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

10
11 In the Matter of:

12 ART CHACON, ART CHACON FOR
WATER BOARD 2014, and
13 CALIFORNIANS FOR CLEAN WATER,

14 Respondent.

FPPC Case No. 14/1236

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Art Chacon is a member of the Central Basin Municipal Water District Board of Directors. He
18 first was elected to the position in 2006, and he was re-elected in 2010 and 2014.

19 For his last re-election campaign, Art Chacon for Water Board 2014 was his controlled
20 committee.

21 In 2014, Californians for Clean Water was a general purpose committee, which supported
22 Chacon's re-election with campaign signs and mailers. This activity was reported by the Clean Water
23 committee as independent expenditures.

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1 Although Chacon did not control every action and decision of the Clean Water committee, the
2 influence of his agents was significant enough that the committee qualified as his controlled committee
3 under the Political Reform Act.¹ As the controlling candidate, his name was required to be included as
4 part of the committee name for all purposes, including the “paid for by” disclosures in three mass mailers
5 that the committee sent in opposition to Chacon’s opponents. Under these facts, multiple violations arise,
6 which are discussed in more detail below.

7 SUMMARY OF THE LAW

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

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

12 When enacting the Political Reform Act, the people of California found and declared that
13 previous laws regulating political practices suffered from inadequate enforcement by state and local
14 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
15 purposes.”³

16 One purpose of the Act is to promote transparency by requiring each committee that is controlled
17 by a candidate to disclose this relationship on campaign filings, in the committee name, on campaign
18 filings of other committees controlled by the same candidate, and in “paid for by” disclosures for mass
19 mailings.⁴ Also, the Act imposes certain rules that are designed to aid the audit and enforcement process,
20 including the one bank account rule, which is discussed in more detail below.⁵

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24 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
25 81000 through 91014. All statutory references are to this code. 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 this source.

26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Sections 84101; 84102, subdivisions (e) and (g); 84211, subdivision (p); 84213; 84305, subdivision (c); and
Regulation 18402, subdivision (c)(1).

⁵ Section 85201.

1 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
2 be “vigorously enforced.”⁶

3 **Definition of Controlled Committee**

4 The Act defines a “committee” to include any person (or combination of persons) who receives
5 contributions totaling \$1,000 or more in a calendar year.⁷ This type of committee commonly is referred
6 to as a “recipient committee.”

7 A recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly
8 with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate
9 controls a committee if he or she, his or her agent, or any other committee he or she controls has a
10 significant influence on the actions or decisions of the committee.⁸

11 **Controlled Committee Name and Filing Requirements**

12 At the core of the Act’s campaign reporting system is the requirement that committees must file
13 campaign statements and reports for certain reporting periods and by certain deadlines.⁹

14 Whenever identification of a committee is required by law, the identification must include the full
15 name of the committee, and in the case of a committee that is controlled by one or more candidates, the
16 name of the committee must include the last name of each controlling candidate.¹⁰

17 Also, whenever a candidate-controlled committee files a campaign statement, information about
18 the controlling candidate must be disclosed on the filing along with information about any other
19 committees that candidate controls. Additionally, the controlling candidate must sign/verify the
20 controlled committee’s campaign statements.¹¹

21 **Required Disclosures for Senders of Mass Mailings**

22 A “mass mailing” is over 200 substantially similar pieces of mail sent in a calendar month, not
23 including form letters or other mail sent in response to an unsolicited request, letter or other inquiry.¹²

24 ⁶ Section 81002, subdivision (f).

25 ⁷ Section 82013, subdivision (a).

26 ⁸ See Section 82016.

27 ⁹ Sections 84200, et seq.

28 ¹⁰ Sections 84101; 84102, subdivisions (e) and (g); and Regulation 18402, subdivision (c)(1).

¹¹ See Sections 84211, subdivision (p); and 84213.

¹² Section 82041.5 and Regulation 18435.

1 The “sender” of a mass mailing is the candidate or committee who pays for the largest portion of
2 expenditures attributable to the designing, printing, and posting of the mailing.¹³ The phrase “pay for”
3 means to make, promise to make, or incur an obligation to make payment.¹⁴

4 When a single candidate or committee sends a mass mailing, the Act provides that the name,
5 street address, and city of the sender must be disclosed on the outside of each piece of mail in the mass
6 mailing. Also, if the sender is a controlled committee, the name of the person controlling the committee
7 must be part of the disclosure. In any case, the required disclosure must be preceded by the words “Paid
8 for by.”¹⁵

9 **One Bank Account Rule**

10 The Act requires campaign funds to be segregated from non-political, personal accounts and kept
11 in a single, designated campaign bank account.¹⁶ All contributions or loans made to the candidate, to a
12 person on behalf of the candidate, or to the candidate’s controlled committee must be deposited into this
13 account.¹⁷ Any personal funds that will be utilized to promote the election of the candidate must be
14 deposited into the account prior to expenditure.¹⁸ All campaign expenditures must be made from the
15 account.¹⁹ At times, this is referred to as the one bank account rule.

16 **Joint and Several Liability of Candidate and Committee**

17 A candidate may be held jointly and severally liable, along with his controlled committee, for
18 violations committed by the committee.²⁰

19 **SUMMARY OF THE FACTS**

20 In 2014, when Chacon was seeking re-election to the Central Basin Municipal Water District
21 Board of Directors, Division III, several other candidates were running against him. The results of the
22 election, which was held on November 4, 2014, are summarized below:

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24 ¹³ Regulation 18435, subdivision (b).

25 ¹⁴ Regulation 18435, subdivision (c).

26 ¹⁵ See Section 84305 and Regulation 18435, subdivision (d).

27 ¹⁶ Section 85201.

28 ¹⁷ Section 85201, subdivision (c).

¹⁸ Section 85201, subdivision (d).

¹⁹ Section 85201, subdivision (e).

²⁰ Sections 83116.5 and 91006.

Candidate	# of Votes	% of Vote
Art Chacon	4,931	26.13
Elba Romo	4,548	24.10
C.J. Salgado	4,288	22.73
Jason Gardea-Stinnett	2,310	12.24
Mario Gomez	2,135	11.32
Anthony Felix, Jr.	656	3.48

Chacon won, beating his second place opponent by approximately 383 votes (about two percent of the votes that were cast).

That year, Chacon’s re-election committee, Art Chacon for Water Board 2014, reported receipts and expenditures totaling approximately \$51,947 and \$45,726, respectively.

That same year, the Californians for Clean Water committee reported receipts and expenditures totaling approximately \$55,100 and \$57,097, respectively. Including consulting fees, roughly 80% of the committee’s expenditures were in support of Chacon and against his opponents. (The remaining 20% mostly was comprised of contributions to other candidates/committees and payments for professional services.)

The Clean Water committee filed campaign statements as a general purpose committee. Its pro-Chacon expenditures included payments for campaign signs, slate mailers, and “hit piece” mass mailers against his opponents. This spending was reported by the Clean Water committee as independent expenditures.

Although Chacon did not control every action and decision of the Clean Water committee, the influence of his agents (including Cary Jones²¹ and Chacon’s brothers, Hector Chacon and Fernando Chacon) was significant enough that the committee qualified as his controlled committee under the Political Reform Act.

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²¹ Jones worked for Art Chacon, Hector Chacon, and the Clean Water Committee on Art’s 2014 re-election campaign.

1 **VIOLATIONS**

2 **Count 1**

3 *Failure to Disclose Controlling Candidate Relationship on Campaign Filings*

4 As the controlling candidate, Chacon’s last name was required to be included as part of the Clean
5 Water committee’s name for all purposes. Also, Chacon was required to be identified as the controlling
6 candidate on the Clean Water committee’s campaign statements, and he was required to sign/verify the
7 committee’s campaign statements. However, the committee’s campaign statements never disclosed
8 Chacon as the controlling candidate, he never signed or verified them, and the committee name never
9 included Chacon’s last name.

10 Additionally, the pre-election and semi-annual campaign statements that were filed by Art
11 Chacon for Water Board 2014 were required to disclose that Chacon also controlled the Clean Water
12 committee, but this disclosure was not provided.

13 In this way, Chacon, Art Chacon for Water Board 2014, and the Clean Water committee violated
14 Sections 84102, subdivisions (e) and (g); 84211, subdivision (p); 84213, subdivision (a); and Regulation
15 18402, subdivision (c)(1).

16 **Counts 2 through 4**

17 *Failure to Disclose the True Sender of Mass Mailings*

18 In mid-October 2014, the Clean Water committee sent a mass mailer to approximately 9,038
19 recipients. The mailer was in opposition to one of Chacon’s opponents, Elba Romo. Also, the mailer was
20 in opposition to Sergio Calderon (who was running for re-election to the Water Replenishment District of
21 Southern California). The mailer urged the reader to “Vote No” on Romo and Calderon, who were
22 portrayed in a bad light and referred to as bad apples. The following disclosure was included as part of
23 the mailer: “**Paid for by Californians for Clean Water (ID #1365897).**” Of note, this identification
24 number, which was issued by the Secretary of State, was not the ID of the Clean Water committee.
25 Rather, it was the ID of the Art Chacon for Water Board 2014 committee. Immediately below this “paid
26 for by” disclosure, the following sentence was printed: “Not authorized by a candidate or a committee
27 controlled by a candidate.”

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1 On or about October 31, 2014, the Clean Water committee sent two more mass mailers. One was
2 another sending of the bad apples mailer, this time to approximately 5,000 recipients. The other mailer
3 was sent to approximately 14,583 recipients in opposition to another one of Chacon’s opponents, Jason
4 Stinnett. The mailer portrayed Stinnett in a bad light, and it urged the reader not to vote for him. Both
5 mailers included “paid for by” disclosures that were identical to the first bad apples mailer, except this
6 time, the committee ID number that appeared in the disclosures was for the Clean Water committee—
7 instead of the ID number for Art Chacon for Water Board 2014. (However, the mailer against Stinnett
8 first was printed using the ID number for Art Chacon for Water Board 2014, but this was “corrected” by
9 the printer. The original ID number was covered with X’s, and the ID number for the Clean Water
10 committee was added next to this.)

11 In this way, Chacon and the Clean Water committee committed three violations of Section 84305,
12 subdivision (c), which provides that when a committee sends a mass mailer, the mailer’s “paid for by”
13 disclosure must include the name of the controlling candidate.

14 **Count 5**

15 *Violation of the One Bank Account Rule*

16 Separate campaign bank accounts were maintained for Art Chacon for Water Board 2014 and the
17 Clean Water committee. Each committee received contributions, which were to be used to support
18 Chacon. Each committee deposited these funds into its own campaign account. Both of these accounts,
19 which belonged to committees controlled by Chacon, were used to make expenditures in support of his
20 re-election.

21 In this way, Chacon and the Clean Water committee violated Section 85201, which provides that
22 all contributions made on behalf of a candidate must be deposited into a single, designated campaign
23 bank account, and all campaign expenditures must be made from this same account.

24 **PROPOSED PENALTY**

25 This matter consists of five counts. The maximum penalty that may be imposed is \$5,000 per
26 count. Thus, the maximum penalty that may be imposed is \$25,000.²²

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²² See Section 83116, subdivision (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
3 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
4 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
5 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
6 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
7 record of violations.²³ Additionally, the Commission considers penalties in prior cases with comparable
8 violations.

9 Regarding Count 1, failure to identify the relationship between a committee and its controlling
10 candidate deprives the public of important information about the purpose of the committee. Counts 2
11 through 4 involve similar public harm with respect to the public’s right to know who is the true sender of
12 a mass mailing. Count 5 (violation of the one bank account rule) involves circumvention of an important
13 safeguard that is meant to create a paper trail to aid the audit and enforcement process. (Violation of the
14 one bank account rule makes it more difficult to track and verify campaign financial activity—and to
15 identify other potential violations.)

16 Together, Counts 1 through 5 comprise a scheme, which served to conceal the Chacon
17 campaign’s involvement with respect to the “hit piece” mailers in this case (and other pro-Chacon
18 spending by the Clean Water committee for campaign signs and slate mail). Recently, the Commission
19 considered another settlement where this type of relationship between a candidate and an ostensibly
20 independent committee was concealed from the public.

21 *In the Matter of Carlos Villapudua; Steve Bestolarides; and Central Valley PAC – California,*
22 *Yes on Measure D*; FPPC Case No. 12/798 (approved Jul. 21, 2016), the Commission imposed a penalty
23 in the amount of \$26,000 against two county supervisors and a ballot measure committee. The committee
24 sought to pass a ballot measure that would extend the term limits of the supervisors—who controlled the
25 committee—and this relationship was concealed from the public. This resulted in advertisements with
26 “paid for by” language that failed to disclose the roles of the controlling supervisors.

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²³ Regulation 18361.5, subdivision (d).

1 Although the statutory violations that were charged in the *Central Valley PAC* case are different,
2 technically,²⁴ from the statutes that are involved in the current case, both cases involve a similar type of
3 scheme/public harm. For example, both cases involve controlled committees with campaign filings and
4 “paid for by” disclosures that falsely created the impression that the committees were independent. Also,
5 both cases involve similar motives in terms of controlling candidates who would not have wanted their
6 names associated with negative, “hit piece” attack advertisements against their opponents/critics.
7 (Whereas Chacon’s official re-election committee focused on positive messaging, the Clean Water
8 committee focused on attacking Chacon’s opponents during the last two or three weeks of the election.)
9 Additionally, both cases involve experienced candidates who had reason to be familiar with the Act.
10 Chacon first was elected to his position in 2006—and in 2014, he was running for re-election to his third
11 term of office. In *Central Valley PAC*, each supervisor had been re-elected to a second, four-year term
12 (and one of them was a city councilman for a number of years before that).

13 With respect to the amount of spending in each case, the *Central Valley PAC* stipulation noted
14 that the ballot measure committee spent at least \$26,465 on advertisements that displayed improper “paid
15 for by” disclosures. In the current case, not counting consulting fees, the committee paid at least \$27,371.
16 Of this amount, at least \$12,000 was for the “hit piece” mass mailers, which displayed improper “paid for
17 by” disclosures. The remaining amount was for campaign signs and slate mail, which did not trigger
18 “paid for by” disclosures. It might be argued that a reduced penalty is warranted in the current case
19 because the mass mailers cost less than the advertisements in *Central Valley PAC*. However, the other
20 expenditures in the current case—for signs and slate mail—still involved public harm because they were
21 reported, improperly, as independent expenditures.

22 Also, in *Central Valley PAC* it was noted that certain campaign statements were filed late.
23 However, they were filed before the election. For settlement purposes, these late filings were identified
24 as aggravating factors—instead of being charged as additional counts. The current case involves late
25 disclosure as well. During the last 90 days before the election, the Clean Water committee received about
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27 ²⁴ *Central Valley PAC* was charged as an advertising case because of the specific rules that apply to ballot measure
28 committees. Since the current case does not involve a ballot measure committee, different statutes are charged to achieve the
same result.

a dozen contributions that were in amounts of \$1,000 or more. Each contribution was required to be reported within 24 hours on a Form 497 contribution report. These reports were not filed, but receipt of these contributions was reported on other campaign filings. In most cases, this disclosure did not occur within the required 24-hour reporting period, but did occur prior to the election. Additionally, with respect to Art Chacon for Water Board 2014, the campaign statements that were required to be filed by that committee prior to the election were filed a few days late—and after the election, three semi-annual campaign statements were filed approximately 23, 24, and 73 days late. Another semi-annual campaign statement (for the period ending June 30, 2017) was not filed by the required due date of July 31, 2017, but is being filed as a condition of settlement. For settlement purposes, as in Central Valley PAC, these filing issues are being noted as aggravating factors—instead of being charged as additional counts.

Unlike *Central Valley PAC*, the current case involves violations that occurred in a close election. (Chacon only won re-election by about 383 votes—roughly two percent of the votes that were cast.)

Also, Chacon does have a history of prior violations of the Act. For example, in February 2011, the Commission imposed a penalty in the amount of \$30,000 against Chacon and Art Chacon for Water Board 2010 in FPPC Case No. 08/652 for campaign filing/reporting violations, a recordkeeping violation, and unlawful cash transactions—which occurred in 2006 and 2007. More recently, on August 12, 2014, a warning letter was issued to Chacon and Art Chacon for Water Board 2010 in FPPC Case No. 14/305 for campaign filing violations, which occurred in 2011, 2012, 2013, and 2014.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$25,000 is justified, as reflected in the chart below:

Count	Violation	Respondents	Penalty
1	Failure to Disclose Controlling Candidate Relationship on Campaign Filings	Art Chacon, Art Chacon for Water Board 2014, and Californians for Clean Water	\$5,000
2	Failure to Disclose True Sender of Mass Mailing	Art Chacon and Californians for Clean Water	\$5,000
3	Failure to Disclose True Sender of Mass Mailing	Art Chacon and Californians for Clean Water	\$5,000
4	Failure to Disclose True Sender of Mass Mailing	Art Chacon and Californians for Clean Water	\$5,000
5	Violation of the One Bank Account Rule	Art Chacon and Californians for Clean Water	\$5,000
Total:			\$25,000

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents Art Chacon, Art Chacon for Water Board 2014, and Californians for Clean Water hereby
4 agree as 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 this
15 matter, to be represented by an attorney at Respondents’ own expense, to confront and cross-examine all
16 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 \$25,000. 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 refuses 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
5 fax or as a PDF email attachment—is as effective and binding as the original.

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8 Dated: _____ Galena West, Chief of Enforcement
9 Fair Political Practices Commission

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11 Dated: _____ Art Chacon, individually and on behalf of Art Chacon
12 for Water Board 2014 and Californians for Clean Water,
13 Respondents

14 The foregoing stipulation of the parties "In the Matter of Art Chacon, Art Chacon for Water
15 Board 2014, and Californians for Clean Water," FPPC Case No. 14/1236, is hereby accepted as the final
16 decision and order of the Fair Political Practices Commission, effective upon execution below by the
17 Chair.

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19 IT IS SO ORDERED.

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21 Dated: _____ Joann Remke, Chair
22 Fair Political Practices Commission