

No. S233526

IN THE
SUPREME COURT
Of The State Of California

SUPREME COURT
FILED

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Deputy

SWEETWATER UNION HIGH SCHOOL DISTRICT,
Plaintiff and Respondent

v.

GILBANE BUILDING COMPANY, et al.
Defendants and Appellants.

ANSWERING BRIEF ON THE MERITS

After a Decision by the Court of Appeal
Fourth Appellate District, Division One [D067383]

San Diego Superior Court [37-2014-00025070-CU-MC-CTL]
Hon. Eddie C. Sturgeon, Judge

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I. INTRODUCTION

This case illustrates an abuse of the anti-SLAPP statute (Code of Civil Procedure section 425.16) which was designed to protect parties exercising their First Amendment rights from being financially terrorized by well-heeled opponents here seeking to quell threatening litigation under the guise of freedom of speech. In this case, the Sweetwater Union High School District (“Sweetwater” and/or “District”) seeks to void certain construction management contracts secured by Gilbane Construction (“Gilbane”) by illegal influence peddling. Gilbane seeks to utilize the anti-SLAPP procedure to dismiss the lawsuit, claiming that its influence peddling was protected First Amendment activity because Gilbane officials had a right to contact public officials to present their position to them, and that, in the absence of legally-admissible evidence of illegal activity, the anti-SLAPP statute compels dismissal of Sweetwater’s lawsuit. Although Sweetwater presented evidence to the trial court that demonstrated Gilbane’s corrupt actions and intentions, Gilbane argues in simple terms that if that evidence is not properly before the court, Sweetwater cannot prevail and demonstrate a probability of prevailing on its claims. Thus, Gilbane seeks to exclude the damning evidence from consideration in order to avail itself of First Amendment protections, clearly distorting what was intended by the anti-SLAPP process.

The anti-SLAPP statute establishes a procedure for striking a pleading that is brought primarily to “chill” the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 197. A lawsuit arising from Constitutionally protected speech or activity is a SLAPP if it “lacks even minimal merit.” *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89. The statute provides in pertinent part that in making its determination with respect to the motion, “the court shall

consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” Code Civ. Proc. § 425.16(b)(2).

Sweetwater responded to Gilbane’s anti-SLAPP motion by presenting the guilty pleas and sworn factual bases for them by the public officials and Gilbane personnel who admitted their misconduct in documents filed in the Superior Court. Additionally, Sweetwater presented sworn grand jury testimony in order to further demonstrate the probability of prevailing on its claims.

At issue in this case is whether the sworn factual bases for the guilty pleas constitute affidavits under the anti-SLAPP statute and whether sworn testimony of individuals complicit in the pay-to-play scheme qualify as admissible and responsive affidavits under the anti-SLAPP statutory scheme. Petitioners instead have characterized the issue before this Court as “Is testimony given in a criminal case by nonparties to a later civil case subject to Evidence Code section 1290 et. seq. (Former Testimony) setting conditions for receiving former testimony in evidence?” See Opening Brief on the Merits at p. 1. The Supreme Court granted the petition of Gilbane and Gilbane/SGI a joint venture (the joint venture) from the decision of the Court of Appeal, Fourth Appellate District, Division One, *Sweetwater Union High School Dist. v. Gilbane Building Co.* (2016) 245 Cal.App.4th 19, (“*Sweetwater*”), which held that the evidence presented to the trial court satisfactorily established that Sweetwater’s case had the requisite merit to proceed forward, despite Gilbane’s First Amendment claims, and further held that the evidence presented did constitute affidavits within the meaning of the anti-SLAPP statute.

To establish a probability of prevailing on its claims that the former governmental officials had a prohibited interest in the contracts at issue, Sweetwater offered the guilty pleas and narrative sworn factual bases

supporting the guilty pleas of the contractors who gave the lavish gifts to the public officials as well as guilty pleas and their sworn factual bases of the public officials to whom Gilbane provided the illegal gifts and who voted on the contracts. Sweetwater also offered the sworn criminal grand jury testimony of Gilbane's Program Director and a Chief Executive Officer of the Gilbane/SGI Joint Venture who, along with another SGI manager, testified at length as to the extravagant gifts they gave, using their credit card receipts and calendars to confirm the dates and amounts of the gifts given. Gilbane would have the Court ignore such evidence at this early, pre-trial stage so as to avoid altogether the day of reckoning for the political corruption scandal Gilbane played an instrumental role in creating. Such a result is contrary to the purpose and intent of the anti-SLAPP statute.

II. STATEMENT OF THE CASE

A. Procedural History

Sweetwater commenced this action after a new, interim Board of Trustees authorized its filing following the guilty pleas and removal from office of four of the five members of the Board of Trustees for abusing their position of trust with respect to public contracts. Sweetwater's complaint alleges Gilbane, the Gilbane/SGI Joint Venture, and an additional defendant the Seville Group, Inc. ("SGI") engaged in an elaborate scheme to lavish expensive dinners, trips and other gifts on the District's former superintendent and several members of the Board, who in turn voted to award defendants a series of contracts in violation of Government Code § 1090. The complaint seeks to void the District's program management contracts with all three entities and to require them to disgorge the monies Sweetwater paid them under these contracts to manage their bond program and school construction.

The SLAPP process provides for summary disposal of appropriate lawsuits through a special motion to strike under section 425.16, commonly referred to as an “anti-SLAPP motion.”

[It] requires the court to engage in a two-step process. First the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken ‘in furtherance of the [defendant]’s right of petition or free speech under the United States or California Constitution in connection with a public issue....If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.

Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 67.

Gilbane filed an anti-SLAPP motion in which the Gilbane/SGI Joint Venture joined. The trial court denied the motion under the first prong of the anti-SLAPP statute on the ground that the conduct underlying the complaint was illegal as a matter of law and therefore was not protected by the Constitutional guarantees of free speech and petition. Other than addressing and ruling on Gilbane’s objections to evidence, the trial court did not rule on the second prong, whether Sweetwater had met its burden to establish its case had the requisite minimal merit to proceed forward. Appellant’s Appendix (“AA”) 1477-1478, 1479.

The Court of Appeal affirmed. *Sweetwater, supra*, 245 Cal.App.4th at p.19. The Court of Appeal held that while the evidence that Sweetwater presented may establish that *some* of the conduct may have been illegal, the evidence did not establish that all of the conduct at issue was illegal as matter of law, as some of the contributions were to pageants, charities or campaigns. Thus the Appellate Court did not agree with the trial court that

the anti-SLAPP motion could be resolved in Sweetwater's favor on the first prong.

As a result, the Appellate Court looked to the anti-SLAPP second prong—whether the District showed a probability of prevailing on its claims—and addressed and affirmed the Superior Court's evidentiary rulings on the proffered guilty pleas, the narratives supporting the factual basis for those guilty pleas, as well as to certain grand jury testimony and documents presented to the grand jury. The Appellate Court noted that both Sweetwater and Gilbane requested judicial notice of the plea forms reflecting the guilty or no contest pleas. *Sweetwater, supra*, 245 Cal.App.4th at p.28, fn. 8. AA 34 -35, 481-482, 483-547, 603-606.

Gilbane's Petition For Review did not contest all of the findings and holdings of the Court of Appeal. Rather, it confined its petition to the evidentiary rulings and the portion of opinion about the use and "admissibility" of the guilty pleas, their attached narratives supporting the factual bases of the guilty pleas, and the grand jury testimony and exhibits about which the witnesses at the grand jury testified. The sole issue here is whether this testimony given under oath can be admissible evidence used to oppose an anti-SLAPP motion because such testimony is equivalent to an affidavit. Petitioner asserts that it cannot, however for the reasons set forth herein, Petitioner is wrong in each of its assertions.

B. Statement of Facts

The District's causes of action for violations of Gov't Code § 1090 allege that former Superintendent Gandara and several former Board members had prohibited financial interests in contracts with the named defendants. 1 AA 50 *et seq.* The prohibited financial interests that District officials had in those contracts came as a result of activity by the principals and managers of the Gilbane/SGI Joint Venture.

In 2000, California voters approved Proposition 39, which reduced the voting threshold for the passage of school bonds from two-thirds to 55 percent, in turn increasing the number of voter-approved school facilities bonds. Since this time, voters in the Sweetwater Union High School District have approved two separate propositions designed to fund school improvements — in 2000, Proposition BB, a \$187 million bond, and in 2006, Proposition O, allowing the District to issue \$644 million in bonds. 1 AA 52, 248; 3 AA 607-620. Both propositions allowed the District to hire program managers to monitor the construction projects. *Id.* Harris/Gafcon (hereinafter “Harris”) was hired by Sweetwater as the program manager for the Proposition BB. 5 AA 1246 at paragraph 3. Harris had stellar performance reviews for Proposition BB work and exceeded the expectations of those who were in charge of the program. *Id.* at paragraph 4 and 5 AA 1232 at paragraph 4. Harris finished the Proposition BB projects ahead of time, and their work quality was very good. *Id.*¹

i. Gilbane and SGI sought to become program managers for Proposition O while wining and dining key District officials.

In the months *before* the November 2006 election when Proposition O was on the ballot, Gilbane and SGI began providing expensive dinners and sporting event tickets to key District officials, as follows:

¹ Appellants argue their performance as program manager was exemplary. However, no forensic audit was ever done to determine if the Gilbane/SGI joint venture overcharged the District for program management or committed fraud. After they were replaced, the same work was done for 60% less than what was charged by SGI. See Declaration of Tom Calhoun at 5 AA 1223-24 and Declaration of Eric Hall at 5 AA 1226-27.

By Whom	To Whom	When and What	In Appellate Record at
Flores	Sandoval	2/17/06 - meal at Anthony's	4 AA 999, at pg. 1546:4-8, 1546:28-1547:7
Flores	Quiñones	2/17/06 - meal at Greystone	<i>Id.</i>
Amigable	Sandoval	9/22/06 - meal at Baci	4 AA 960-61, at pg. 351:16-354:22
Flores	Gandara and Sandoval	10/05/06 - dinner at Flemings	4 AA 1000, at pg. 1554:21-1555:4
Amigable	Sandoval	10/12/06 - dinner at Morton's	4 AA 962, at pg. 357:14-358:19
Flores	Sandoval	10/27/06 - dinner at Lou & Mickey's	4 AA 1001, at pg. 1558:26-1559:17

On November 7, 2006, Proposition O was approved. 1 AA 52. Soon thereafter, then-Superintendent Gandara indicated his plans to re-compete the program management services work for Proposition O instead of allowing Harris to continue the work which they were already doing under the existing Proposition BB bond. 5 AA 1246 at paragraph 5. Gandara sought to replace Harris despite good performance reviews for Proposition BB work. 5 AA 1025 at pg. 2885:6-17. In her declaration filed in opposition to the anti-SLAPP motion, Sweetwater's Director of Planning and Construction and at one point Assistant Superintendent Katy Wright stated that the Proposition BB projects were being managed "ahead of time" and "[t]heir work quality was very good." AA 1245-1247. Ms. Wright who "was directly involved with the management of the Proposition BB bond," attested that when she heard that Gandara was not planning to use Harris/Gafcon for the new Proposition O construction work, she

informed Gandara that “the District would essentially lose a year because it would take a while for a new team to get up to speed and understand what happened at each of the campuses.” She also “relayed” to Gandara “the good quality of work that [Harris/Gafcon] performed for the District on Proposition BB.” In addition, despite Wright’s expertise “with respect to managing the work done under the bond measures,” she was “not asked to participate or provide the criteria by which the program manager was to be selected,” and was “not allowed to participate” in the decision to select the Joint Venture even after she asked to participate. AA 1245-1247.

Gilbane and SGI continued giving financial inducements to District officials. Amigable provided Sandoval with tickets to a San Diego Chargers game that cost \$415 each. 4 AA 936 at pg. 362:19-363:18. Amigable provided a dinner to Gandara and Sandoval at Po Pazzo that cost \$1,416.08. 4 AA 964 at pg. 364:21-367:5.

On February 20, 2007, the Board directed Gandara to initiate the Request for Proposal/Request for Qualifications (“RFP/RFQ”) process for the Proposition O program management services. 5 AA 1036 at pg. 1446:25-1447:15 and 1171-1173. Initially when the RFP/RFQ was submitted, there was a clause prohibiting proposers from contacting any District official or Board member. 5 AA 1127. This clause was necessary “to maintain the integrity of the process” and prevent improper “attempts to influence the process”. 5 AA 1030-1031, at pg. 1293:26-1294:4. Gandara had this clause removed. 5 AA 1235 at paragraph 4.

These initial dinners and tickets were just the tip of the iceberg of what became a routine pattern of enticement between the private contractors and District officials. In the two months between when the “no contact” clause was removed and when the District Board approved hiring the Gilbane/SGI JV, its people had significant contact with several Board members, as is shown below:

By Whom	To Whom	When and What	In Appellate Record at
Amigable and Flores	Sandoval and Ricasa	03/09/07 - \$1,383 dinner at Baci including flying in lobsters, plus \$538.50 for wine	4 AA 966-968, at pg. 381:26-384:28 and 386:9-387:25
Amigable	Sandoval and Smith	03/30/07 – \$729 dinner	4 AA 968-68, at pg. 398:22-400:7
Amigable	Sandoval	04/14/07 - tickets to Athletics-Yankees baseball game, paid \$1,285.75 for food and beverages	4 AA 969, at pg. 400:15-401:12
Flores	Quiñones	04/19/07 – dinner	4 AA 1005-06, at pg. 1574:10-1576:4

Amigable indicated that he wanted to show the March 9 dinner attendees that he was “willing to get them nice wine” and that he wanted them to expect that “if we are going to dinner, we are going to a nice dinner.” 4 AA 966 at pg., 383:4-12. The reason for this was, as SGI’s Flores testified:

You said you had no assurances that your contributions would result in a winning selection. But were you confident that a lack of contributions would guarantee you would not be selected?

A. I would say so.

4 AA 1004 at pg. 1568:1-5.

ii. After lavish entertainment expenditures, Gilbane and SGI were awarded their first District contract, and their expenditures increased.

Gilbane and SGI’s efforts paid off quickly. On April 21, Gandara called Amigable to indicate he was going to recommend them to the Board, despite opposition to the change and support for Harris from within. 4 AA 970-971 at pg. 407:16-408:25, 410:26-411:8. During this call, Gandara

asked Amigable to draft a “white paper” to help Gandara defend his position of why the Gilbane/SGI JV was selected over Harris, in anticipation of concerns over the selection. 4 AA 971 at pg. 408:2-25. Amigable testified the whole purpose of the “pre-sell” was to establish a relationship so Gandara would call him for help like this in getting the Gilbane/SGI JV selected. *Id.* at pg. 410:11-21.

On April 24, 2007, Gandara recommended that Gilbane and SGI provide program management services for the Proposition O Bond Measure. 3 AA 621. That same day, Board action authorized the District to negotiate a permanent contract. *Id.*

SGI’s CEO Flores testified that he believed that SGI would experience negative consequences if he did not acquiesce to the Board members’ demands for further gifts. 4 AA 1003 at pg. 1565:2-26. As such, Gilbane and SGI provided additional financial inducements in the weeks between the April 24 vote to negotiate a contract and the next vote on the permanent contracts on May 16, 2007. SGI provided \$15,000 to the Mariachi event at the bequest of Sandoval and Gandara. 4 AA 1007 at pg. 1586:28-1587:27. Amigable provided dinner to Board member Ricasa at a restaurant in Point Loma that cost \$313. 4 AA 972-73, at pg. 414:6-418:6.

iii. District officials awarded the Gilbane/SGI Joint Venture multiple contracts after months of expensive dinners, theater tickets and an all-expense paid New Year’s Eve weekend at the Rose Bowl.

On May 16, 2007, the Board including Trustee Pearl Quiñones, Arie Ricassa and Greg Sandoval unanimously approved two agreements with the Gilbane/SGI Joint Venture—the interim Proposition O program management agreement and the program management agreement to complete Harris’ Proposition BB Projects. 1 AA 53, 66-85; 3 AA 627-628, 648, 652-671. The wining and dining then continued at an incredible rate in the eight months between the May 2007 approval of this *interim*

Proposition O contract and the January 2008 approval of the *permanent* contract. While the permanent Proposition O program management agreement was being negotiated, the financial courting became more elaborate:

By Whom	To Whom	When and What	In Appellate Record at
Amigable	Gandara and Quiñones	06/16/07 - dinner at Baci	4 AA 974, at pg. 422:15-423:12, 4 AA 975, at pg. 425:2-6
Ortiz	Sandoval and Gandara	07/20/07 - dinner at Bertrand at Mr. A's	5 AA 1042, at pg. 1863:12-20, 4 AA 1008, at pg. 1595:7-16
Ortiz	Quiñones	08/03/07 - dinner at Bertrand at Mr. A's	5 AA 1043, at pg. 1866:14-26
Ortiz	Quiñones	09/04/07 - dinner at Buon Giorno	5 AA 1042, at pg. 1863:21-1864:14
Amigable	Gandara	09/08/07 - dinner at Loews Coronado Bay Resort	4 AA 977, at pg. 453:1-454:2
Amigable	Gandara	09/08/07 - gondola ride at Loews Coronado Bay Resort	<i>Id.</i>
Amigable	Sandoval and Gandara	09/13/07 - beverages at Hotel Del Coronado	4 AA 976-77, at pg. 451:24-452:12
Amigable	Gandara	10/11/07 - dinner at Flemings	4 AA 978, at pg. 462:9-463:19
Amigable	Gandara	10/11/07 - tickets to La Jolla Playhouse	<i>Id.</i>
Amigable	Gandara and	10/26/07 - dinner at	4 AA 979, at pg.

By Whom	To Whom	When and What	In Appellate Record at
	Sandoval	Baci	466:28-468:14
Amigable and Flores	Quiñones	11/05/07 - tickets to see Jersey Boys	4 AA 980, at pg. 469:7-471:24
Amigable and Flores	Quiñones	11/08/07 - dinner at Morton's	<i>Id.</i>
Amigable and Flores	Gandara	11/10/07 - tickets to see Jersey Boys	<i>Id.</i>
Amigable and Flores	Gandara	11/10/07 - dinner at Fleming's	4 AA 981, at pg. 472:13-473:11
Amigable	Sandoval and Gandara	12/08/07 - dinner at Top of the Market	4 AA 981-82, at pg. 475:16-476:21
Amigable	Sandoval and Gandara	12/08/07 - drinks at Top of the Hyatt	4 AA 982, at pg. 475:16-477:14
Amigable	Gandara	12/17/07 - Holiday get-together for Gandara's staff at Frida's	5 AA 1045, at pg. 1880:24-1881:16
Ortiz	Sandoval	12/17/07 - dinner at Rei Do Gado	5 AA 1045, at pg. 1878:26-1880:6
Ortiz	Sandoval	12/17/07 - tickets to the Lyceum Theatre	<i>Id.</i>
Ortiz	Sandoval and Gandara	12/31/07 - dinner at Twin Palms	4 AA 1010, at pg. 1616:26-1618:20 4 AA 1011-12, at pg. 1623:22-1624:10
Ortiz	Sandoval and Gandara	12/31/07 - suites at the Biltmore Hotel	<i>Id.</i>
Ortiz	Sandoval and Gandara	01/01/08 - Rose Bowl tickets	4 AA 1010, at pg. 1617:26-1618:6
Amigable	Sandoval, Gandara and others	01/05/08 - dinner at Morton's	4 AA 983, at pg. 487:2-27

By Whom	To Whom	When and What	In Appellate Record at
Amigable	Sandoval	01/25/08 - dinner at Fish Market	3 AA 511, facts 96, 97

Certain extravagant expenditures during this timeframe are noteworthy. In November 2007, Amigable and Flores provided Quiñones tickets to see the play “Jersey Boys” at a cost of \$90 per ticket and took her to a dinner at Morton’s Steakhouse that cost \$711.23. 4 AA 980, at pg. 469:7-471:24. Less than one week later, Amigable and Flores also provided tickets to Gandara and his family to see the play “Jersey Boys,” this time at a cost of \$165 per ticket. 4 AA 981, at pg. 472:13-473:11. On top of the theater, Amigable and Flores also provided dinner that evening to the Gandara family at Fleming’s Steakhouse that cost \$625.22. 4 AA 981, at pg. 472:13-473:11.

On New Year’s Eve weekend 2007, SGI treated Gandara and Sandoval as well as their families to a weekend in Pasadena to celebrate the Rose Bowl. SGI provided dinner at the Twin Palms Restaurant in Pasadena, hotel suites at the Los Angeles Biltmore Hotel, as well as nine Rose Bowl tickets for Gandara and Sandoval. 4 AA 1010, at pg. 1616:26-1618:20, 4 AA 1011, at pg. 1623:22-1624:10.

iv. District officials reward the Gilbane/SGI Joint Venture with yet another lucrative contract.

After the lavish dinners, theater tickets, and Rose Bowl weekend, the Board approved the permanent Proposition O program management services contract on January 28, 2008, with Sandoval, Quiñones and Ricasa all voting yes. 1 AA 53, 87-147, 163-223; 3 AA700, 711; 4 AA 717-777. In the four months between this vote and a lucrative contract amendment, the following financial benefits were provided:

By Whom	To Whom	When and What	In Appellate Record at
Amigable	Sandoval and Gandara	02/01/08 - \$854.21 dinner at Baci	3 AA 514, facts 106, 107
Amigable	Quiñones	02/22/08 - \$243 dinner at Dobson's	3 AA 515, facts 108, 109
Amigable	Sandoval and Gandara	02/23/08 - \$957.41 dinner at Top of the Market	3 AA 515, facts 110, 111
Amigable	Quiñones	03/07/08 - \$285.29 dinner at Donovan's	3 AA 515-516, facts 112, 113
Amigable	Sandoval, Gandara and Ricasa	03/14/08 - dinner at Island Prime	3 AA 516, fact 114
Amigable	Gandara	03/25/08 - \$378.38 dinner at Baci	3 AA 516, facts 115, 116
Amigable	Gandara	03/27/08 - discounted plane ticket	3 AA 516, fact 117
Amigable	Quiñones	04/04/08 - dinner at Po Pazzo	3 AA 516, fact 118
Amigable	Quiñones	04/2008 - discounted plane ticket	3 AA 517, fact 119

On May 20, 2008, the Board approved an Amendment/Supplement to the program management agreement with the Gilbane/SGI joint venture, with Sandoval, Quiñones and Ricasa again voting yes. 4 AA 778, 787-788, 792-794. This three page amendment expanded the contract scope to include “construction services” for which the joint venture ultimately received \$7,466,762.88. 4 AA 792, 5 AA 1237-38, 4 AA 895 and 4AA 896.

More financial benefits followed. In November of 2008, SGI provided a lavish trip for Gandara and his wife. SGI provided the plane tickets to fly to Northern California and paid for three nights of hotel

accommodations, multiple wine tastings, and a hot air balloon ride that cost \$245 per person. 5 AA 1048-49, at pg. 1926:19-1928:3, 5 AA 1050, at pg. 1050, at pg. 1931:9-17, 5 AA 1050, at pg. 1931:24-1932:4, 5 AA 1050, at pg. 1933:22-28, and 5 AA 1052, at pg. 1939:14-1940:22. The trip itself caused SGI's Program Manager Jaime Ortiz to exceed his credit card limit, which SGI internal communications stated was "worth it." 5 AA 1051, at pg. 1937:28-1938:11, 4 AA 1013, at pg. 1653:6-1654:18, and 4 AA 1013, at pg. 1655:5-27.

SGI alone was awarded the June 2010 contract for which SGI received \$9,034,423.06. 4 AA 795 and 897. Separate from this contract the Gilbane/SGI JV received over \$17 million. 5 AA 1239-40, at ¶¶ 12-15, 4 AA 0879-92, 5 AA 1238-39, at ¶¶ 6-8, 4 AA 893, 4 AA 894, 5 AA 1237-38, at ¶¶ 3-5, 4 AA 895, and 4 AA 896.

C. The Guilty Pleas

Gilbane's former Program Director Henry Amigable pled guilty² to violating Education Code §35230, which prohibits offering any valuable thing to a member of the governing board of any school district with the intent to influence his/her action in regard to the making of any contract before the school district's governing board. 2 AA 388, *et seq.* Under penalty of perjury, Amigable stated in writing in the factual basis to his plea and later confirmed in open Court the following:

Between March 9, 2007 and June 22, 2010 I provided gifts, meals and tickets to entertainment events directly to Jesus Gandara, Superintendent, Greg Sandoval, elected Board member, Arlie Ricassa, elected Board member, and Pearl Quiñones, elected Board member, of the Sweetwater Union High School District. I provided the meals, tickets and gifts upon my initiative as sanctioned and encouraged by my

² Appellants claim Amigable pled no contest. The reporter's transcript from Mr. Amigable's change of plea hearing unequivocally reflects he pled "guilty." See 6 AA 1450 at lines 16-20 and 1452 at lines 4-6.