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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11 In the Matter of:

12 DAVE JONES FOR ATTORNEY
13 GENERAL 2018, DAVE JONES, AND
14 JAMES SANTOS,

15 Respondents.

FPPC Case No. 2021/00641

STIPULATION, DECISION AND ORDER

Date Submitted to Commission: April 2023

16 **INTRODUCTION**

17 Dave Jones for Attorney General 2018 (the “Committee”) was a candidate-controlled committee
18 formed to support candidate Dave Jones (“Jones”) for Attorney General in the June 5, 2018 Primary
19 Election and the November 6, 2018 General Election. The treasurer for the Committee was James Santos
20 (“Santos”). Jones was unsuccessful in the election and the Committee terminated effective May 20, 2019.
21 This case arose from an audit conducted by the Franchise Tax Board (“FTB”). The FTB audit report
22 covered the audit period of January 1, 2015 through June 30, 2018. During the audit period, the
23 Committee reported receiving contributions of approximately \$5,305,080 and making expenditures of
24 approximately \$4,799,809. The FTB’s audit found that the Committee, Jones, and Santos violated the
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1 Political Reform Act¹ (“Act”) by failing to timely disclose subvendor information for payments totaling
2 \$958,652 on the Form 460 pre-election campaign statements filed for the periods of January 1, 2018
3 through April 21, 2018 and April 22, 2018 through May 19, 2018.

4 **SUMMARY OF THE LAW**

5 The Act and its regulations are amended from time to time. The violations in this case occurred in
6 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
7 existed at that time. The applicable statutes of limitations have been tolled by a tolling agreement
8 executed by Respondents.

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

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

14 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
15 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
16 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
17 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
18 “vigorously enforced.”⁶

19 **Duty to Report Subvendor Payments**

20 A subvendor is a person or company that is hired by a committee’s agent or independent
21 contractor to provide a good or service for the committee. The Act requires committees to report
22 payments of \$500 or more made on its behalf or for its benefit by an agent or independent contractor the
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25 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
26 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
are to this source.

27 ² Section 81001, subd. (h).

³ Section 81003.

28 ⁴ Section 81002, subd. (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

1 same way it would if it were making the payment on its own.⁷ Disclosure of the expenditures made by an
2 agent or independent contractor are required to be made at the same time and in the same manner and
3 detail as required for the committee’s direct expenditures.⁸ Specifically, the following information must
4 be provided: (1) the subvendor’s full name; (2) his or her street address; (3) the amount of each
5 expenditure; and (4) a brief description of the consideration for which each expenditure was made.⁹ This
6 information is commonly referred to as “subvendor information.”

7 **Joint and Several Liability of Committee, Candidate, and Treasurer**

8 It is the duty of a committee treasurer and the candidate to ensure that the committee complies
9 with the Act’s campaign reporting system.¹⁰ A treasurer and candidate may be held jointly and severally
10 liable with the committee for violations committed by the committee.¹¹

11 **SUMMARY OF THE FACTS**

12 According to the Committee’s statements of organization, the Committee qualified as a recipient
13 committee on October 14, 2015 and terminated as of May 20, 2019. According to the Committee’s
14 campaign statements, between January 1, 2015 and June 30, 2019, the Committee reported
15 approximately \$5,305,080 in contributions and \$4,799,809 in expenditures.

16 FTB’s audit found that the Committee, Jones, and Santos substantially complied with the Act’s
17 disclosure and recordkeeping provisions during the audit period.

18 However, the Committee failed to timely disclose subvendor information for expenditures
19 amounting to \$958,652 across two reporting periods between January 1, 2018 and May 19, 2018. During
20 these reporting periods, the Committee reported a total of \$2,317,009 in expenditures. The late-reported
21 subvendor information amounted to approximately 41% of the Committee’s total expenditures for these
22 reporting periods.

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27 ⁷ Section 84303.

⁸ Section 84211, subd. (k); Regulation 18431, subd. (c).

⁹ Section 84211, subd. (k).

¹⁰ Sections 81004, 84100, 84104, and Regulation 18427.

¹¹ Sections 83116.5 and 91006.

1 Subvendor information for \$957,121 in expenditures was disclosed on amendments filed on July
2 31, 2018, after the 2018 Statewide Direct Primary Election, but before the General Election and before
3 the FTB audit.

4 VIOLATION

5 **Count 1: Failure to Timely Report Subvendor Information on Campaign Statements**

6 The Committee, Jones, and Santos failed to timely report subvendor information for expenditures
7 totaling \$958,652 on pre-election campaign statements for the reporting periods of January 1, 2018 to
8 April 21, 2018 and April 22, 2018 to May 19, 2018, in violation of Government Code Sections 84303
9 and 84211, subdivision (k).

10 PROPOSED PENALTY

11 This matter consists of one proposed count. The maximum penalty that may be imposed is \$5,000
12 per count.¹² Thus, the maximum penalty that may be imposed for the count charged here is \$5,000.

13 This matter does not qualify for the streamline settlement program. The amount of unreported
14 information for the campaign statements at issue fails the population limit test. Specifically, the
15 unreported activity associated with the Committee's pre-election campaign statement for the reporting
16 period ending on May 19, 2018 exceeds the \$100,000 threshold necessary for Tier Two treatment.

17 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
18 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
19 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
20 considers the facts and circumstances of the violation in the context of the following factors set forth in
21 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
22 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
23 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
24 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
25 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
26 staff or any other governmental agency in a manner not constituting complete defense under Government

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28 ¹² See Section 83116, subd. (c).

1 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
2 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
3 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

4 With respect to the first factor, the public harm inherent in campaign reporting violations is that
5 the public is deprived of important, time-sensitive information regarding campaign activity, which is
6 heightened when related to pre-election activity. Here, the Committee's failure to timely report
7 subvendor payments prior to the June 5, 2018 Primary Election resulted in the public having limited
8 knowledge of the Committee's expenditures. Approximately \$958,652 worth of subvendor information
9 was not reported prior to the election. This amounts to approximately 41% of the Committee's total
10 expenditures made between January 1, 2018 and May 19, 2018. In mitigation, \$957,121 was disclosed on
11 amendments filed before the General Election.

12 With respect to the second factor, Jones was experienced as a candidate. Jones successfully ran
13 for the California State Assembly in 2004, 2006, and 2008, and successfully ran for California Insurance
14 Commissioner in 2010 and 2014. According to Santos, Santos is an experienced, professional campaign
15 treasurer.

16 With respect to the third factor, the following cases were considered as comparable cases:

- 17 • *In the Matter of Judge Mike Cummins, Judge Mike Cummins for District Attorney 2018, and*
18 *Melissa Cummins*; FPPC No. 18/330. Respondents failed to timely report \$62,994.82 in
19 subvendor payments for the reporting period of January 1, 2018 to April 21, 2018; \$20,499 in
20 subvendor payments for the reporting period of April 22, 2018 to May 19, 2018; and \$13,984 in
21 subvendor payments for the reporting period of May 20, 2018 to June 30, 2018. This amounted to
22 approximately 43% of the Committee's total expenditures made during the relevant periods. In
23 March 2021, the Commission approved a total penalty of \$3,000 for two counts of failure to
24 timely report subvendor payments.
- 25 • *In the Matter of Roger Aceves for Supervisor 2014, Roger S. Aceves, and Tony Vallejo*; FPPC No.
26 17/145. Respondents failed to timely report \$261,299.21 in subvendor payments made during the
27 reporting periods of July 1, 2013 to December 31, 2013; January 1, 2014 to March 17, 2014;
28 March 18, 2014 to May 17, 2014; and May 18, 2014 to June 30, 2014. This amounted to

1 approximately 54% of the Committee's total expenditures made during the relevant periods. In
2 June 2018, the Commission approved a total penalty of \$7,500 for four counts, including failure
3 to provide sufficient notice to potential major donor committees, unlawful cash contributions of
4 \$100 or more, and two counts of failure to timely report subvendor payments for \$2,000 per
5 count.

- 6 • *In the Matter of Kenneth Pon and For the Children of West County*; FPPC No. 14/403.
7 Respondents, a primarily formed ballot measure committee and its treasurer, failed to timely
8 report a total of \$459,790.10 in subvendor payments across five different reporting periods,
9 including pre-election periods, in 2012. The pertinent subvendor payments accounted for 58% of
10 all expenditures in 2012. In November 2016, the Commission approved a penalty of \$3,000 on
11 each of two counts of failure to timely report subvendor payments.

12 Here, the Committee failed to timely disclose subvendor information for approximately 41% of the
13 expenditures from the relevant reporting periods. Whereas, in Cummins, Aceves, and Pon, that number
14 was higher at 43%, 54%, and 58%, respectively. The present case has \$958,652 in unreported subvendor
15 information, but the three other cases are significantly lower with \$97,478, \$261,299, and \$459,790 in
16 unreported subvendor information.

17 With respect to the fourth factor, the Enforcement Division did not find evidence to support a
18 finding that there was intent to conceal, deceive, or mislead.

19 With respect to the fifth factor, the evidence supports that the violations were most likely
20 inadvertent or negligent. The subvendor information was reported on amended campaign statements as
21 soon as it was received by the Committee, Jones, and Santos from the vendor shortly after the election.
22 These amendments occurred before the General Election, before the FTB audit, and before the matter
23 was referred to the Enforcement Division by the FTB.

24 With respect to the sixth factor, there is no relevant information available for this factor.

25 With respect to the seventh factor, the violations appear to be isolated and limited to the
26 violations in the present case. There is no prior enforcement history for any of the Respondents.

27 With respect to the eighth factor, the treasurer voluntarily filed amended pre-election campaign
28 statements including the subvendor information as soon as it was received.

1 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
2 penalty of \$4,000 for Count 1 recommended.

3 **CONCLUSION**

4 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
5 Committee, Jones, and Santos hereby agree as follows:

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

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

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

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

20 5. Respondents agree to the issuance of the decision and order set forth below. Also,
21 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
22 \$4,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
23 California—is/are submitted with this stipulation as full payment of the administrative penalty described
24 above, and same shall be held by the State of California until the Commission issues its decision and
25 order regarding this matter.

26 6. If the Commission declines to approve this stipulation—then this stipulation shall become
27 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
28 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to

1 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
2 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
3 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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9 Dated: _____

Christopher B. Burton, Acting Chief of Enforcement
Fair Political Practices Commission

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12 Dated: _____

Dave Jones, individually and on behalf of Dave Jones for
Attorney General 2018

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15 Dated: _____

James Santos, individually and on behalf of
Dave Jones for Attorney General 2018

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19 The foregoing stipulation of the parties Dave Jones for Attorney General 2018, Jones, and Santos,
20 FPPC Case No. 2021-00641 is hereby accepted as the final decision and order of the Fair Political
21 Practices Commission, effective upon execution below by the Chair.

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23 IT IS SO ORDERED.

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25 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission