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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10

11 In the Matter of:

FPPC Case No. 19/1508

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13 LOCAL 18 WATER & POWER  
DEFENSE LEAGUE (IBEW), AND  
14 BRIAN D'ARCY (TREASURER),

STIPULATION, DECISION AND ORDER

15 Respondents.  
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17 **INTRODUCTION**

18 Local 18 Water & Power Defense League (IBEW) (the "Committee") is a general purpose  
19 committee sponsored by the International Brotherhood of Electrical Workers Local 18. The Committee's  
20 treasurer at the time of the violations was Brian D'Arcy ("D'Arcy").

21 The Committee was the subject of a Franchise Tax Board ("FTB") audit, which revealed that  
22 Respondents committed violations of the Political Reform Act (the "Act"),<sup>1</sup> by failing to timely file 24-  
23 hour contribution reports disclosing three contributions made by the Committee.

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28 <sup>1</sup> The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violation in this case occurred in  
3 2015 and 2016. 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> For this reason,  
8 the 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 Duty to File 24-Hour Contribution Reports

15 Each committee that makes or receives a late contribution must file a report within 24 hours of  
16 making or receiving the contribution.<sup>7</sup> A “late contribution” includes a contribution aggregating \$1,000 or  
17 more that is made to or received by a candidate, controlled committee, or primarily formed committee  
18 within 90 days before the date of the election at which the pertinent candidate or measure is to be voted  
19 on.<sup>8</sup> A “late contribution” also includes a contribution, including a loan, that totals in the aggregate one  
20 thousand dollars (\$1,000) or more and is made to or received by a political party committee, within 90  
21 days before the date of a state election or on the date of the election.<sup>9</sup>

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24 <sup>2</sup> Section 81001, subd. (h).

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

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

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

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

<sup>7</sup> Section 84203.

<sup>8</sup> Section 82036.

<sup>9</sup> *Id.*

1 Joint and Several Liability of Committee and Treasurer

2 Every committee must have a treasurer.<sup>10</sup> It is the duty of a committee's treasurer to ensure that the  
3 committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds  
4 and the reporting of such funds.<sup>11</sup> Any person who violates any provision of the Act, who purposely or  
5 negligently causes any other person to violate any provision of the Act, or who aids and abets any other  
6 person in the violation of the Act is liable under the Act if the person has filing or reporting obligations  
7 under the Act, or is paid to provide services regulated by the Act.<sup>12</sup> If two or more persons are responsible  
8 for a violation of the Act they are jointly and severally liable.<sup>13</sup>

9 **SUMMARY OF THE FACTS**

10 The Committee, which is still open, has been active since 1982. The Committee was audited by the  
11 FTB for the period of January 1, 2015 through December 31, 2016. During that time the Committee  
12 reported receiving \$405,446 in contributions, and making \$338,460 of expenditures. The Committee was  
13 active in the March 3, 2015 Los Angeles city Primary Election and the November 8, 2016 General Election.

14 The Committee and D'Arcy failed to timely file a 24-hour report for a \$25,000 contribution made  
15 to Citizens for Increased Voter Participation, A Committee Supporting Yes on Charter Amendments 1 and  
16 2 on February 26, 2015. The report was required in connection with the city of Los Angeles Primary  
17 Election held on March 3, 2015. The 24-hour contribution report was not filed, but the contribution was  
18 timely disclosed after the election, on the Committee's semiannual statement for the January 1, 2015-June  
19 30, 2015 reporting period.

20 The Committee and D'Arcy also failed to timely file a 24-hour report for a \$100,000 contribution  
21 to No on Prop 53 and a \$15,000 contribution to the California Democratic Party made on October 26, 2016.  
22 The report was required in connection with the General Election held on November 8, 2016. The  
23 Committee filed the 24-hour contribution report 89 days late on January 24, 2017. The two contributions  
24 were timely disclosed after the election, on the Committee's semiannual statement for the July 1, 2016-

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27 <sup>10</sup> Section 84100.

<sup>11</sup> Section 84104 and Regulation 18427, subd. (a).

28 <sup>12</sup> Section 83116.5.

<sup>13</sup> Section 83116.5.

1 December 31, 2016 reporting period. The contributions were also timely disclosed on 24-hour reports filed  
2 by the contribution recipients.

### 3 **VIOLATIONS**

#### 4 Count 1: Failure to Timely File a 24-Hour Contribution Report

5 The Committee and D'Arcy failed to timely file a 24-hour contribution report for a late contribution  
6 of \$25,000 made to Citizens for Increased Voter Participation, A Committee Supporting Yes on Charter  
7 Amendments 1 and 2 on February 26, 2015, and they failed to timely file a 24-hour contribution report for  
8 a \$100,000 late contribution to No on Prop 53 and a \$15,000 late contribution to the California Democratic  
9 Party made on October 26, 2016, in violation of Section 84203.

### 10 **PROPOSED PENALTY**

11 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per count.  
12 Thus, the maximum penalty that may be imposed is \$5,000.<sup>14</sup>

13 In determining the appropriate penalty for a particular violation of the Act, the Commission  
14 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission  
15 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention  
16 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)  
17 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were  
18 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>15</sup>

19 In this case, the Enforcement Division found no evidence that Respondents intended to conceal,  
20 deceive, or mislead the public. Respondents have no prior Enforcement history. The public harm inherent  
21 in campaign reporting violations is that the public is deprived of important, time-sensitive information  
22 regarding political contributions and expenditures. The harm is even greater when the public is deprived  
23 of information before an election, such as the contents of late contribution reports, because such  
24 information has the potential to affect how votes are cast. Here, the Committee and D'Arcy failed to timely  
25 report three late contributions totaling \$140,000 resulting in no disclosure of these contributions before the  
26 pertinent elections. In mitigation of all counts, for the audit period of January 1, 2015 through December  
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28 <sup>14</sup> Section 83116, subd. (c).

<sup>15</sup> Regulation 18361.5, subd. (d).

1 31, 2016, 24-hour contribution reports were timely filed for 13 other contributions made totaling \$77,000.  
2 The Committee stated it made its best efforts to timely disclose all contributions made within the applicable  
3 90-day reporting periods and all contributions in question were timely disclosed on the Form 460s filed by  
4 the Committee. Moreover, two of the contributions were reported by the Committee on a late filed 24-hour  
5 report after Respondents discovered that it had not been previously filed. Further, for the reports being  
6 charged, there was timely disclosure from the contribution recipients.

7 The Commission also considers penalties in prior cases involving similar violations. Recent similar  
8 cases involving a failure to timely file 24-hour reports include the following:

- 9 • *In the Matter of Standing Committee on Political Education of the California Labor Federation,*  
10 *AFL-CIO and Art Pulaski*; FPPC No. 18/145. This matter arose from an audit performed by the  
11 Franchise Tax Board's Political Reform Audit Program. The Committee and Pulaski failed to timely  
12 file three 24-hour reports including a report due October 8, 2014 for \$25,000, a report due April  
13 14, 2015 for \$8,500 and a report due May 8, 2015 for \$25,000 for a total of \$58,500, in violation  
14 of Section 84203 (1 count). The amount not reported was relatively small compared to the overall  
15 activity, however, the \$25,000 contribution given in 2014 to the California Democratic Party was  
16 not reported on a campaign statement and was not disclosed by the Committee until three years  
17 later on a statement filed April 14, 2017. This contribution was reported timely by the recipient of  
18 the contribution. In mitigation, the Committee timely filed 24-hour contribution reports for 34 other  
19 contributions totaling \$240,000. On February 20, 2020, the Commission imposed a penalty of  
20 \$2,500 for this violation.

21 For the violation here, a penalty higher than *AFL-CIO* is justified. Although all three contributions  
22 here were timely reported on semiannual statements, unlike the comparable case, those weren't filed until  
23 after the pertinent elections. Also, while the number of contributions not timely reported is comparable, in  
24 *AFL-CIO* the amount not reported is much lower. Further, the amount not reported in *AFL-CIO* was small  
25 compared to the committee's overall activity. Here, the amount not timely reported accounts for over 40%  
26 of the Committee's expenditures during the audit period, and nearly 20% of its overall activity. Therefore,  
27 a higher penalty is appropriate.

1 Based on the foregoing, the following penalties are recommended:

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| Count | Violation                              | Proposed Penalty |
|-------|--|------------------|
| 1     | Failure to Timely File 24-Hour Reports | \$3,000          |
|       | <b>TOTAL:</b>                          | <b>\$3,000</b>   |

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5 **CONCLUSION**

6 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
7 Respondents, Local 18 Water & Power Defense League (IBEW), and Brian D’Arcy, hereby agree as  
8 follows:

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

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

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

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

23 5. Respondents agree to the issuance of the decision and order set forth below. Also,  
24 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
25 \$3,000. One or more payments totaling this amount, to be paid to the General Fund of the State of  
26 California, is/are submitted with this stipulation as full payment of the administrative penalty described  
27 above, and they will be held by the State of California until the Commission issues its decision and order  
28 regarding this matter.

1           6.     If the Commission declines to approve this stipulation—then this stipulation shall become  
2 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
3 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
4 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before  
5 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
6 shall be disqualified because of prior consideration of this Stipulation.

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

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

Dated: \_\_\_\_\_  
Brian D’Arcy (Treasurer) individually and on behalf of  
Local 18 Water & Power Defense League (IBEW)

