



**New York City Campaign Finance Board**  
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Via C-Access  
July 8, 2016

Janet A. McDowell  
Levine 2013



Dear Janet McDowell:

Please find attached the New York City Campaign Finance Board's ("CFB" or "Board") Final Audit Report for the 2013 campaign of Mark D. Levine (the "Campaign"). CFB staff prepared the report based on a review of the Campaign's financial disclosure statements and documentation submitted by the Campaign.

This report incorporates the Board's final determination of November 12, 2015. The report concludes that the Campaign did not fully demonstrate compliance with the requirements of the Campaign Finance Act (the "Act") and Board Rules (the "Rules").

As detailed in the attached Final Board Determination, the Campaign was assessed penalties totaling \$2,593.

<u>CATEGORY</u>	<u>AMOUNT</u>
Penalties Assessed	\$2,593
Amount previously paid	(\$2,093)
<u>Total Owed</u>	<u>\$500<sup>1</sup></u>

<sup>1</sup> On July 5, 2016, the Campaign submitted a check of \$500 for the penalties assessed. The check has not cleared the bank as of the date of this Final Audit Report. The Campaign will be deemed paid in full upon clearance of the check.

The full amount owed must be paid no later than **August 8, 2016**. Please send a check in the amount of \$500, payable to the “New York City Election Campaign Finance Fund,” to: New York City Campaign Finance Board, 100 Church Street, 12th Floor, New York, NY 10007.

If the CFB is not in receipt of the full amount owed by **August 8, 2016**, the Candidate’s name and the amount owed will be posted on the CFB’s website. The CFB may also initiate a civil action to compel payment. In addition, the Candidate will not be eligible to receive public funds for any future election until the full amount is paid. Further information regarding liability for this debt can be found in the attached Final Board Determination.

The January 15, 2014 disclosure statement (#16) was the last disclosure statement the Campaign was required to file with the CFB for the 2013 elections. If the Campaign raises additional contributions to pay outstanding liabilities, please note that all 2013 election requirements, including contribution limits, remain in effect. The Campaign is required to maintain its records for six years after the election, and the CFB may require the Campaign to demonstrate ongoing compliance. *See* Rules 3-02(b)(3), 4-01(a), and 4-03. In addition, please contact the New York State Board of Elections for information concerning its filing requirements.


The CFB appreciates the Campaign’s cooperation during the 2013 election cycle. Please contact the Audit Unit at 212-409-1800 or [AuditMail@nyccfb.info](mailto:AuditMail@nyccfb.info) with any questions about the enclosed report.


Sincerely,



Signature on original

Sauda S. Chapman  
Director of Auditing and Accounting

c: Mark D. Levine  


Levine 2013  


Attachments



# **EC2013 Final Audit Report**

Levine 2013

July 2016

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## **RESULTS IN BRIEF**

The results of the New York City Campaign Finance Board’s (“CFB” or “Board”) review of the reporting and documentation of the 2013 campaign of Mark D. Levine (the “Campaign”) indicate findings of non-compliance with the Campaign Finance Act (the “Act”) and Board Rules (the “Rules”) as detailed below:

### ***Disclosure Findings***

Accurate public disclosure is an important part of the CFB’s mission. Findings in this section relate to the Campaign’s failure to completely and timely disclose the Campaign’s financial activity.

- The Campaign did not report or inaccurately reported financial transactions to the Board (see Finding #1).
- The Campaign did not file the required daily disclosure statements during the two weeks preceding the 2013 general election (see Finding #2).
- The Campaign did not disclose payments made by its vendors to subcontractors (see Finding #3).
- The Campaign did not properly disclose transferred funds (see Finding #4).

### ***Contribution Findings***

All campaigns are required to abide by contribution limits and adhere to the ban on contributions from prohibited sources. Further, campaigns are required to properly disclose and document all contributions. Findings in this section relate to the Campaign’s failure to comply with the requirements for contributions under the Act and Rules.

- The Campaign accepted a contribution from a prohibited source (see Finding #5).
- The Campaign accepted aggregate contributions exceeding the \$2,750 contribution limit for the 2013 election cycle (see Finding #6).
- The Campaign accepted a contribution from an unregistered political committee. (see Finding #7).
- The Campaign did not disclose in-kind contributions received (see Finding #8).

### *Expenditure Findings*

Campaigns participating in the Campaign Finance Program are required to comply with the spending limit. All campaigns are required to properly disclose and document expenditures and disburse funds in accordance with the Act and Rules. Findings in this section relate to the Campaign's failure to comply with the Act and Rules related to its spending.

- The Campaign did not properly report and/or document its joint expenditures (see Finding #9).
- The Campaign made expenditures that were not in furtherance of the Campaign (see Finding #10).
- The Campaign made post-election expenditures that are not permissible (see Finding #11).
- The Campaign exceeded the \$168,000 expenditure limit for the primary election (see Finding #12).

### *Other Findings*

- The Campaign commingled 2013 election cycle receipts and expenditures with receipts and expenditures from a previous election (see Finding #13).

## BACKGROUND

The Campaign Finance Act of 1988, which changed the way election campaigns are financed in New York City, created the voluntary Campaign Finance Program. The Program increases the information available to the public about elections and candidates' campaign finances, and reduces the potential for actual or perceived corruption by matching up to \$175 of contributions from individual New York City residents. In exchange, candidates agree to strict spending limits. Those who receive funds are required to spend the money for purposes that advance their campaign.

The CFB is the nonpartisan, independent city agency that administers the Campaign Finance Program for elections to the five offices covered by the Act: Mayor, Public Advocate, Comptroller, Borough President, and City Council member. All candidates are required to disclose all campaign activity to the CFB. This information is made available via the CFB's online searchable database, increasing the information available to the public about candidates for office and their campaign finances.

All candidates must adhere to strict contribution limits and are banned from accepting contributions from corporations, partnerships, and limited liability companies. Additionally, participating candidates are prohibited from accepting contributions from unregistered political committees. Campaigns must register with the CFB, and must file periodic disclosure statements reporting all financial activity. The CFB reviews these statements after they are filed and provides feedback to the campaigns.

The table below provides detailed information about the Campaign:

Name: Mark D. Levine	Contribution Limit:
ID: 311	\$2,750
Office Sought: City Council	
District: 07	Expenditure Limit:
	2010–2012: \$45,000
Committee Name: Levine 2013	2013 Primary: \$168,000
Classification: Participant	2013 General: \$168,000
Certification Date: June 4, 2013	
	Public Funds:
Ballot Status: Primary, General	Received: \$92,400
Primary Election Date: September 10, 2013	Returned: \$0
General Election Date: November 5, 2013	
Party: Democratic, Working Families	Campaign Finance Summary:
	<a href="http://bit.ly/1yS2wsE">http://bit.ly/1yS2wsE</a>

## SCOPE AND METHODOLOGY

Pursuant to Admin. Code § 3-710(1), the CFB conducted this audit to determine whether the Campaign complied with the Act and Rules. Specifically, we evaluated whether the Campaign:

- Accurately reported financial transactions and maintained adequate books and records.
- Adhered to contribution limits and prohibitions.
- Disbursed funds in accordance with the Act and Rules.
- Complied with expenditure limits.
- Received the correct amount of public funds, or whether additional funds are due to the Campaign or must be returned.

Prior to the election, we performed preliminary reviews of the Campaign's compliance with the Act and Rules. We evaluated the eligibility of each contribution for which the Campaign claimed matching funds, based on the Campaign's reporting and supporting documentation. We also determined the Candidate's eligibility for public funds by ensuring the Candidate was on the ballot for an election, was opposed by another candidate on the ballot, and met the two-part threshold for receiving public funds. In January of 2013, we requested all bank statements to date from the Campaign and reconciled the activity on the statements provided to the Campaign's reporting. We then provided the results of this preliminary bank reconciliation to the Campaign on April 22, 2013. Based on various criteria, we also selected the Campaign for an onsite review, and visited the Campaign's location to observe its activity and review its recordkeeping. After the election, we performed an audit of all financial disclosure statements submitted for the election (see summary of activity reported in these statements at Appendix #1).

To verify that the Campaign accurately reported and documented all financial transactions, we requested all of the Campaign's bank statements and reconciled the financial activity on the bank statements to the financial activity reported on the Campaign's disclosure statements. We identified unreported, misreported, and duplicate disbursements, as well as reported disbursements that did not appear on the Campaign's bank statements. We also calculated debit and credit variances by comparing the total reported debits and credits to the total debits and credits amounts appearing on the bank statements. Because the Campaign reported that more than 25% of the dollar amount of its total contributions were in the form of credit card contributions—or had a variance between the total credit card contributions reported and the credits on its merchant account statements of more than 4%—we reconciled the transfers on the submitted merchant account statements to the deposits on the bank account statements.

As part of our reconciliation of reported activity to the bank statements the Campaign provided, we determined whether the Campaign properly disclosed all bank accounts. We also determined if the Campaign filed disclosure statements timely and reported required activity daily during the



two weeks before the election. Finally, we reviewed the Campaign's reporting to ensure it disclosed required information related to contribution and expenditure transactions, such as intermediaries and subcontractors.

To determine if the Campaign adhered to contribution limits and prohibitions, we conducted a comprehensive review of the financial transactions reported in the Campaign's disclosure statements. Based on the Campaign's reported contributions, we assessed the total amount contributed by any one source and determined if it exceeded the applicable limit. We also determined if any of the contribution sources were prohibited. We reviewed literature and other documentation to determine if the Campaign accounted for joint activity with other campaigns.

To ensure that the Campaign disbursed funds in accordance with the Act and Rules, we reviewed the Campaign's reported expenditures and obtained documentation to assess whether funds were spent in furtherance of the Candidate's nomination or election. We also reviewed information from the New York State Board of Elections and the Federal Election Commission to determine if the Candidate had other political committees active during the 2013 election cycle. We determined if the Campaign properly disclosed these committees, and considered all relevant expenditures made by such committees in the assessment of the Campaign's total expenditures.

We requested records necessary to verify that the Campaign's disbursement of public funds was in accordance with the Act and Rules. Our review ensured that the Campaign maintained and submitted sufficiently detailed records for expenditures made in the election year that furthered the Candidate's nomination and election, or "qualified expenditures" for which public funds may be used. We specifically omitted expenditures made by the Campaign that are not qualified as defined by the Campaign Finance Act § 3-704.

We also reviewed the Campaign's activity to ensure that it complied with the applicable expenditure limits. We reviewed reporting and documentation to ensure that all expenditures—including those not reported, or misreported—were attributed to the period in which the good or service was received, used, or rendered. We also reviewed expenditures made after the election to determine if they were for routine activities involving nominal costs associated with winding up a campaign and responding to the post-election audit.

To ensure that the Campaign received the correct amount of public funds, and to determine if the Campaign must return public funds or was due additional public funds, we reviewed the Campaign's eligibility for public matching funds, and ensured that all contributions claimed for match by the Campaign were in compliance with the Act and Rules. We determined if the Campaign's activity subsequent to the pre-election reviews affected its eligibility for payment. We also compared the amount of valid matching claims to the amount of public funds paid pre-election and determined if the Campaign was overpaid, or if it had sufficient matching claims, qualified expenditures, and outstanding liabilities to receive a post-election payment. As part of this review, we identified any deductions from public funds required under Rule 5-01(n).

We determined if the Campaign met its mandatory training requirement based on records of training attendance kept throughout the 2013 election cycle. Finally, we determined if the Campaign submitted timely responses to post-election audit requests sent by the CFB.

Following an election, campaigns may only make limited winding up expenditures and are not going concerns. Because the activity occurring after the post-election audit is extremely limited, the audit focused on substantive testing of the entire universe of past transactions. The results of the substantive testing served to establish the existence and efficacy of internal controls. The CFB also publishes and provides to all campaigns guidance regarding best practices for internal controls.

To determine if contributors were prohibited sources, we compared them to entities listed in the New York State Department of State's Corporation/Business Entity Database. Because this was the only source of such information, because it was neither practical nor cost effective to test the completeness of the information, and because candidates could provide information to dispute the Department of State data, we did not perform data reliability testing. To determine if reported addresses were residential or commercially zoned within New York City, we compared them to a database of addresses maintained by the New York City Department of Finance. Because this was the only source of such data available, because it was not cost effective to test the completeness of the information, and because campaigns had the opportunity to dispute residential/commercial designations by providing documentation, we did not perform data reliability testing.

In the course of our reviews, we determined that during the 2013 election cycle a programming error affected C-SMART, the application created and maintained by the CFB for campaigns to disclose their activity. Although the error was subsequently fixed, we determined that certain specific data had been inadvertently deleted when campaigns amended their disclosure statements and was not subsequently restored after the error was corrected. We were able to identify these instances and did not cite exceptions that were the result of the missing data or recommend violations to the Board. The possibility exists, however, that we were unable to identify all data deleted as a result of this error.

The CFB's Special Compliance Unit investigated any complaints filed against the Campaign that alleged a specific violation of the Act or Rules. The Campaign was sent a copy of all formal complaints made against it, as well as relevant informal complaints, and was given an opportunity to submit a response.

The Campaign was provided with a preliminary draft of this audit report and was asked to provide a response to the findings. The Campaign responded, and the CFB evaluated any additional documentation provided and/or amendments to reporting made by the Campaign in response. The Campaign was subsequently informed of its alleged violations and obligation to repay public funds, and was asked to respond. The Campaign responded and the CFB evaluated any additional information provided by the Campaign. CFB staff recommended that the Board find that the Campaign committed violations subject to penalty. The Campaign chose not to contest the CFB staff recommendations. The Board's actions are summarized as a part of each Finding in the Audit Results section. The finding numbers and exhibit numbers, as well as the

number of transactions included in the findings, may have changed from the Draft Audit Report to the Final Audit Report.

## COMPLAINTS

On November 1, 2013, E. O'Brien Murray filed a complaint against the Campaign, alleging that it coordinated in purported independent expenditures made in support of the Campaign by United for the Future and New Yorkers for Clean, Livable and Safe Streets, Inc. ("NYCLASS"), two independent spenders registered with the Board.<sup>2</sup> In support of the allegation, the complaint cited the relationships between the Campaign, the independent spenders, and The Advance Group (a/k/a Strategic Consultants), as well as media accounts of the expenditures at issue.

CFB staff provided the Campaign with a copy of the complaint and an opportunity to respond. However, a response was not required as the allegations in the complaint regarding the Campaign concerned issues that were the subject of an ongoing inquiry.

On May 21, 2014, the Board determined that the expenditures by NYCLASS in support of the Campaign were not independent of the Campaign, due to both parties' relationship with The Advance Group. See [Final Board Determination \(May 21, 2014\)](#).<sup>3</sup>

While the complaint remains open due to the various parties and issues that were implicated, CFB staff is prepared to recommend that the Board determine that the allegations concerning the Campaign have been resolved.

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<sup>2</sup> The complaint was filed against several parties. However, only the allegations relating to the Campaign are discussed herein.

<sup>3</sup> [http://www.nyccfb.info/pdf/press/140516\\_Press\\_Memo\\_Levine.pdf](http://www.nyccfb.info/pdf/press/140516_Press_Memo_Levine.pdf).

## OTHER MATTERS

On September 8, 2013, New Yorkers for Clean, Livable and Safe Streets (“NYCLASS”) reported independent expenditures on behalf of the Campaign in the amount of \$8,436. On September 9, CFB staff sent a letter to the Campaign citing Board Rule 1-08(f)(1)(v) and noting that, based on The Advance Group’s (“TAG”) relationships with both the Campaign and NYCLASS, any expenditures made by NYCLASS on behalf of the Campaign would likely be deemed non-independent. The letter further reminded the Campaign that non-independent expenditures made on its behalf would be considered in-kind contributions and subject to the contribution and expenditure limits of the Act.

On October 1, 2013, CFB staff sent the Campaign a Notice of Alleged Violations and Recommended Penalties (“Penalty Notice”) recommending that the Board find that the expenditures made by NYCLASS were not independent and therefore constituted an over-the-limit in-kind contribution from a prohibited source, *i.e.*, a corporation. The Campaign contested the staff’s recommendation and requested that this matter be heard before the Office of Administrative Trials and Hearings (OATH). On March 3, 2014, CFB staff served the Campaign with an OATH petition recommending a penalty of \$8,686 for accepting and failing to report an over-the-limit contribution from a prohibited source. The petition also recommended separate violations and penalties against co-respondents TAG and NYCLASS.

On March 28, 2014, the Campaign’s attorney, Laurence Laufer, submitted a letter to CFB staff on behalf of the Campaign. The letter stated that the Campaign had no dealings with NYCLASS other than participating in its endorsement process and that the Campaign did not suggest, request, or authorize any expenditures by NYCLASS. On April 10, CFB staff informed the Campaign that it would be removed as a party to the OATH proceeding, though the proceeding would remain pending against TAG and NYCLASS. On April 14, the Campaign waived its right to adjudication before OATH and stated that it would not contest CFB staff’s recommendation to the Board. The matter was subsequently considered at the Board’s May 21 meeting.

The Board found that NYCLASS’s expenditures were not independent of the Campaign, due to both parties’ relationships with TAG. Because the Campaign received the benefit of these expenditures, the Board determined that the Campaign had accepted and failed to report an over-the-limit contribution from a prohibited source, and assessed a penalty of \$250 plus the amount of the expenditures ( $\$250 + \$8,436 = \$8,686$ ). See [Final Board Determination \(May 21, 2014\)](#). Because the Board found credible the Campaign’s assertion that it was unaware of NYCLASS’s activities, the Board determined that this matter, with respect to the Campaign, had been fully resolved. Accordingly, the Board determined that no other compliance ramification or public funds determination related to these expenditures would be included in the Campaign’s audit for the 2013 elections. The expenditure limit calculation thus does not include NYCLASS’s expenditures as a campaign expenditure.

## AUDIT RESULTS

### *Disclosure Findings*

#### 1. Financial Disclosure Reporting - Discrepancies

Campaigns are required to report every disbursement made, and every contribution, loan, and other receipt received. *See* Admin. Code § 3-703(6); Rule 3-03. In addition, campaigns are required to deposit all receipts into an account listed on the candidate's Certification. *See* Admin. Code § 3-703(10); Rule 2-06(a). Campaigns are also required to provide the CFB with bank records, including periodic bank statements and deposit slips. *See* Admin. Code §§ 3-703(1)(d), (g); Rules 4-01(a), (b)(1), (f).

The Campaign provided the following bank statements:

BANK	ACCOUNT #	ACCOUNT TYPE	STATEMENT PERIOD
JP Morgan Chase	XXXXXX1880	Checking	Aug 2012 – Jul 2015
First Data Merchant Services	XXXXXXXXXX9883	Merchant	Dec 2012 – Feb 2014
Litle & Co. Funds	XXXXX5758	Merchant	April 16, 2013 – Jul 2015

Below are the discrepancies and the additional records needed, as identified by a comparison of the records provided and the activity reported by the Campaign on its disclosure statements.

a) The Campaign must provide the bank statements listed below:

BANK	ACCOUNT #	STATEMENT PERIOD
ActBlue <sup>4</sup>	Unknown	Inception – Present

b) The Campaign did not report the following transaction that appears on its bank statements:

ACCOUNT #	NAME	CHECK No./ TRANSACTION	PAID DATE	AMOUNT	NOTES
XXXXXX1880	Duane Reade	Debit	05/31/13	\$13.05	(1)

(1) The amount of the unreported transaction was added to the Campaign's primary election expenditure limit calculation (see also Finding #12 and Exhibit II).

<sup>4</sup> This account is the payment gateway for the Litle & Co. merchant account.

c) The Campaign reported the following transactions that do not appear on its bank statements:

NAME	CHECK NO./ TRANSACTION	STATEMENT/ SCHEDULE/ TRANSACTION	PAID DATE	AMOUNT	NOTES
Berlin Rosen, LTD	1041	9/F/R0001382	06/06/13	\$1,800.00	
The Advance Group	1155	13/F/R0002298	09/24/13	\$4,000.00	(1)
<b>Total</b>				<b>\$5,800.00</b>	

(1) The amount of this uncleared transaction was deducted from the Campaign's primary election expenditure limit calculation (see also Finding #12 and Exhibit II).

d) The Campaign did not properly report the transactions listed below.

NAME	CHECK NO./ TRANSACTION	PAID DATE	REPORTED AMOUNT	ACTUAL AMOUNT	DIFFERENCE	NOTES
Reznick, Jonathan	6/F/R0000437	12/16/12	\$175.00	\$275.00	\$100.00	
Duane Reade	9/F/R0001327	05/28/13	\$3.26	\$12.60	\$9.34	
<b>Total</b>					<b>\$109.34</b>	(1)

(1) The net difference between the reported and actual amounts listed below was added to the Campaign's primary election expenditure limit calculation (see also Finding #12 and Exhibit II).

### Previously Provided Recommendation

a) The Campaign must provide all pages of the requested bank statements.

b) The Campaign must amend its disclosure statements to report these transactions. The Campaign must also provide documentation for each transaction. Because bank statements provide limited information about a transaction, the Campaign should review invoices or other records to obtain all of the information necessary to properly report the transaction.

c) For each transaction reported in the Campaign's disclosure statements that does not appear on the Campaign's bank statements, the Campaign must provide evidence to show that the transaction cleared the bank (i.e., a copy of the front and back of the check, and the bank statement showing the payment). Alternatively, the Campaign may provide evidence that the transaction was reported in error, or amend the Campaign's disclosure statement to void the



check. For each voided check, the Campaign must either issue a replacement check or forgive the expenditure payment. Any forgiven liabilities will be considered in-kind contributions, which could result in contribution limit violations, or be considered contributions from a prohibited source. The Campaign may need to contact the payee to determine why the transaction did not clear.

d) For inaccurately reported transactions, the Campaign must amend its disclosure statements to accurately report the transactions.

Please note that any newly entered transactions that occurred during the election cycle (01/12/10—01/11/14) will appear as new transactions in an amendment to Disclosure Statement 16, even if the transaction dates are from earlier periods. Any transactions dated after the election cycle will appear in disclosure statements filed with the New York State Board of Elections. Also note that the Campaign must file an amendment for each disclosure statement in which transactions are being modified. Once all data entry is completed, the Campaign should run the Modified Statements Report in C-SMART to identify the statements for which the Campaign must submit amendments. The C-SMART draft and final submission screens also display the statement numbers for which the Campaign should file amendments. If the Campaign added any new transactions, it must submit an amendment to Disclosure Statement 16.<sup>5</sup>

### **Campaign's Response**

a) In response to the Draft Audit Report, the Campaign stated that the ActBlue account was active only from April 20, 2013 through September 2, 2013; it also provided a spreadsheet of transactions processed via ActBlue. In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign provided a letter from ActBlue stating that it deactivated the Campaign's account on December 16, 2013. However, the Campaign failed to provide monthly statements from ActBlue.

b) In response to the Draft Audit Report, the Campaign amended its disclosure statements to report several transactions cited in the Draft Audit Report. However, the Campaign failed to report one transaction.

c) In response to the Draft Audit Report, the Campaign stated it addressed the cited transactions. Of the seven transactions cited in the Draft Audit Report as uncleared, the Campaign deleted five transactions. Three of these transactions were wage payments, for which the Campaign stated it was not able to find the workers to reissue new checks. Therefore, the Campaign considered those workers volunteers. However, because the workers performed services with the expectation of receiving payment, their services are considered in-kind contributions pursuant to Admin. Code § 3-702(8) and Advisory Opinion 2003-1. Of the remaining deleted transactions, the Campaign stated it recorded a payment to Broadway Hardware in error and subsequently deleted it; however, the Campaign failed to demonstrate that the expenditure payment occurred in error or

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<sup>5</sup> If the Campaign amends its reporting with the CFB, it must also submit amendments to the New York State Board of Elections.



that the expenditure did not occur. Berlin Rosen returned its \$1,880 payment with a statement that it had mistakenly issued the invoice and the Campaign did not owe any amount; the Campaign did not void this transaction from its reporting. The Campaign stated that it did not deliver the \$4,000 check to the Advance Group; while the vendor provided a statement that it is not owed this amount, the Campaign did not delete the transaction from its reporting.

d) In response to the Draft Audit Report, the Campaign stated that it amended its disclosure statements to accurately report the transactions. However, the reporting did not reflect these changes.

**Board Action**

a) The Board found the Campaign in violation and assessed \$50 in penalties.

b – d) The Board has taken no further action on this matter other than to make this a part of the Candidate’s record with the Board.

**2. Daily Pre-Election Disclosure – Statements of Contributions/Expenditures**

During the 14 days preceding an election, if a candidate: (1) accepts a loan, contribution, or contributions from a single source in excess of \$1,000; or (2) makes aggregate expenditures to a single vendor in excess of \$20,000, the candidate shall report such contributions, loans, and expenditures to the Board in a disclosure, received by the Board within 24 hours of the reportable transaction. *See* Rule 3-02(e). This includes additional payments of any amount to vendors who have received aggregate payments in excess of \$20,000 during the course of the election cycle. These contributions and expenditures must also be reported in the Campaign’s next disclosure statement.

The Campaign did not file the required daily disclosure to report the following transaction:

CONTRIBUTION(S)/LOAN(S):

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	RECEIVED DATE	AMOUNT	NOTES
New York State Laborers’ PAC	15/ABC/R0002373	11/04/13	\$2,750.00	(1)

(1) The disclosure was filed 2 days after the date of the election. A daily disclosure statement that is filed after the election is considered a failure to file.

**Previously Provided Recommendation**

If the Campaign believes it filed the required daily disclosure timely, as part of its response it must submit the C-SMART disclosure statement confirmation email as proof of the submission.

The Campaign may provide an explanation if it believes that its failure to file the daily disclosure is not a violation, but it cannot file daily pre-election disclosures now.

### **Campaign's Response**

In response to the Draft Audit Report, the Campaign stated that it attempted to submit a daily pre-election disclosure but experienced technical difficulties with C-SMART which prevented it from reporting this activity. However, there is no record that the Campaign contacted the CFB regarding this issue or any CFB record of a technical problem with C-SMART during this time.

### **Board Action**

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

### **3. Disclosure – Possible Subcontractors**

Subcontractors are vendors that a campaign's vendor hires to supply goods/services. If a vendor hired by a campaign pays a subcontractor more than \$5,000, the campaign must report the vendor, the name and address of the subcontractor, the amounts paid to the subcontractor, and the purpose of the subcontracted goods/services. *See* Rule 3-03(e)(3).

The vendors listed below received large payments and may have subcontracted goods and services. However, the Campaign did not report subcontractors used by these vendors:

PAYEE	AMOUNT PAID
Berlin Rosen, LTD	\$86,356.87
The Advance Group	\$36,637.75

### **Previously Provided Recommendation**

The Campaign must contact the vendors, who must verify whether subcontractors were used. The Campaign may provide the vendor with a copy of the Subcontractor Form (available on the CFB website at [http://www.nyccfb.info/PDF/forms/subcontractor\\_disclosure\\_form.pdf](http://www.nyccfb.info/PDF/forms/subcontractor_disclosure_form.pdf)) for this purpose, and submit the completed form with the Campaign's response. In addition, if subcontractors were used and paid more than \$5,000, the Campaign must amend its disclosure statements to report subcontractor information. If the vendor does not complete the Subcontractor Form, the Campaign should submit documentation of its attempts to obtain this information, including copies of certified mail receipts and the letters sent to the vendors.

### Campaign's Response

In response to the Draft Audit Report, the Campaign provided a Subcontractor Form from Berlin Rosen, LTD, which documented that it subcontracted to Westerleigh Concepts. The Campaign also provided a Subcontractor Form from The Advance Group stating that it subcontracted \$7,033.80 to Westerleigh Concepts. However, the Campaign did not amend its disclosure statements to report the use of subcontractors.

### Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

## 4. Disclosure – Reporting of Transferred Funds

Campaigns must disclose transfers of funds to their current election committee from any other committee of the candidate. In addition, campaigns must accurately disclose the contributions making up the transfers as the last monetary contributions, loans, and other receipts received by the transferor committee before making the transfer. If transferring funds from a non-covered committee, campaigns must also disclose the expenditures made by the transferor committee in connection with raising the contributions, and provide documentation of each contributor's authorization to contribute to the current committee. *See Admin. Code §§ 3-702(9), 3-703(14); Rules 1-07, 3-03(c)(2), and 4-01(b)(8).*

The Campaign did not provide a Transfer Authorization Card for the following contribution comprising a portion of the December 24, 2012 transfer-in from Levine for New York:

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	RECEIVED DATE	AMOUNT
Magistro, Samantha	6/G1/R0000772	07/20/12	\$1,695.22

### Previously Provided Recommendation

The Campaign must provide a Transfer Authorization Card for the contributor listed above. If contemporaneous records do not exist, the Campaign must explain why they do not exist and detail all previous attempts made to obtain them.

## **Campaign's Response**

In response to the Draft Audit Report, the Campaign provided a Transfer Authorization card from Samantha Magistro, on which the contributor wrote that she authorized \$250 to be transferred (\$1,445.22 less than her total contribution).

## **Board Action**

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

## ***Contribution Findings***

### **5. Prohibited Contributions – Corporate/Partnership/LLC**

Campaigns may not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for a loan from any corporation. This prohibition also applies to contributions received after December 31, 2007 from any partnership, limited liability partnership (LLP), or limited liability company (LLC). *See* New York City Charter §1052(a)(13); Admin. Code §§ 3-703(1)(l), 3-719(d); Rules 1-04(c), (e).

Prior to the election, the Campaign accepted contributions from entities listed on the New York State Department of State's website as corporations, partnerships, and/or LLCs in the following instances detailed below. After notification from the CFB, the Campaign refunded the contributions.

**PREVIOUSLY REFUNDED CONTRIBUTIONS FROM PROHIBITED SOURCES**

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	INCURRED/ RECEIVED/ REFUNDED DATE	AMOUNT	NOTE
Uysal, Michael	6/ABC/R0000173	12/09/12	\$100.00	(1)
Quintessenza, James	7/ABC/R0001022	03/03/13	\$50.00	(2)
Broadway Housing Communities	12/F/R0002126	01/09/13	\$250.00	(3)

(1) Although the Campaign reported the contribution as shown, the documentation provided indicates that this contribution was from Law Offices of Michael D. Uysal PLLC.

(2) Although the Campaign reported the contribution as shown, the documentation provided indicates that this contribution was from Jocarl Management Ltd.

(3) The Compliance Visit Letter dated August 20, 2013, sent after the Campaign's onsite review, cited the Campaign for failing to report expenditures for fundraising events. The finding included an event held on January 9, 2013 at RIO Gallery located at 583 Riverside Drive, 7<sup>th</sup> Floor. In response to the Compliance Visit Letter, the Campaign submitted an invoice from Broadway Housing Communities for the use of the space. In addition, the Campaign submitted a copy of the bank check issued September 9, 2013 for \$250.00. Because the Campaign did not report or pay the vendor for the use of the space prior to notification from the CFB, the initial transaction is an in-kind contribution from a corporate entity.

### **Previously Provided Recommendation**

The Campaign was previously informed of these findings in the Statement Review Mailings, dated February 15, 2013 and April 22, 2013, and the Compliance Visit Notice dated September 4, 2013, respectively. These findings were not included in the Draft Audit Report. The Campaign issued, documented, and reported the refunds; no further response was necessary at that time.

Even if the prohibited contribution is refunded, accepting a prohibited contribution may result in a finding of violation and the assessment of a penalty.

### **Campaign's Response**

The Campaign was previously informed of these findings, respectively, in the Statement Review Mailings, dated February 15, 2013 and April 22, 2013, and Compliance Visit Notice dated September 4, 2013. These findings were not included in the Draft Audit Report. No further response was necessary at that time. The Campaign did not address these transactions in its response to the Notice of Alleged Violations and Recommended Penalties.

### **Board Action**

The Board found the Campaign in violation and assessed \$325 in penalties.

## **6. Prohibited Contributions – Contributions Over the Limit**

Campaigns may not accept contributions, either directly or by transfer, from any single source in excess of the applicable contribution limit for the entire election cycle. A single source includes, but is not limited to, any person or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled. *See* Rule 1-04(h). Cumulative contributions from a single source may include monetary contributions, in-kind contributions, and outstanding loans or advances, etc.

Candidates participating in the Program may contribute up to three times the contribution limit to their own campaign. *See* Admin. Code § 3-703(1)(h). Non-participating candidates are not limited in the amount they can contribute to their own campaign from their own money. *See* Admin. Code § 3-719(2)(b).

Creditors who extend credit beyond 90 days are considered to have made a contribution equal to the credit extended, unless the creditor continues to seek payment of the debt. Outstanding liabilities that are forgiven or settled for less than the amount owed are also considered contributions. *See* Rules 1-04(g)(4), (5).

Prior to the election, the Campaign accepted contributions in excess of the contribution limit in the following instances. After notification from the CFB, the Campaign transferred-out the amount in excess of the limit.

PREVIOUSLY REFUNDED CONTRIBUTIONS OVER THE LIMIT

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	TRANSACTION TYPE	INCURRED/ RECEIVED/ REFUNDED DATE	AMOUNT	NOTE
Magistro, Samantha	6/G1/R0000772	Transfer-In Contribution	07/20/2012	\$3,000.00	(1)
Magistro, Samantha	7/H/R0000857	Transfer-Out	03/04/2013	(\$250.00)	(2)
				\$2,750.00	
Office Limit				(\$2,750.00)	
<b>Amount Over-the-Limit</b>				<b>\$0.00</b>	

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	TRANSACTION TYPE	INCURRED/ RECEIVED/ REFUNDED DATE	AMOUNT	NOTE
Green, Bob	6/G1/R0000771	Transfer-In Contribution	07/24/2012	\$5,000.00	(3)
Green, Bob	7/H/R0000857	Transfer-Out	03/04/2013	(\$2,250.00)	
				\$2,750.00	
Office Limit				(\$2,750.00)	
<b>Amount Over-the-Limit</b>				<b>\$0.00</b>	

(1) The Campaign updated its reporting to reflect that the net amount transferred in is \$1,695.22.

(2) The Campaign reported a \$250.00 transfer-out, which is attributed to the contributor.

(3) The Campaign updated its reported to reflect that the net amount transferred in is \$2,750.00.

### Previously Provided Recommendation

The Campaign was previously informed of these findings in the Statement Review Mailing of February 15, 2013; these findings were not included in the Draft Audit Report. On March 4, 2013 the Campaign issued, documented, and reported the refund; no further response was necessary at that time.

Even if the portion of the contribution in excess of the limit is refunded, accepting a contribution in excess of the limit may result in a finding of violation and the assessment of a penalty.



## Campaign's Response

The Campaign was previously informed of these findings in the Statement Review Mailing dated February 15, 2013; these findings were not included in the Draft Audit Report.

## Board Action

The Board found the Campaign in violation and assessed \$250 in penalties.

## 7. Prohibited Contributions – Unregistered Political Committees

Participating campaigns may not, either directly or by transfer, accept any contribution, loan, guarantee, or other security for a loan from any political committee, unless it is registered with the CFB, or registers within ten days of receipt of the contribution. *See* Admin. Code §§ 3-703(1)(k), 3-707; Rule 1-04(d).

A list of registered political committees can be viewed on the CFB's website, [www.nyccfb.info](http://www.nyccfb.info). Political committees are often required to register with governmental agencies other than the CFB; however, registering with those agencies does not register them with the CFB.

Prior to the election, the Campaign accepted contributions from unregistered political committees in the following instances. Upon notification from the CFB, the Campaign refunded the contribution(s), or the political committee registered with the CFB.

### CONTRIBUTIONS FROM UNREGISTERED POLITICAL COMMITTEES THAT SUBSEQUENTLY REGISTERED OR WHOSE CONTRIBUTIONS WERE REFUNDED

NAME	STATEMENT/ SCHEDULE/ TRANSACTION	RECEIVED DATE	AMOUNT	NOTE
Friends of Manny de los Santos	6/ABC/R0000632	01/11/13	\$50.00	
Nadler for Congress, Inc.	6/ABC/R0000585	01/11/13	\$1,000.00	
Barack Obama Democratic Club	11/F/R0001960	08/13/13	\$103.50	(1)

(1) The Campaign's Compliance Visit Letter, dated August 12, 2013, cited accepting an in-kind contribution from an unregistered political committee because CFB staff obtained a palm card from the Barack Obama Democratic Club of Upper Manhattan ("BODC"), which featured the Candidate, among others. Because the Campaign had not reported payments for the palm card, it was considered an in-kind contribution from an unregistered political committee.

## Previously Provided Recommendation

The Campaign was previously informed of these findings in the Statement Review Mailing dated February 15, 2013 and Compliance Visit Notice dated August 12, 2013; these findings were not



included in the Draft Audit Report. The Campaign previously issued, documented, and report the refunds; no further response was necessary at that time.

### **Campaign's Response**

In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign did not contest these findings.

### **Board Action**

The Board found the Campaign in violation and assessed \$278 in penalties.

## **8. Undocumented or Unreported In-Kind Contributions**

In-kind contributions are goods or services provided to a campaign for free, paid by a third party, or provided at a discount not available to others. The amount of the in-kind contribution is the difference between the fair market value of the goods or services and the amount the Campaign paid. Liabilities for goods and services for the Campaign which are forgiven, in whole or part, are also in-kind contributions. In addition, liabilities for goods and services outstanding beyond 90 days are in-kind contributions unless the vendor has made commercially reasonable attempts to collect. An in-kind contribution is both a contribution and expenditure subject to both the contribution and expenditure limits. Volunteer services are not in-kind contributions. In-kind contributions are subject to contribution source restrictions. *See* Admin. Code § 3-702(8); Rules 1-02 and 1-04(g). Campaigns may not accept contributions from any corporation, partnership, limited liability partnership (LLP), or limited liability company (LLC). *See* Admin. Code § 3-703(1)(l).

Campaigns are required to report all in-kind contributions they receive. *See* Admin. Code § 3-703(6); Rule 3-03. In addition, campaigns are required to maintain and provide the CFB documentation demonstrating the fair market value of each in-kind contribution. *See* Admin. Code §§ 3-703(1)(d), (g); Rules 1-04(g)(2) and 4-01(c).

In response to the Draft Audit Report, the Campaign deleted previously cited uncleared transactions. However, the Campaign failed to demonstrate that the expenditures did not occur or that they were reported in error.

NAME	REPORTED CHECK No./ TRANSACTION	STATEMENT/ SCHEDULE/ TRANSACTION	PAID DATE	AMOUNT	NOTES
Broadway Hardware	Debit	Unreported	06/02/13	\$28.18	(1)
Ipsen, Gus	1081	Unreported	08/08/13	\$88.00	(2)
Sacktor, Clark	1080	Unreported	08/08/13	\$99.00	(3)
Ipsen, Gus	1092	Unreported	08/12/13	\$77.00	(4)
<b>Total</b>				<b>\$292.18</b>	<b>(5)</b>

(1) The Campaign previously reported this transaction as TID 9/F/R0001372.

(2) The Campaign previously reported this transaction as TID 11/F/R0001905.

(3) The Campaign previously reported this transaction as TID 11/F/R0001902.

(4) The Campaign previously reported this transaction as TID 11/F/R0001943.

(5) The sum of these transactions was added to the Campaign's primary election expenditure limit. *See also Finding #12.*

### Previously Provided Recommendation

This finding was identified as a result of the Campaign's response to the Draft Audit Report.

### Campaign's Response

In response to the Draft Audit Report, the Campaign stated that it reported the Broadway Hardware transaction in error, so it subsequently deleted it. However, this transaction is an outstanding liability and is considered an in-kind contribution. *See Finding #1 c).*

The Campaign stated that the Gus Ipsen and Clark Sacktor transactions were uncashed wage checks. The employees did not cash their checks, and the Campaign was unable to locate them in order to issue new ones. Therefore, the Campaign decided to refer to them as volunteers. However, these workers are not volunteers because they performed services with the expectation of payment. Therefore, the Campaign cannot consider them volunteers. Their services are in-kind contributions pursuant to Admin. Code § 3-702(8) and Advisory Opinion 2003-1.

### Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

## ***Expenditure Findings***

### **9. Undocumented/Unreported Joint Expenditures**

Campaigns are permitted to engage in joint campaign activities, provided that the benefit each candidate derives from the joint activity is proportionally equivalent to the expenditure. *See* Admin. Code § 3-715; Rule 1-04(p).

Upon request from the CFB, a campaign is required to provide copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g); Rule 4-01.

The Campaign provided an invoice from NY Prints for joint petitioning (see Transaction ID R0001489). The description of the item, “your equal share of the following club petitions: Broadway Dems, CF 69 AD, Obama Dems, Tioga, 3 Parks, Marisol Alcantera – 70 D,” is the only narrative and methodology provided for this joint expenditure.

A copy of this invoice is included as Exhibit I. Based on a review of this information, the Campaign did not fully account for the joint campaign activity.

### **Previously Provided Recommendation**

The Campaign may provide documentation from NY Prints containing a detailed methodology of the cost allocation of the joint expenditures, including pricing information, the number of petitions, copies of the petitions, and what share of the cost was covered by each campaign.

### **Campaign’s Response**

This finding was identified as a result of the documentation received by the CFB after the Campaign’s Draft Audit Report was issued. The Campaign did not address this allegation in its response to the Notice of Alleged Violations and Recommended Penalties.

### **Board Action**

The Board found the Campaign in violation and assessed \$100 in penalties.

### **10. Expenditures – Not In Furtherance of the Campaign**

Campaigns may only spend campaign funds for items that further the candidate’s election. Campaigns must keep detailed records to demonstrate that campaign funds were used only for those purposes. *See* Admin. Code §§ 3-703(1)(d), (g); Rule 4-01. The law gives examples of the types of expenditures that are presumed to be campaign-related, although in certain circumstances

expenditures of the types listed as appropriate may be questioned. Among the relevant factors are: the quality of the documentation submitted; the timing and necessity of the expenditure; the amount of the expenditure and/or all expenditures of a specific type in relation to the Campaign's total expenditures; and whether the expenditure is duplicative of other spending. The law also prohibits the conversion of campaign funds to personal use which is unrelated to a political campaign, and provides examples of expenditures that are not in furtherance of a campaign. *See* New York State Election Law §14-130; Admin. Code §§ 3-702(21), 3-703, and 3-710(2)(c); Rules 1-03(a), and 5-03(e), and Advisory Opinion No. 2007-3 (March 7, 2007). Expenditures not demonstrated to be in furtherance of the candidate's election are considered "non-campaign related."

Documentation provided by the Campaign indicates that campaign funds were used to pay for four personal expenditures listed below. The Candidate refunded the total amount of the expenditures to the Campaign prior to notice from the CFB.

PAYEE	STATEMENT/ SCHEDULE/ TRANSACTION	PURPOSE CODE	INVOICE DATE	DATE PAID	AMOUNT	NOTE
Rayira Grocery Deli Corp	9/F/R0001493	OTHER	05/22/13	05/22/13	\$21.50	(1)
The Gibson	9/F/R0001444	OTHER	05/26/13	05/26/13	\$18.00	(1)
Duane Reade	9/F/R0001457	OTHER	06/12/13	06/12/13	\$15.20	(1)
Village Fried Chicken	9/F/R0001497	OTHER	06/17/13	06/18/13	\$11.50	(1)
<b>Total</b>					<b>\$66.20</b>	

(1) The Campaign submitted an explanation stating that the Campaign Manager used the Campaign debit card instead of his personal debit card to make these purchases. The Campaign also stated that the expenditures were subsequently refunded via check. The Campaign reported the reimbursement from Barrie Cullen as an Other Receipt (see Transaction ID 9/E/R0001499) and reported expenditure refunds for each transaction.

### Previously Provided Recommendation

There is no additional action for the Campaign to take in response to this finding at this time; however, these expenditures may be considered a violation and subject to penalty.

### Campaign's Response

In response to the Draft Audit Report, the Campaign stated that the Campaign debit card was charged unintentionally. The Campaign Manager reimbursed the Campaign for the amount charged.

## Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

## Expenditure Findings

### 11. Expenditures – Improper Post-Election

After the election, campaigns may only make disbursements for the preceding election, or for limited, routine activities of nominal cost associated with winding up a campaign and responding to the post-election audit. Campaigns have the burden of demonstrating that post-election expenditures were for the preceding election or the limited and routine activities described in the law. *See* Admin. Code § 3-710(2)(c); Rule 5-03(e)(2).

The expenditure listed below is an improper post-election expenditure due to the timing, amount and/or purpose reported by the Campaign:

PAYEE	STATEMENT/ SCHEDULE/ TRANSACTION	PURPOSE CODE	INVOICE DATE	DATE PAID	AMOUNT	NOTE
The Garage Bar & Eater	May 2015 Bank Statement	N/A	N/A	05/13/15	\$96.85	(1)

(1) This finding was identified during the Notice of Alleged Violation and Recommended Penalties response review.

### Previously Provided Recommendation

This finding was identified during the review of the response to the Notice of Alleged Violation and Recommended Penalties. This expenditure appears as a debit on the Campaign's May 2015 bank statement. This expenditure is not reported to the New York State Board of Elections.

### Campaign's Response

This finding was identified during the review of the response to the Notice of Alleged Violation and Recommended Penalties. This expenditure appears as a debit on the May 2015 bank statement. This expenditure is not reported to the New York State Board of Elections.

## Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

## 12. Expenditures – Exceeding the Legal Limit

Campaign Finance Program participants must abide by strict limits on the amount of money their campaigns spend. An expenditure is considered made when the good and/or service is received, used or rendered regardless of when the payment is made. The following types of expenditures are exempt and do not count toward the expenditure limit:

- Challenging or defending the validity of petitions or canvassing and re-canvassing election results
- Preparing for an appearance before the Board
- Limited expenses to prepare for the post-election audit

*See* Admin. Code §§ 3-706, 3-703(1)(i), 3-711(2)(a); Rules 1-08(b), (d), and (l).

Based on its reporting and documentation, the Campaign exceeded the primary election expenditure limit. *See* the details of the expenditure limit calculation at Exhibit II. The following adjustments were made to the expenditure limit calculation:

- a) Unreported expenditures were added to the primary election, see Finding #1b).
- b) Expenditures misreported by the Campaign were added to the three years prior to the election year and to the primary election, see Finding #1d).
- c) Uncleared expenditures were deducted from the primary, see Finding #1c).
- d) Unreported in-kind contributions were added to the primary election, see Finding #8.
- e) Expenditures reported during the three years prior to the election year were attributed to the primary election, see Exhibit IIa.
- f) Expenditures reported during the general election were attributed to the primary election, see Exhibit IIb.
- g) Expenditures made after the general election were attributed to the primary election, see Exhibit IIc.

### **Previously Provided Recommendation**

If the Campaign disagrees with the expenditure limit calculation, it must address the specific line items of the calculation as described below:

a – b) The Campaign must amend its disclosure statements to accurately report the transactions.

c) The Campaign must amend its disclosure statements to remove this reported transaction.

d) The Campaign must amend its disclosure statements to report these unreported transactions and must provide documentation for each transaction.

e – f) If the Campaign disagrees with the attribution of expenditures in the exhibit, for each transaction it must provide a detailed explanation of when the good and/or service was received, used, or rendered and provide supporting documentation. The Campaign must address each line of the calculation in dispute.

g) This finding was identified during the review of the response to the Notice of Alleged Violation and Recommended Penalties.

### **Campaign's Response**

In response to the Draft Audit Report, the Campaign disputed and addressed specific line items of the calculations as described below:

a) The Campaign amended its disclosure statements to report twelve transactions out of the thirteen unreported transactions cited. However, it failed to report one cited transaction.

b) The Campaign stated that it had amended its disclosure statements to accurately report the transactions. However, the reporting did not reflect these changes.

c) In response to the Draft Audit Report, the Campaign stated that it did not send check #1155 to The Advance Group (TAG) because it did not owe TAG any payment. In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign provided a letter from TAG stating that the Campaign did not owe TAG any additional payments. However, the Campaign reported this payment and did not amend its disclosure statements to delete this transaction.

d) The Campaign stated these transactions were wage checks for which the Campaign was not able to find the workers to reissue new checks; the Campaign considers those workers to be volunteers. However, these workers are not considered volunteers because they performed services with the expectation of payment. Therefore, the Campaign cannot assume the workers to be volunteers. Their services are considered an in-kind contribution pursuant to Admin. Code § 3-702(8).

e – f) In response to a preliminary pre-election expenditure limit review, the Campaign stated that it received the integrated platform from NPG VAN on December 1, 2012 and therefore the full



amount must be attributed to the out-year spending limit. The Campaign submitted an invoice that states it purchased the "DMO Tier 1 Package" at \$320.00 per month for the period of December 2012 to September 2013. Because the Campaign used the service throughout the election, this amount was attributed to the primary election spending limit, pursuant to Rule 1-08(b). In response to the Draft Audit Report, the Campaign states that only \$2,667 ( $[\$320 \times 8 \text{ months}] + [\$10.70 \times 10 \text{ days}]$ ) of the total NGP VAN expenditures should be allocated to the primary, based on 8 months and ten days of pro-rata usage. The Campaign was charged \$320 per month for the first 11 months of 2013, for a total of \$3,840, prior to additional fees, of which the prorated cost is \$2,667 attributable to the primary (January 1 – September 10, 2013) and \$853 to the general (September 11 – November 30, 2013). Therefore, pursuant to Rule 1-08(b), the \$1,840 invoiced on December 1, 2012 is attributable to the primary election and of the \$1,200 invoiced on October 1, 2013, \$854 is attributed to the general and \$346 to the primary. Of the \$1,200 commingling (see finding #13) \$720 is attributed to the out-year and \$480 to the primary. The Campaign did not address the attribution of expenditures to NGP Van, Inc. in its response to the Notice of Alleged Violations and Recommended Penalties.

Regarding the expenditure to the NYS Democratic Committee and the Postmaster of New York, the Campaign stated that it based its position on Advisory Opinion 1988-2. That Advisory Opinion specifies, "It is the view of the Board that an expenditure for campaign matter prepared for public distribution must be attributed to the expenditure limitation in effect at the time of distribution." The Campaign's expenditures occurred within the last two weeks of the year, and the reported Campaign activity does not indicate, nor did the Campaign state, that it used the purchases for mailings distributed prior to December 31, 2012. A section of Advisory Opinion 1988-2 specifically addresses the purchase of a service in the out year that is rendered during both the out year and the election year—similar to the Campaign's purchase of access to a voter file from the New York State Democratic Committee for a specific period. In such a situation, the Campaign is directed to pro-rate the cost based on the period in which the service is received, or attribute the entire amount to the year of the election. Because the license agreement term began December 18, 2012 and ended December 31, 2013, the pro-rata portion of the expenditure for the period of January 1, 2013 to the date of the primary election has been allocated to the primary election expenditure limit.

In a similar manner, the Campaign cited Advisory Opinion 1988-2 in arguing that it could attribute the expenditure to the Postmaster of New York to the out-year period. It drew an analogy between the postage it paid for and a discussion in Advisory Opinion 1988-2 of mailing labels that were delivered to the recipient campaign prior to the election year, but not used or distributed until the year of the election. However, the Campaign again ignores more relevant examples in the Advisory Opinion. Although it allows for office supplies to be attributed to the period in which they were received, in multiple examples the Advisory Opinion directs campaigns to attribute the cost of campaign literature, and supplies for campaign literature, to the period in which they are used. As the Campaign itself notes in its response to the Notice of Alleged Violations and Recommended Penalties, 2013 was the "year of distribution" for the postage expenditure. Therefore, these expenditures are allocated to the primary election expenditure limit.



g) This finding was identified during the review of the response to the Notice of Alleged Violation and Recommended Penalties.

## **Board Action**

The Board found the Campaign in violation and assessed \$1,590 in penalties.

## ***Other Findings***

### **13. Commingling of Funds**

All campaign receipts must be deposited into an account listed on the candidate's Certification and receipts accepted for one election may not be commingled with receipts accepted for any other election. *See* Rules 1-03(a)(2) and 2-06(b).

Expenditures are presumed to be made for the first election following the day they are made, with the exception of state or local election expenditures made before the first January 12 following the election, or federal election expenditures made before the first January 1 following the election. *See* Rule 1-08(c)(1) ad (3).

Campaigns are required to establish and maintain a separate campaign bank account and to report all bank, merchant, and depository accounts used for campaign purposes. *See* Admin. Code §§ 3-703(1)(c), (d), (g), (6), (10), (11); Board Rules 1-11(d), 2-06, 4-01(f). Campaign receipts must be deposited into an account listed on the candidate's Certification and campaigns are prohibited from commingling campaign funds with personal or business funds or funds accepted for another election. *See* Board Rules 1-03(a)(2), 2-06(b), (e). Expenditures are presumed to be for the first election following the day they are made, with the exception of state or local election expenditures made before the first January 12 following the election, or federal election expenditures made before the first January 1 following the election. *See* Board Rules 1-08(c)(1), (3).

a) The Candidate's state committee for the 2012 primary election, Levine for New York ("LNY"), made a \$1,200 payment to NGP VAN on October 1, 2012, for services that appear to have been rendered to the Campaign rather than to LNY. This payment therefore represents a commingling of campaign funds with funds accepted for a different election.

In its response to the Draft Audit Report, the Campaign provided a \$1,200 invoice from NGP VAN for services from October 2012-September 2013, billed to LNY on October 1, 2012. The invoice stated that \$1,200 was paid on that date, with another \$1,200 to be paid by April 1, 2013 (for a total of \$2,400).

LNY reported to the New York State Board of Elections ("NYSBOE") that it paid the \$1,200 expenditure on October 1. The Campaign stated that the \$1,200 was a partial payment of the

invoice, covering six months of service (October 2012-March 2013) at \$200 per month and leaving an outstanding balance of \$1,200 for service from April-September 2013, also at \$200 per month. The invoice further stated that an additional six months of service, from October 2013-March 2014, would be billed in October 2013.

The Campaign reported that it began activity in August 2012 – prior to the October 1, 2012 date on which LNY was invoiced by NGP VAN. Additionally, the 2012 primary election, for which the Campaign opened the LNY committee, occurred prior to October 1, 2012. This, along with the Campaign’s payments to NGP VAN beginning in November 2012, indicate that the services paid for by LNY on October 1, 2012 for a period extending until at least September 2013 were for the Campaign, not for LNY.

The fact that invoices from NGP VAN to the Campaign subsequent to the October 1, 2012 invoice reference the \$1,200 previously paid pursuant to that invoice, and that the \$1,200 was deducted from the total amount owed by the Campaign, further indicates that the Campaign’s first installment of \$1,200 for services received from October 2012-March 2013 was improperly paid by LNY.

b) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign submitted its May 2015 bank statement which shows a \$3,735.00 expenditure to “Urj Crane Lake Camp” incurred on May 19, 2015. Publicly available information indicates that the entity is a children’s camp in Lindhurst, NJ. Based on the nature of the expenditure, Campaign funds were used for a personal purpose. An amount equal to the expenditure was subsequently credited back to the Campaign’s account on May 26, 2015.

### **Previously Provided Recommendation**

a) The Campaign may be able to reduce this penalty by providing documentation demonstrating that the Campaign reimbursed Levine for New York for this expenditure.

b) This finding was identified as a result of the Campaign’s response to the Notice of Alleged Violation and Recommended Penalties dated July 10, 2015.

### **Campaign’s Response**

a) In response to the Notice of Alleged Violations and Recommended Penalties, the Campaign submitted a copy of cancelled check #1201 for \$1,200 from Levine 2013 dated August 10, 2015 as reimbursement to Levine for New York.

b) This finding was identified as a result of the Campaign’s response to the Notice of Alleged Violation.

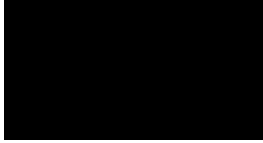
### **Board Action**

a) The Board found the Campaign in violation, but did not assess a penalty.

b) The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

We performed this audit in accordance with the audit responsibilities of the CFB as set forth in Admin. Code § 3-710. We limited our review to the areas specified in this report's audit scope.

Respectfully submitted,



Signature on original

Sauda S. Chapman

Director of Auditing and Accounting

Date: July 8, 2016

Staff: Hannah Golden

Hormis Thaliath

**New York City Campaign Finance Board  
Campaign Finance Information System  
Transaction Summary Report  
Appendix 1**

**Candidate:** Levine, Mark D (ID:311-P)**Office:** 5 (City Council)**Election:** 2013

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1. Opening cash balance (All committees)		\$0.00
2. Total itemized monetary contributions (Sch ABC)		\$139,085.40
3. Total unitemized monetary contributions		\$0.00
4. Total in-kind contributions (Sch D)		\$846.42
5. Total unitemized in-kind contributions		\$0.00
6. Total other receipts (Sch E - excluding CFB payments)		\$2,185.45
7. Total unitemized other receipts		\$0.00
8. Total itemized expenditures (Sch F)		\$225,243.31
Expenditure payments	\$224,079.05	
Advance repayments	\$1,164.26	
9. Total unitemized expenditures		\$0.00
10. Total transfers-In (Sch G)		\$6,945.22
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$6,945.22	
11. Total transfers-out (Sch H)		\$2,500.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$2,500.00	
12. Total loans received (Sch I)		\$0.00
13. Total loan repayments (Sch J)		\$0.00
14. Total loans forgiven (Sch K)		\$0.00
15. Total liabilities forgiven (Sch K)		\$9.34
16. Total expenditures refunded (Sch L)		\$1,946.20
17. Total receipts adjustment (Sch M - excluding CFB repayments)		\$6,495.00
18. Total outstanding liabilities (Sch N - last statement submitted)		\$1,030.78
Outstanding Bills	\$1,030.78	
Outstanding Advances	\$0.00	
19. Total advanced amount (Sch X)		\$0.00
20. Net public fund payments from CFB		\$92,400.00
Total public funds payment	\$92,400.00	
Total public funds returned	\$0.00	
21. Total Valid Matchable Claims		\$25,859.00
22. Total Invalid Matchable Claims		N/A
23. Total Amount of Penalties Assessed		\$11,279.00
24. Total Amount of Penalty Payments		\$10,779.00
25. Total Amount of Penalties Withheld		\$0.00

**Exhibit I**

**Levine 2013**

**Undocumented or Unreported Joint Expenditures – NY Prints (Invoice dated 06/26/13)**

**(see Finding #9)**


# nyprints LLC

33-17 73 Street • Jackson Heights, NY 11372  
646-502-7330

attn: Al Handell

## INVOICE

Date	Invoice #
June 26, 2013	30033

<b>Bill To</b>
<p><b>Mark Levine for Council</b></p> 

*PAID 7/2/13  
CHK # 1056  
1488/1489*

Job #      Petitions

PO No.	Terms
	upon receipt

Quantity	Description	Amount
	<p>Petitions Your equal share of the following club petitions</p> <p>2 lots Broadway Dems 1 lot CFD, 69 AD 2 lots Obama Dems 2 lots Tioga 1 lot 3 Parks 1 lot Marisol Alcantera - 70 D</p> <p style="text-align: right;">9 lots</p>	

RECEIVED  
\$ 1450.00  
JUN 27 2013  
New York City  
Campaign Finance Board

<b>Subtotal</b>	1450.00
<b>Sales Tax (8.875 %)</b>	128.69
<b>TOTAL</b>	1578.69
<b>Payments/Credits</b>	-----
<b>Balance Due</b>	1578.69

New York City Campaign Finance Board  
 Campaign Finance Information System  
 Exhibit II  
 Levine 2013  
 Primary Election Expenditure Limit Calculation  
 (See Finding #12)

**Election:** 2013  
**Candidate:** Levine, Mark D (ID:311-P)  
**Office:** 5 (City Council)

	<u>2010-2012</u>	<u>2013</u>
Total Reported Primary Expenditures:	\$25,322.34	\$171,383.33
Less Claimed Exempt Expenditures:	(\$0.00)	(\$11,000.00)
<b>Audit Adjustments:</b>		
Expenditures: Unreported (See Finding #1b)	\$0.00	\$13.05
Expenditures: Uncleared (See Finding #1c)	\$0.00	(\$4,000.00)
Expenditures: Misreported (See Finding #1d)	\$100.00	\$9.34
In-Kind Contributions: Unreported (See Finding #8)	\$0.00	\$292.18
Pre Elect Expenditures Attr butable to Primary Election (See Exhibit #IIa)	(\$3,814.61)	\$3,814.61
General Elect Expenditures Attr butable to Primary Election (See Exhibit #IIb)	\$0.00	\$7,597.65
Post Elect Expenditures Attributable to Primary Election (See Exh bit #IIc)	\$0.00	\$1,000.00
Attr butable Comingled Expenditures (See Finding #13)	\$720.00	\$480.00
Less Prior Year Expenditure Limits	(\$45,000.00)	
Prior Year Amounts Over the Limit	\$0.00	\$0.00
	Adjusted Expenditures	\$169,590.16
	Less Current Year Expenditure Limit	(\$168,000.00)
	<b>Cumulative Amount Over the Limit</b>	<b><u>\$1,590.16</u></b>



**Exhibit IIa**  
**Levine 2013**  
**Pre-Election Expenditures Attributable to the Primary**  
**(see Finding #12e)**

Name	Statement/ Schedule/ Transaction ID	Purpose Code	Invoice Date	Paid Date	Amount	Notes
Ngp Van, Inc.	6/F/R0000442	OFFCE	12/01/12	12/05/12	\$360.00	(1)
Ngp Van, Inc.	8/F/R0001102	OFFCE	12/01/12	03/20/13	\$1,480.00	(1)
Nys Democratic Committee	6/F/R0000445	OFFCE	12/18/12	12/18/12	\$1,474.61	(2)
Postmaster Of New York	6/F/R0001309	CMAIL	12/27/12	12/27/12	\$500.00	(3)
<b>Total</b>					<b><u>\$3,814.61</u></b>	

**Notes:**

- (1) In response to a preliminary pre-election expenditure limit review, the Campaign previously stated that it "received" the integrated platform on December 1, 2012 and therefore the full amount must be attributed to the out-year spending limit. The Campaign submitted an invoice that states it purchased the "DMO Tier 1 Package" at \$320.00 per month for the period of December 2012 to September 2013. Because the Campaign used the service throughout the election, this amount was attributed to the primary election spending limit, pursuant to Rule 1-08(b). In response to the Draft Audit Report, the Campaign states that only \$2,667 of the NGP VAN expenditures should be allocated to the primary, based on 8 months and ten days of pro-rata usage. The calculation is based on a \$10.70 calculation of cost for September (\$320 monthly fee / 30 days). The Campaign was charged \$320 per month for the first 11 months of 2013, for a total of \$3,840, prior to additional fees, of which the prorated cost is \$2,667 attributable to the primary (January 1 – September 10, 2013) and \$853 to the general (September 11 – November 30, 2013). The \$1,840 invoiced on December 1, 2012 is attributable to the primary election.
- (2) In response to a preliminary pre-election expenditure limit review, the Campaign previously stated that access to the voter file was granted on December 18, 2012 and that it was received and used in the out-year period and therefore must be attributed to the out-year. Per the New York State Democratic Committee Voter File License Agreement provided by the Campaign, the term of the agreement covered December 18, 2012 through December 31, 2013. Therefore, the agreement covers a period of 379 days, at a rate of approximately \$5.83 per day (\$2,209.00 / 379). For the primary election period of January 1, 2013 to September 10, 2013 - which spans 253 days - the Campaign incurred charges of \$1,474.61 (\$2,209.00 x [253 / 379]). The \$1,474.61 was attributed to the primary election spending limit.
- (3) In response to a preliminary pre-election expenditure limit review, the Campaign previously stated that the stamps were delivered on the day they were purchased and therefore the expenditure must be attributed to the out-year. However, pursuant to Rule 1-08(b), an expenditure is attributable to the period in which the good or service is received, used, or rendered, regardless of when payment is made. Therefore, this expenditure was attributed to the primary election spending limit pending the Campaign's submission of documentation showing when the stamps were used.

**Exhibit IIb**  
**Levine 2013**  
**General Election Expenditures Attributable to the Primary**  
**(see Finding #12f)**

<b>Name</b>	<b>Statement/ Schedule/ Transaction ID</b>	<b>Purpose Code</b>	<b>Invoice Date</b>	<b>Paid Date</b>	<b>Amount</b>	<b>Notes</b>
Sunco	14/F/R0002308	OTHER	09/07/13	01/00/00	\$62.00	(1)
Thesextongroup	12/F/R0002181	OTHER	09/11/13	09/12/13	\$3,374.99	
Barrie, Cullen M	13/F/R0002291	CONSL	09/11/13	09/24/13	\$1,024.00	
Courier Car Rental	12/F/R0002275	OTHER	09/12/13	09/12/13	\$296.88	
Abreu, Shaun	12/F/R0002234	CONSL	09/14/13	09/15/13	\$500.00	
Gantcher, Rebecca	12/F/R0002238	CONSL	09/16/13	09/16/13	\$1,200.00	
Stoll, Glickman & Bellina	13/F/R0002249	PROFL	09/17/13	09/17/13	\$500.00	
Crenshaw, Dave	13/F/R0002261	WAGES	09/19/13	09/19/13	\$170.00	
Leadership For Educational Equ	13/D/R0002285	WAGES	09/20/13		\$13.35	
Ngp Van, Inc.	14/F/R0002329	OFFCE	10/01/13	10/08/13	\$346.00	(2)
Gantcher, Rebecca	13/F/R0002244	ADVAN		09/17/13	\$76.03	(3)
Levenson, Sebastian	13/F/R0002247	ADVAN		09/17/13	\$9.50	(3)
Lorris Ritter, Elizabeth	13/F/R0002293	ADVAN		09/23/13	\$24.90	(3)
<b>Total</b>					<b><u>\$7,597.65</u></b>	

**Notes:**

- (1) This advance purchase was made by Elizabeth Lorris Ritter.
- (2) Of the \$1,200 expenditure, \$346 is attributable to the primary and \$854 is attributable to the General. This is calculated based on the Campaign's explained pro-rata charge, as described in its response to the DAR. The calculated cost for the \$320 monthly charge is \$640, total, for October and November 2013, plus \$214 (\$10.70 per day, based on \$320 for a 30 day month, for September 11 - 30). The remaining amount, \$1,200 less \$854, is \$346.
- (3) The underlying advance purchases are dated on, or prior to, September 10, 2013.

**Exhibit IIc**

**Levine 2013**

**Post-Election Expenditures Attributed to the Primary Election – The Advance Group May 2013**

**Retainer**

**(see Finding #12g)**

PLEASE PRINT OR TYPE THE NAME OF THE BANK BRANCH



**CASHIER'S CHECK**

PLEASE PRINT OR TYPE THE ACCOUNT NUMBER

9803517527

25-3  
440

Date 08/03/2015

Void after 7 years

Remitter: LEVINE 2013

Pay To The **THE ADVANCE GROUP**  
Order Of:

Pay: ONE THOUSAND DOLLARS AND 00 CENTS

**\*\* 1,000.00 \*\***

Drawer: **JPMORGAN CHASE BANK, N.A.**



Signature on original

Senior Vice President  
JPMorgan Chase Bank, N.A.  
Columbus, OH



Do not write outside this box

Memo:  
Note: For information only. Comment has no effect on bank's payment.

