § 100.52(b)(2). The Commission has consistently treated a contribution by a business owner that is funded by a loan from the business as a contribution by the business. In MUR 3191 (Christmas Farm, Inc., *et al.*), the Commission determined that there was probable cause to believe that a candidate's contribution to his campaign of \$209,000 that he withdrew from a corporation, of which he was a 50% shareholder, constituted contributions by the corporation because the draws were against his

² Canseco Ltd. and Caza are listed as co-lenders on a \$30,000 promissory note issued to the Candidate dated January 28, 2010. Att. B to Committee Response. Caza is listed as the sole lender on a \$28,000 note to the Candidate dated April 12, 2010, and on a \$58,000 note to the Candidate's sister also dated April 12, 2010. Att. C-D to Committee Response. The sister, in turn, is listed as the lender on a \$58,000 note from the sister to the Candidate dated April 12, 2010. Att. E to Committee Response.

personal equity in the corporation (indicating that his equity served as collateral for a loan) rather than a reduction of his equity interest (which would have constituted a withdrawal of his own funds). The withdrawal thereby had the effect of a loan from a repayable drawing account and, indeed, the corporation recorded the transaction as a loan. *See* Factual and Legal Analysis, MUR 3191 (Christmas Farm, Inc., *et al.*); *see also* MUR 3119 (Edmar Corp.) (finding probable cause to believe that corporation contributed to a candidate, a shareholder of the corporation, by loaning the shareholder/candidate \$266,000 that the candidate then contributed to his campaign).³

The Committee characterizes the funds provided to the Candidate and his sister as loans from Canseco, Ltd. to be repaid with interest. The Committee admits that the sums were not distributions and that the Candidate's and his sister's ownership interest in Canseco, Ltd. were merely held as security against the loans in the event of default. In fact, Jorge Canseco said that "the amount of the *loan* was determined by the company's accountants (Canseco, Ltd., presumably) to ensure that the value of the *loan* did not exceed the cash value of [the Candidate's] ownership interest in [Canseco, Ltd.], less the amount of taxes the company would owe *were it to make a distribution of the funds maintained in Caza's bank account.*" Affidavit at 2. (Emphasis added). Thus, even if we accept as true that the source of the loans was Canseco, Ltd., rather than Caza, based on the Commission precedent discussed above, we would nevertheless conclude that Canseco, Ltd. made an excessive contribution to the Committee in violation of 11 C.F.R. §§ 110.1(b)(1) and 110.1(e).⁴

³ The Commission has also consistently applied these principles in its advisory opinions. The Commission has evaluated in each case whether a proposed transaction constituted a loan from a business to the contributor to make a contribution, in which case the request was denied, or whether the proposed transaction constituted the routine and irreversible payment of income to the contributor, in which case the request was approved. *See, e.g.*, Advisory Op. 2005-20 (Pillsbury, Winthrop, Shaw, Pittman, LLP) at 3 & n.3 (systematic monthly distributions of actual or anticipated partner profits to partners based on their assigned share of the profits become the personal assets of the partners and, if used for contributions, would not constitute contributions by the partnership); Advisory Op. 1997-09 (Chicago Board of Trade) (no prohibited corporate contributions or contributions in the name of another if traders used their personal trading account to make contributions so long as the trader's firm did not extend credit or advance funds to the trader "and thus make the contribution itself"); Advisory Op. 1984-10 (Arnold & Porter LLP) (Commission denied request by law firm to pay for contributions made in the name of its partners that would subsequently be deducted from the partners' quarterly income distribution).

⁴ If the \$100,000 is treated as a partnership contribution, the amount attributable to the Candidate in accordance with Section 110.1(e) would not be excessive because a candidate can make unlimited expenditures from personal funds under Section 110.10. However, the amount attributable to the partnership itself would be excessive, and the amounts attributable to the other individual partners in Canseco, Ltd. would potentially be excessive depending on the total number of non-corporate partners, their respective share of the partnership profits and any other contributions they previously made, respectively, affecting their contributions limits for the Candidate. *See* 11 C.F.R. §§ 110.1(e) and 110.1(b).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

November 25, 2013

MEMORANDUM

TO: Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson *LJS*
Deputy General Counsel - Law

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Danita C. Alberico *DCA*
Attorney

SUBJECT: Audit Division Resubmission of the Draft Final Audit Report on Canseco for Congress (LRA 878)

The Office of the General Counsel ("OGC") reviewed the resubmitted Draft Final Audit Report ("DFAR") on Canseco for Congress ("Committee"), the Committee's response to the Interim Audit Report ("IAR"), and additional documentation and information that the Committee submitted subsequent to its IAR response. The resubmitted DFAR contains the same three findings as the original DFAR: Receipt of Apparent Prohibited Contributions (Finding 1); Receipt of Apparent Excessive Contributions (Finding 2); and Misstatement of Financial Activity (Finding 3).

The Audit Division resubmitted the DFAR to OGC because the Committee's additional documentation and information caused the Audit Division to make significant changes to the amounts at issue in each of the findings as well as to the classification of some of the items at issue. The Committee did not raise any new or additional legal arguments in its subsequent submission of additional documentation and information and, despite the extent of the Audit Division's changes to the DFAR, the changes do not present any new or additional legal issues. Thus, we incorporate herein our legal analysis of February 7, 2013 on the original DFAR and concur with the resubmitted DFAR. We recommend that the Audit Division attach and forward to the Commission and the Committee this memorandum along with our prior legal analysis. If you have any questions, please contact Danita C. Alberico, the attorney assigned to this audit.

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February 19, 2014

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

Re: Draft Final Audit Report of the Audit Division for Canseco for Congress

Dear Mr. Hintermister:

Canseco for Congress (the "Committee") is in receipt of the Federal Election Commission's Draft Final Audit Report ("DFAR") regarding the audit of Canseco for Congress's records from January 1, 2009 – December 31, 2010. The Committee, through counsel, hereby requests a hearing prior to the Commission's adoption of a Final Audit Report to specifically dispute two DFAR findings.

First, the Committee wishes to dispute the Commission's finding that two contributions totaling \$100,000 appear to be prohibited contributions from a foreign national corporation. Second, the Committee wishes to dispute the Commission's finding that it must refund \$10,050 in funds to certain contributors because these funds have already been repaid.

Thank you for your consideration of this request. If you require additional information, or if I can be of any assistance, then I can be reached at (512) 354-1783.

Sincerely,



Chris K. Gober
Counsel, Canseco for Congress

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