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

10  
11 In the Matter of:

12 OUR WATER NOW – H2OWN “YES  
ON MEASURE W,” RICHARD PIERCY,  
13 AND ADOLPH COLLASO,

14 Respondents.

FPPC Case No. 16/19934

STIPULATION, DECISION AND ORDER

15  
16 INTRODUCTION

17 Our Water Now – H2Own “Yes on Measure W” (the “Committee”) is a primarily formed ballot  
18 measure committee that was created to support Measure W, a measure on the November 2016 ballot in  
19 Apple Valley, California. The principal officer of the Committee is Richard Piercy (“Piercy”), and its  
20 treasurer is Adolph Collaso (“Collaso”).

21 Despite being primarily formed to support Measure W, the Committee did not change its name to  
22 reflect its support of the measure until contacted by the Enforcement Division of the Fair Political  
23 Practices Commission (the “Commission”) months after the election, thereby resulting in a violation of  
24 Sections 84103 and 84107 of the Political Reform Act (the “Act”).<sup>1</sup> Further, the Committee failed to  
25 sufficiently report certain financial activity on its pre-election campaign statements, in violation of

26  
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 Section 84211, subdivisions (a), (b), (c), (d), (f), (i), and (k), of the Act.

2 **SUMMARY OF THE LAW**

3 The Act and its regulations are amended from time to time. The violations in this case occurred  
4 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as  
5 they existed at that time.

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

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

10 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in  
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper  
12 practices are inhibited.<sup>4</sup> Along these lines, the Act includes a comprehensive campaign reporting  
13 system—and the true sources of campaign contributions may not be concealed.<sup>5</sup> Another purpose of the  
14 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>6</sup>

15 Duty to Identify Committee as Primarily Formed Ballot Measure Committee

16 The Act defines “primarily formed committee” to include a committee which is formed or exists  
17 primarily to support or oppose a single ballot measure.<sup>7</sup> Within 30 days of the designation of the  
18 numerical order of propositions appearing on the ballot, any committee which is primarily formed to  
19 support or oppose a ballot measure shall, if supporting the measure, include the statement “a committee  
20 for Proposition \_\_,” in any reference to the committee required by law.<sup>8</sup>

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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., and 84301.

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

<sup>7</sup> Section 82047.5.

<sup>8</sup> Section 84107.

1 Mandatory Filing of Campaign Statements

2 At the core of the Act’s campaign reporting system is the requirement that committees file  
3 campaign statements and reports for certain reporting periods, by certain deadlines, and including certain  
4 information.<sup>9</sup>

5 The Act requires that committees report the total amount of contributions received during the  
6 period covered by the campaign statement from (i) persons who have given a cumulative amount of \$100  
7 or more; and (ii) persons who have given a cumulative amount of less than \$100.<sup>10</sup> Further, the Act  
8 requires that committees report the name, address, occupation, and employer of each person that  
9 contributes \$100 or more on its campaign statements.<sup>11</sup>

10 The Act also requires that committees report the total amount of expenditures made during the  
11 period covered by the campaign statement to (i) persons who have received \$100 or more; and (ii)  
12 persons who have received less than \$100.<sup>12</sup> For each person to whom an expenditure of \$100 or more  
13 has been made, the committee must report the name and address of the recipient, the amount of the  
14 expenditure, and a brief description of the consideration for which each expenditure was made.<sup>13</sup>

15 Joint and Several Liability of Committee, Principal Officer, and Treasurer

16 It is the duty of a committee treasurer to ensure that the committee complies with the Act.<sup>14</sup> It is  
17 the duty of the committee’s principal officer to authorize the content of communications made by the  
18 committee, authorize expenditures made by the committee, and determine the committee’s campaign  
19 strategy.<sup>15</sup> A treasurer and principal officer may be held jointly and severally liable, along with the  
20 committee, for violations committed by the committee.<sup>16</sup>

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24 <sup>9</sup> Sections 84200, et seq.

25 <sup>10</sup> Section 84211, subs. (a), (c), and (d).

26 <sup>11</sup> Section 84211, subd. (f).

27 <sup>12</sup> Section 84211, subs. (b), (i), and (j).

28 <sup>13</sup> Section 84211, subd. (k).

<sup>14</sup> Sections 81004, 84100, 84104, and 84213; Regulation 18427.

<sup>15</sup> Section 82047.6; Regulation 18402.1, subd. (b).

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

1 **SUMMARY OF THE FACTS**

2 Measure W was a measure on the November 2016 General Election ballot in Apple Valley,  
3 California which would have resulted in the acquisition of a water utility by the town. The measure did  
4 not pass, receiving only 43.23 percent of the vote.

5 The Committee filed its initial Form 410 statement of organization on or about May 23, 2016,  
6 which identified the Committee as a primarily formed committee supporting the “town water company  
7 purchase.” Measure W was officially added to the ballot on July 26, 2016, and assigned its letter on  
8 August 16, 2016. On or about October 3, 2016, the Committee filed an amendment to its statement of  
9 organization, noting that it had qualified as a committee on September 26, 2016; however, the Committee  
10 did not change its name at this time.

11 Leading up to the November 2016 General Election, the Committee ran several different  
12 advertisements supporting Measure W. In particular, the Committee paid for a video digital ad that ran  
13 on two different occasions prior to the election; a radio ad which ran locally between October 10 and  
14 November 1, 2016; and a direct mail piece which was distributed between October 6 and November 5,  
15 2016.

16 The digital ad displayed text that read “Paid for by H2Own – Our Water Now Committee  
17 #1386018.” The radio ad verbally disclosed that the ad was “Paid for by H2O-Our Water Now ID#  
18 1386018.” The direct mailer included the words “Paid for by: H2Own-Our Water Now Citizens  
19 Committee-ID#1386018,” along with the Committee’s address.<sup>17</sup> At this time, the name of the  
20 Committee still did not include reference to Measure W, either on its statement of organization, or in any  
21 of the advertisements.

22 On or about October 5, 2016, the Committee received a \$1,500 sales order for the radio  
23 advertisement; however, the Committee did not report the expenditure until its campaign statement for  
24 the period of October 23 to December 31, 2016, which was filed January 25, 2017, over three months  
25 after the pre-election expenditure was made.

26 In 2016, the Committee reported \$25,987.59 in contributions and \$21,889.63 in expenditures.

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28 <sup>17</sup> It is noteworthy that none of these advertisements correctly stated the name of the Committee as it appeared on the  
operative statement of organization - “Our Water Now – H2Own.”

1 The Committee also created a GoFundMe web site, which garnered a total of \$375 in contributions,  
2 including a \$200 contribution from Lance Arnt. None of these contributions were timely reported on the  
3 Committee’s campaign statements.

4 On or about February 17, 2017, after being contacted by the Enforcement Division, the  
5 Committee filed an amendment to its statement of organization, changing the name of the committee to  
6 “Our Water Now – H2Own ‘Yes on Measure W.’”

7 **VIOLATIONS**

8 Count 1: Failure to Timely Change Committee Name to Reflect Supported Ballot Measure

9 The Committee, Piercy, and Collaso failed to timely change the name of the Committee, a  
10 primarily formed ballot measure committee, to reflect the supported ballot measure, within 30 days of the  
11 designation of the measure as “Measure W,” by amending its statement of organization, in violation of  
12 Sections 84103 and 84107 of the Act.

13 Count 2: Failure to Timely Report Financial Activity on Pre-Election Campaign Statements

14 The Committee, Piercy, and Collaso failed to timely report a total of \$175 in unitemized  
15 contributions under \$100 and a contribution of \$200 received from Lance Arnt on its pre-election  
16 campaign statement covering the reporting period of July 1 to September 24, 2016, and failed to timely  
17 report an expenditure of \$1,500 paid for radio advertisements on its pre-election campaign statement  
18 covering the reporting period of September 25 to October 22, 2016, in violation of Section 84211,  
19 subdivisions (a), (b), (c), (d), (f), (i), and (k), of the Act.

20 **PROPOSED PENALTY**

21 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
22 count. Thus, the maximum penalty that may be imposed is \$10,000.<sup>18</sup>

23 In determining the appropriate penalty for a particular violation of the Act, the Commission  
24 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
25 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
26 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
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28 <sup>18</sup> Section 83116, subd. (c).

1 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
2 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
3 record of violations.<sup>19</sup> Additionally, the Commission considers penalties in prior cases with comparable  
4 violations.

5 Comparable cases in which a penalty was charged for violating Sections 84103 and 84107  
6 include the following:

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

8 Respondents, a primarily formed ballot measure committee and its treasurer, campaigned for various  
9 local measures in various elections. However, despite its activity advocating for the measures, the  
10 committee failed to timely change its name to reflect the measures it supported prior to three different  
11 elections. Further, as a result of the committee's failure to change its name, the proper name of the  
12 committee was also not printed on over half of a million dollars' worth of campaign literature distributed  
13 by the committee, including mailers. For settlement purposes, the naming and advertising disclosure  
14 violations were combined into one count per affected election, charging the respondents \$5,000 per  
15 count. The Commission imposed these penalties in November 2016.

16 Comparable cases in which a penalty was charged for violating Section 84211 include the  
17 following:

- 18 • *In the Matter of Roger Gaylord III and Roger Gaylord for Folsom City Council 2014*; FPPC No.  
19 15/097. Respondents, a candidate and his controlled committee, failed to timely report \$4,131.28 in  
20 expenditures and \$390 in contributions on two different pre-election campaign statements. Further,  
21 Respondents under reported certain loans and under or over reported expenditures on the same pre-  
22 election statements. In February 2017, the Commission imposed a penalty of \$2,000 on one count.

23 As to Count 1, Respondents here both failed to timely change the Committee name to reflect the  
24 supported ballot measure and failed to include the requisite name on any of its campaign advertisements,  
25 similar to the respondents in *Pon*. Given that the committee name appears on all advertisements and  
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<sup>19</sup> Regulation 18361.5, subd. (d).

1 mailers, disclosing the name of the ballot measure and the sender’s position on the measure in the  
2 committee’s name is crucial to the public’s ability to easily identify the nature of the committee.

3 The violations here are mitigated somewhat by the smaller amount of advertising activity;  
4 therefore, a lower penalty is appropriate. Further, according to the Committee, it was outspent by a ratio  
5 of 130 to 1 during the ultimately unsuccessful campaign. As a result, a penalty in the amount of \$3,500  
6 is recommended for Count 1.

7 As to Count 2, the public was harmed by Respondents’ failure to timely disclose important  
8 information related to the campaign, including the advertising activity of the Committee, the identity of  
9 contributors, and the full amount of contributions received. That harm was aggravated by the fact that  
10 Respondents’ violations occurred before the election. *Gaylord* is analogous given that the financial  
11 activity went unreported during pre-election periods. Therefore, a similar penalty in the amount of  
12 \$2,000 is recommend for Count 2.

13 Based on the foregoing, a total penalty in the amount of \$5,500 is recommended.

#### 14 CONCLUSION

15 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
16 Respondents, Our Water Now – H2Own “Yes on Measure W,” Richard Piercy, and Adolph Collaso,  
17 hereby agree as follows:

- 18 1. The Respondents violated the Act as described in the foregoing pages, which are a true  
19 and accurate summary of the facts in this matter.
- 20 2. This stipulation will be submitted for consideration by the Fair Political Practices  
21 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 22 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
23 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
24 liability of the Respondents pursuant to Section 83116.
- 25 4. The Respondents understand, and hereby knowingly and voluntarily waive, any and all  
26 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.  
27 This includes, but is not limited to, the right to appear personally at any administrative hearing held in  
28 this matter, to be represented by an attorney at the Respondents’ own expense, to confront and cross-

1 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an  
2 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter  
3 judicially reviewed.

4 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the  
5 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
6 \$5,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
7 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
8 administrative penalty described above, and same shall be held by the State of California until the  
9 Commission issues its decision and order regarding this matter.

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

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

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

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24 Dated: \_\_\_\_\_  
25 Richard Piercy, individually and on behalf of  
26 Our Water Now – H2Own “Yes on Measure W”

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28 Dated: \_\_\_\_\_  
Adolph Collaso, individually and on behalf of  
Our Water Now – H2Own “Yes on Measure W”



1 The foregoing stipulation of the parties “In the Matter of Our Water Now – H2Own ‘Yes on Measure  
2 W,’ Richard Piercy, and Adolph Collaso,” FPPC Case No. 16/19934 is hereby accepted as the final  
3 decision and order of the Fair Political Practices Commission, effective upon execution below by the  
4 Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_

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10 Joann Remke, Chair  
11 Fair Political Practices Commission  
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