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7  
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12 ROGER ACEVES FOR SUPERVISOR  
2014, ROGER S. ACEVES, AND TONY  
13 VALLEJO,

14 Respondents.

FPPC Case No. 17/145

STIPULATION, DECISION AND ORDER

15  
16 INTRODUCTION

17 Roger S. Aceves (“Aceves”) has served as a member of the Goleta City Council since 2006. In  
18 2013, Aceves created the controlled committee Roger Aceves for Supervisor 2014 (the “Committee”) in  
19 conjunction with his unsuccessful candidacy for Santa Barbara Supervisor, District 2, in the June 3, 2014  
20 Primary Election. Tony Vallejo was the treasurer of the Committee.

21 The Committee was the subject of an FTB audit, which revealed that Respondents committed  
22 numerous violations of the Political Reform Act (the “Act”),<sup>1</sup> including a failure to provide sufficient  
23 notice to potential major donor committees, improper acceptance of cash contributions of \$100 or more,  
24 and a failure to timely report certain subvendor payments.

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27 <sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the  
28 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in  
Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,  
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred in  
3 2013 and 2014. For this reason, all legal references and discussions of law pertain to the Act’s provisions  
4 as they existed at that time.

5 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

6 When enacting the Act, the people of California found and declared that previous laws regulating  
7 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> To that end, the  
8 Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

9 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in  
10 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper  
11 practices are inhibited.<sup>4</sup> Along these lines, the Act includes a comprehensive campaign reporting system.<sup>5</sup>  
12 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be  
13 “vigorously enforced.”<sup>6</sup>

14 Notification to Potential Major Donors

15 A candidate or committee that receives contributions of \$5,000 or more from any person shall  
16 inform the contributor within two weeks of receipt of the contributions that he or she may be required to  
17 file campaign reports, and shall include specific language provided in Regulation 18427.1.

18 If a candidate or committee receives \$10,000 or more from any person during any period in which  
19 late contribution reports are required, they should provide the required notice within one week.<sup>7</sup>

20 The notice is not required if notice has previously been sent in the same calendar year, or if the  
21 contributor has been issued a recipient committee ID number from the Secretary of State.<sup>8</sup>

22 A person qualifies as a major donor committee by making contributions totaling \$10,000 or more  
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24 \_\_\_\_\_  
25 <sup>2</sup> Section 81001, subd. (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subd. (a).

28 <sup>5</sup> Sections 84200, *et seq.*

<sup>6</sup> Section 81002, subd. (f).

<sup>7</sup> Section 84105; Regulation 18427.1.

<sup>8</sup> Section 84105; Regulation 18427.1, subdivision (d).

1 during a calendar year.<sup>9</sup>

2 Prohibited Cash Contributions of \$100 or More

3 No contribution of \$100 or more may be made or received in cash.<sup>10</sup> All contributions of \$100 or  
4 more must be made in the form of a written instrument containing the name of the contributor and the  
5 name of the payee, and drawn from the account of the contributor.<sup>11</sup>

6 Duty to Report Subvendor Payments

7 A subvendor is a person or company that is hired by a committee's agent or independent  
8 contractor to provide a good or service for the committee. The Act requires committees to report  
9 payments of \$500 or more made on its behalf by an agent or independent contractor the same way it  
10 would if it were making the payment on its own.<sup>12</sup> Disclosure of the expenditures made by an agent or  
11 independent contractor are required to be made at the same time and in the same manner and detail as  
12 required for the committee's direct expenditures.<sup>13</sup> Specifically, the following information must be  
13 provided: (1) the subvendor's full name; (2) his or her street address; (3) the amount of each expenditure;  
14 and (4) a brief description of the consideration for which each expenditure was made.<sup>14</sup> This information  
15 reported by the candidate or committee is commonly referred to as "subvendor information."

16 Joint and Several Liability of Candidate, Committee, and Treasurer

17 It is the duty of a committee treasurer to ensure that the committee complies with the campaign  
18 reporting provisions of the Act.<sup>15</sup> A treasurer may be held jointly and severally liable, along with the  
19 candidate and the committee, for violations committed by the committee.<sup>16</sup>

20 **SUMMARY OF THE FACTS**

21 The Committee qualified on August 14, 2013. Aceves was unsuccessful in the election for Santa  
22 Barbara Supervisor, receiving 44.12 percent of the vote. The Committee terminated effective December  
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24 <sup>9</sup> Section 82013, subd. (c).

25 <sup>10</sup> Section 84300, subd. (a).

26 <sup>11</sup> Section 84300, subd. (c).

27 <sup>12</sup> Section 84303.

28 <sup>13</sup> Regulation 18431, subd. (c); Section 84211, subd. (k).

<sup>14</sup> Section 84211, subd. (k)(1)-(4) and (6).

<sup>15</sup> Sections 81004, 84100, 84104, and 84213; Regulation 18427.

<sup>16</sup> Sections 83116.5 and 91006.

1 20, 2014. During its existence, the Committee received \$506,199 in contributions and made \$483,960 in  
2 expenditures.

3 Respondents failed to provide sufficient written notice to any potential major donor committees,  
4 as required by the Act. Specifically, in 2013 and 2014, Respondents were required to provide notice to 21  
5 potential major donors (those who contributed \$5,000 or more) who contributed a total of \$208,320 to  
6 the Committee. Ten of the 21 potential major donors qualified as major donor committees with filing  
7 obligations, representing \$151,500 in contributions to the Committee. None of the ten major donor  
8 committees filed as major donors in the appropriate year. According to Vallejo, Respondents provided  
9 only verbal notice to potential major donors.

10 Respondents also accepted two contributions of \$100 or more in cash, totaling \$5,100, that were  
11 received in the form of cashier's checks. In particular, Respondents deposited a \$100 contribution from  
12 Diana de Bruynkops on March 25, 2014, and a \$5,000 contribution from Tom Price on May 27, 2014.  
13 Vallejo provided that Respondents were initially unaware that cashier's checks were considered cash,  
14 and that volunteers were later instructed not to accept cash contributions.

15 Respondents failed to timely disclose subvendor information for expenditures amounting to  
16 \$261,229.21. In particular, \$1,836.43 in payments during the reporting period of July 1 to December 31,  
17 2013; \$5,000 during the reporting period of January 1 to March 17, 2014; \$185,249.69 during the  
18 reporting period of March 18 to May 17, 2014; and \$81,363.45 during the reporting period of May 18 to  
19 June 30, 2014, failed to include the necessary subvendor information on the Committee's campaign  
20 statements.

21 The unreported subvendor payments derived from payments made to Rincon Strategies. In  
22 general, the missing subvendors provided a variety of goods and services to the Committee, including  
23 printing, television production, and advertisements.

## 24 VIOLATIONS

### 25 Count 1: Failure to Provide Sufficient Notice to Potential Major Donor Committees

26 The Committee, Aceves, and Vallejo failed to provide sufficient notice to 21 potential major  
27 donor committees that contributed a total of \$208,320, in violation of Section 84105 and Regulation  
28 18427.1.



1 As to Count 1, there are no recent comparable cases to rely on. As a result, the Commission  
2 considers the facts of the case, the public harm involved, the purposes of the Act, and the above-  
3 referenced factors in determining an appropriate penalty.

4 Many individuals and entities qualify as major donors on the basis of a single contribution made  
5 to a candidate or committee and are unaware that they have become a “committee” with campaign  
6 reporting obligations under the Act. To increase compliance with the major donor reporting provisions,  
7 Section 84105 was added to the Act to require candidates and recipient committees to notify large  
8 contributors of the Act’s reporting requirements. When a candidate or recipient committee fails to notify  
9 a potential major donor of the pertinent filing requirements, the public is harmed in that it is deprived of  
10 important, time-sensitive information regarding large political contributions.

11 In addition to the significant public harm underlying this type of violation, Respondents’  
12 particular violation here falls on the higher end of the “severity” scale, given the high amount of potential  
13 major donors (21) that they failed to notify and the amount of contributions (\$151,500) that went  
14 unreported due to Respondents’ actions. As a result of the foregoing, a fine in the middle range is  
15 appropriate.

16 Comparable cases in which a penalty was charged for unlawful cash contributions of \$100 or  
17 more include the following:

18 • *In the Matter of John Brosnan and John Brosnan for District 3 Supervisor 2014*; FPPC No.  
19 14/1387. Respondents, a candidate and his controlled committee, received a cash contribution of \$5,000.  
20 The contribution, which amounted to over 12 percent of total contributions received by the Committee,  
21 was received from Brosnan’s parents and reported on the appropriate campaign statement. In March  
22 2016, the Commission approved a fine of \$1,500 on one count.

23 As to Count 2, a penalty similar to that approved in *Brosnan* is recommended here given the  
24 similar amount of cash contributions of \$100 or more that were received by the respective candidates. In  
25 mitigation, \$5,100 represents a very small percentage of the total amount of contributions received by the  
26 Committee, and the contributions were reported on timely-filed campaign statements.

27 Comparable cases in which a penalty was charged for failure to timely report subvendor  
28 payments include the following:

- *In the Matter of Kenneth Pon and For the Children of West County*; FPPC No. 14/403.

Respondents, a primarily formed ballot measure committee and its treasurer, failed to timely report a total of \$459,790.10 in subvendor payments across five different reporting periods, including pre-election periods, in 2012. The pertinent subvendor payments accounted for 58 percent of all expenditures in 2012. In November 2016, the Commission approved a penalty of \$3,000 on each of two counts.

As to Counts 3 and 4, Respondents are deserving of a penalty lower than in the comparable *Pon* case. In *Pon*, the respondents failed to timely report subvendor payments covering five different periods, including pre-election time. Here, Respondents failed to report for four periods, including pre-election periods. In *Pon*, the subvendor payments accounted for 58 percent of all expenditures during a 12-month period. Here, the pertinent subvendor payments accounted for 54 percent during the period of July 1, 2013 to June 30, 2014. However, in mitigation, the actual dollar amount of subvendor payments here was only about 57 percent of the amount at issue in *Pon*; therefore, a per count penalty lower than *Pon* is justified.

In aggravation of all counts, Respondents committed additional violations of the Act that are not being charged herein, in the interest of settlement. In particular, Respondents failed to timely file 24-hour contribution reports for two late contributions amounting to \$11,700, although the subject late contributions were reported on the Committee’s timely-filed campaign statements. Further, Respondents committed minor violations related to recordkeeping, the one bank account rule, and campaign reporting.

Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Provide Sufficient Notice to Potential Major Donor Committees	\$2,000
2	Unlawful Cash Contributions of \$100 or More	\$1,500
3	Failure to Timely Report Subvendor Payments	\$2,000
4	Failure to Timely Report Subvendor Payments	\$2,000
<b>TOTAL:</b>		<b>\$7,500</b>

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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
3 Respondents, Roger Aceves for Supervisor 2014, Roger S. Aceves, and Tony Vallejo, hereby agree as  
4 follows:

5 1. Respondents violated the Act as described in the foregoing pages, which are a true and  
6 accurate summary of the facts in this matter.

7 2. This stipulation will be submitted for consideration by the Fair Political Practices  
8 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

9 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
10 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
11 liability of Respondents pursuant to Section 83116.

12 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all  
13 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.  
14 This includes, but is not limited to, the right to appear personally at any administrative hearing held in  
15 this matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine  
16 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
17 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
18 reviewed.

19 5. Respondents agree to the issuance of the decision and order set forth below. Also,  
20 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
21 \$7,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
22 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
23 administrative penalty described above, and same shall be held by the State of California until the  
24 Commission issues its decision and order regarding this matter.

25 6. If the Commission declines to approve this stipulation—then this stipulation shall become  
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
27 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
28 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing

1 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
2 Director, shall be disqualified because of prior consideration of this Stipulation.

3 7. The parties to this agreement may execute their respective signature pages separately. A  
4 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax  
5 or as a PDF email attachment is as effective and binding as the original.

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7 Dated: \_\_\_\_\_  
8 Galena West, Chief of Enforcement  
9 Fair Political Practices Commission

10 Dated: \_\_\_\_\_  
11 Roger S. Aceves, individually and on behalf of Roger  
12 Aceves for Supervisor 2014

13 Dated: \_\_\_\_\_  
14 Tony Vallejo, individually and on behalf of Roger  
15 Aceves for Supervisor 2014

1 The foregoing stipulation of the parties “In the Matter of Roger Aceves for Supervisor 2014, Roger S.  
2 Aceves, and Tony Vallejo,” FPPC Case No. 17/145 is hereby accepted as the final decision and order of  
3 the Fair Political Practices Commission, effective upon execution below by the Chair.  
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5 IT IS SO ORDERED.  
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7 Dated: \_\_\_\_\_  
8 Joann Remke, Chair  
9 Fair Political Practices Commission  
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