

FEDERAL ELECTION COMMISSION**FIRST GENERAL COUNSEL'S REPORT****MUR 7986**

DATE COMPLAINT FILED: April 21, 2022

DATE OF NOTIFICATIONS: May 3, 2022

DATE OF LAST RESPONSE: June 14, 2022

DATE OF ACTIVATION: September 21, 2022

ELECTION CYCLE: 2022

SOL EXPIRATION: December 20, 2026 to
March 31, 2027**COMPLAINANT:**

Charles Dudek

RESPONDENTS:

Nathan Magsig
Magsig for Congress and Melissa Allen in her
official capacity as treasurer
Andrew Tuell Concrete, Inc.
Borges Brothers, Inc., dba All American
Construction & Roofing Group
Buckingham Property Management
Cen Cal Title, Inc.
Coehlo West
Community Vocation Services Inc.
Efrain Yanez Construction, Inc.
Finegan Dealer Group North dba Clovis
Chrysler Dodge Jeep Ram
Fresno Plumbing and Heating, Inc.
Gill Insurance Agency, Inc.
Ginder Real Estate
HSG Farmers, Inc.
The Indart Group, Inc.
The Red Caboose Café, Inc.
Valley Metal Finishing, Inc.
WA Funding, Inc.
Beal Developments, LLC
Cooper River Ranch Villages, LLC
Palm Place Investments, LLC
River Ranch Citrus, LLC
TriValley Development Group, LLC
Westech Systems, LLC

**RELEVANT STATUTES AND
REGULATIONS:**

52 U.S.C. § 30118(a)

1 11 C.F.R. § 114.2(a), (d)

2

3 **INTERNAL REPORTS CHECKED:** Disclosure Reports

4

5 **FEDERAL AGENCIES CHECKED:** None

6 **I. INTRODUCTION**

7 This matter arises from a Complaint alleging that Nathan Magsig, 2022 candidate for
8 Congress to California's 5th Congressional District, and his principal campaign committee,
9 Magsig for Congress and Melissa Allen in her official capacity as treasurer (the "Committee"),
10 violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by knowingly
11 accepting prohibited corporate contributions. According to the Complaint, 16 registered
12 corporations and six LLCs contributed to the Committee, as reported in the Committee's 2021
13 Year-End and April 2022 Quarterly reports. The contributions from alleged corporations totaled
14 \$23,100 while the LLCs contributed a total of \$17,000. In its Response, the Committee contends
15 that Magsig had previously accepted corporate contributions in connection with his state-level
16 campaigns in California where corporate contributions are permissible. Because Magsig was a
17 first-time federal candidate, the Committee asserts that it accepted the contributions relying on
18 Magsig's state-level experience without knowing it was unlawful to accept such contributions at
19 the federal level.

20 As explained below, the available information shows that one of the Respondents was
21 incorrectly identified as a corporation whereas it is a partnership eligible to make contributions,
22 and that all six LLCs are apparently partnerships or sole proprietorships and thus eligible to
23 make contributions. Therefore, we recommend the Commission find no reason to believe that
24 the LLCs and the misidentified partnership, Coelho West, violated the Act. As for the other 15
25 contributions, which total \$22,600, the Committee admits that it accepted prohibited corporate

1 contributions because it was unaware of the federal restriction on such contributions. However,
2 given the modest amount in violation and the fact that all the prohibited contributions were
3 refunded, we recommend that the Commission dismiss as a matter of prosecutorial discretion
4 under *Heckler v. Chaney*¹ the allegations as to the Committee, Magsig, and the individual
5 corporate Respondents.

6 **II. FACTUAL BACKGROUND**

7 Magsig established the Committee as his principal campaign committee on December 7,
8 2021, and ran as a first-time federal candidate in the nonpartisan primary for California's 5th
9 Congressional District on June 7, 2022.² Nathan Magsig is a member of the Fresno County
10 Board of Supervisors in California, representing District 5.³ He assumed office in 2017, and his
11 current term ends on January 6, 2025.⁴

12 According to the Complaint, the Committee “knowingly accepted, deposited and
13 expended federally prohibited contributions from [sixteen (16)] registered corporations with the
14 California Secretary of State,” naming the following corporations: (1) Andrew Tuell Concrete,
15 Inc.; (2) Borges Brothers, Inc., dba All American Construction and Roofing Group; (3)
16 Buckingham Property Management; (4) Cen Cal Title, Inc.; (5) Coelho West Custom Framing,
17 Inc.; (6) Community Vocation Services Inc.; (7) Efrain Yanez Construction, Inc.; (8) Finegan
18 Dealer Group North, dba Clovis Chrysler Dodge Jeep Ram; (9) Fresno Plumbing and Heating,

¹ 470 U.S. 821 (1985).

² Magsig for Congress, Statement of Organization (Dec. 7, 2021); Ballotpedia, *California's 5th Congressional District Election, 2022*, [https://ballotpedia.org/California's 5th Congressional District election, 2022](https://ballotpedia.org/California's_5th_Congressional_District_election_2022) (last visited Mar. 22, 2023). Magsig finished in third place in the primary and did not advance to the general election. *Id.*

³ Ballotpedia, *Nathan Magsig*, [https://ballotpedia.org/Nathan Magsig](https://ballotpedia.org/Nathan_Magsig) (last visited Mar. 22, 2023).

⁴ *Id.*

1 Inc.; (10) Gill Insurance Agency, Inc.; (11) Ginder Real Estate; (12) HSG Farmers, Inc.; (13)
2 The Indart Group, Inc.; (14) The Red Caboose Café, Inc.; (15) Valley Metal Finishing, Inc.; (16)
3 WA Funding, Inc.⁵

4 In addition, an Amended Complaint filed on April 27, 2022, alleges that the Committee
5 accepted contributions from six LLCs, which the Complaint asserts were not eligible to make
6 contributions.⁶ The Amended Complaint names the following LLCs: (1) Beal Developments,
7 LLC; (2) Cooper River Ranch Villages, LLC; (3) Palm Place Investments, LLC; (4) River Ranch
8 Citrus, LLC; (5) TriValley Development Group, LLC; (6) Westech Systems, LLC.⁷

9 In its Response, the Committee admits that it “unintentionally” violated the law, by
10 accepting prohibited contributions from 15 of the 16 named corporations in the Complaint.⁸ The
11 Committee further states that Magsig, a first-time federal candidate, who “has previously run on
12 several California elections,” had received corporate contributions during his political bids for
13 state office, which was permissible under California law.⁹ The Committee asserts that its
14 unawareness that “S Corporations were not permitted to make candidate contributions under
15 federal law,[. . .] helps explain how this mistake was made.”¹⁰ The Committee’s Response
16 asserts that “corporations listed in the [original] complaint are all registered as S Corporations in
17 California[, which] elect[ed] to be taxed as a pass-through entity,” except for Coelho West,

⁵ Compl. at 1-3 (Apr. 21, 2022).

⁶ Amended Compl. at 1-2 (Apr. 27, 2022).

⁷ *Id.*

⁸ Committee Resp. at 1-2 (June 14, 2022).

⁹ *See* Cal. Gov’t Code §§ 82047, 85301.

¹⁰ Committee Resp. at 2.

1 which is a partnership and was mistakenly identified in the original Complaint as a corporation.¹¹
2 Apparently, there is a S Corporation in California with a similar name, “Coelho West Custom
3 Framing, Inc.,” which was not the actual contributor to the campaign.¹² The Committee’s
4 Response shows that Coelho West contacted the Committee, after it received notification of the
5 Committee’s attempt to refund the contribution, and explained the error, insisting that its
6 contribution be accepted as valid.¹³ The Committee contends that it refunded the 15
7 contributions, after it received the Complaint.¹⁴ The Committee also notes that it will follow-up
8 with its corporate contributors for any undeposited refunds within 30 days of its Response and
9 disgorge to the U.S. Treasury any refunds undeposited 30 days thereafter.¹⁵

10 In the case of the S Corporations, according to its Response, the Committee “believed
11 that contributions [. . .] from S Corporations were permissible if they were reported in the same
12 manner as Partnership and LLC corporations and attributed to an individual on the report.”¹⁶
13 The Committee claimed that “considering[that] S Corporations are treated similarly to LLCs by
14 the IRS, and that these contributions were made by entities with only one or two members,” the
15 Committee “track[ed] these contributions to ensure that no individual violated contributions
16 limits.”¹⁷ Upon receiving the Complaint, the Committee claims that it “immediately fully

¹¹ *Id.* at 1-2.

¹² *Id.* at 2, n.1.

¹³ *Id.*, Ex. D (shows Coelho West’s explanatory letter to the Committee regarding its partnership status).

¹⁴ *Id.*, Ex. B (Committee provided a list of refunded amounts to corporate contributors, dated May 10, 2022).

¹⁵ *Id.* at 1-2. The Committee’s FEC filings reflect the refunds to the corporations. Magsig for Congress, Disbursements, (Oct. 1, 2021-Dec. 31, 2022), <https://www.fec.gov/data/committee/C00797639/?tab=spending#disbursement-transactions>.

¹⁶ Committee Resp. at 1-2.

¹⁷ *Id.* at 3.

1 refunded all the contributions it has received from S Corporations,” and it included a copy of
2 refund checks stubs issued for the corporations in its Response.¹⁸ With regard to the alleged
3 improper LLC contributions, the Committee states that it “audited all the contributions the
4 Committee received from LLCs and partnerships to ensure there are no other contributions from
5 S Corporations that were not mentioned in the complaint,” and claims that it “did not find any
6 such additional contributions.”¹⁹ The Committee Response does not explain the parameters of its
7 audit process and how it determined the eligibility of the LLC contributions in question.²⁰

8 Three corporations and two LLCs filed responses, while the others did not.²¹ One of the
9 corporations, Buckingham Property Management, acknowledged that it made its contribution in
10 error and obtained a refund.²² The other corporate respondent, Andrew Tuell Concrete, Inc.,
11 asserted that it is an S Corporation, which the company believed was eligible to make
12 contributions.²³ The LLC respondents, Palm Place Investments, LLC, and River Ranch Citrus,
13 LLC, each asserted that it is an LLC and elected to be treated as a partnership by the Internal
14 Revenue Service, making them eligible to make political contributions.²⁴ Magsig did not file a

¹⁸ *Id.*; Committee Resp., Ex. C. The Committee states that it has “audited” all contributions received from the LLCs and partnerships, and it has found no additional impermissible contributions except for a \$1,000 transfer to the Committee by “Nathan Magsig for Supervisor 2024” a non-federal committee previously established by Magsig, which was refunded by the Committee. *Id.* at 3; Committee Resp. at 3, n.2; *see* Palm Place Investments, LLC Resp. at 1; River Ranch Citrus, LLC Resp. at 1.

¹⁹ Committee Resp. at 3.

²⁰ *See id.*

²¹ Andrew Tuell Concrete Inc., Buckingham Property Management Palm Place Investments, LLC, and River Ranch Citrus, LLC filed substantive responses. Andrew Tuell Concrete Resp. (May 25, 2022); Buckingham Prop. Mgmt. Resp. (June 13, 2022). Palm Place Investments, LLC Resp. (May 18, 2022); River Ranch Citrus, LLC (May 25, 2022).

²² Buckingham Mgmt. Resp. at 1.

²³ Andrew Tuell Concrete Resp. at 1.

²⁴ Palm Place Investments, LLC Resp. at 1; River Ranch Citrus, LLC Resp. at 1.

1 Response.

2 **III. LEGAL ANALYSIS**

3 The Act and Commission regulations prohibit corporations from making contributions to
4 federal candidates, and likewise bar candidates, political committees (other than independent
5 expenditure-only political committees and committees with hybrid accounts), and other persons
6 from knowingly accepting or receiving corporate contributions.²⁵ A committee's treasurer is
7 responsible for examining all contributions received for evidence of illegality.²⁶ Treasurers must
8 make their best efforts to determine the legality of the contribution.²⁷ If the legality of the
9 contribution cannot be determined, the treasurer must refund the contribution within 60 days of
10 receipt.²⁸

11 This matter involves contributions from S Corporations, a partnership, and LLCs. In
12 enforcing 52 U.S.C. § 30118, the Commission has treated S Corporations as ordinary
13 corporations and thus prohibited contributions from S Corporations to candidate committees.²⁹
14 With respect to LLCs, Commission regulations allow contributions from LLCs provided the
15 LLC is treated as a partnership for tax purposes and has not elected to be treated as a corporation

²⁵ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a), (d).

²⁶ 11 C.F.R. § 103.3(b).

²⁷ *Id.* § 103.3(b)(1).

²⁸ *Id.* § 103.3(b)(3).

²⁹ *See, e.g.*, Factual & Legal Analysis at 8, MUR 3191 (Christmas Farm Inn) (stating that “although Christmas Farm Inn, Inc., is treated as a Subchapter S corporation for tax purposes, it remains a corporation for purposes of the Federal Election Campaign Act”); Conciliation Agreement (“CA”) V.1, MUR 3119 (Edmar Corp.) (conciliating that Edmar Corporation, an S-corporation, made prohibited corporate contributions, in the form of loans to the Committee); Certification, MUR 5655 (Rick Renzi for Congress) (May 4, 2005) (finding reason to believe that respondents violated the Act in connection with loans the candidate made to his campaign that had come from two Subchapter S corporations that he owned); *cf.* F & LA at 4-5, MUR 7450 (Ashbritt, Inc.) (explaining, in the context of a matter involving an S corporation, that “funds not yet distributed to shareholders are corporate, not personal, funds”).

1 by the Internal Revenue Service.³⁰ Contributions received from an LLC that has elected to be
2 treated as a partnership for federal tax purposes are considered a contribution from a
3 partnership.³¹ Contributions by partnerships are attributed to the partnership and to each partner
4 in direct proportion to his or her share of the partnership profits unless otherwise agreed to by the
5 partners.³² Furthermore, when an LLC makes a contribution, it must affirm to the recipient, at
6 the time the LLC makes the contribution, that it is eligible to make a contribution and “provide
7 information to the recipient committee as to how the contribution is to be attributed.”³³ LLCs
8 that claim corporate status or those that are publicly traded are treated as corporations for
9 purposes of the Act.³⁴

10 Here, the available information confirms that the Committee violated the Act by
11 knowingly accepting contributions from registered corporations. The Committee’s Response
12 admits that “the allegations are accurate, although the violation of the law was unintentional on
13 the part of the Respondent,” when it mistakenly accepted contributions from 15 of the 16 alleged
14 corporate Respondents.³⁵ As noted above, one of the alleged corporate Respondents, Coelho
15 West, was mistakenly identified by the Complaint as a corporation whereas it is a partnership
16 and therefore eligible to make contributions to federal candidates.³⁶ Apparently, the Complaint

³⁰ *Id.* § 110.1(g).

³¹ *Id.*

³² *Id.* § 110.1(e).

³³ *Id.* § 110.1(g)(5).

³⁴ 11 C.F.R. § 110.1(g)(3).

³⁵ Committee Resp. at 1-2.

³⁶ *Id.* at 2, n.1; *see* 11 C.F.R. § 110.1(e) (“A contribution by a partnership shall be attributed to the partnership and to each partner in direct proportion to his or her share of the partnership profits.”). The Committee’s Response states that Coelho West contacted the Committee after it received notification of the Committee’s attempt to refund the contribution and explained that it is a partnership and thus permitted to make contributions. Committee Resp., Ex. D (Refund Letter and Note from Coelho West).

1 mistook a similarly named S corporation in California, Coelho West Custom Framing, Inc, as the
 2 contributor.³⁷ The actual contributor, “Coelho West” is a partnership.³⁸ In admitting to its
 3 violation of 52 U.S.C. § 30118(a), the Committee’s Response indicates that it improperly relied
 4 on California law,³⁹ which permits corporate contributions.⁴⁰

5 A review of the corporate contributions shows an aggregate amount in violation of
 6 \$22,600:⁴¹

CORPORATION	CONTRIBUTION
Andrew Tuell Concrete, Inc ⁴² .	\$2,900
Borges Brothers, Inc.	\$1,000
Buckingham Property Management	\$2,900
Cen Cal Tile, Inc.	\$1,000
Community Vocational Services, Inc.	\$1,000
Efrain Yanez Construction, Inc.	\$500
Finegan Dealer Group North	\$2,900

³⁷ Committee Resp. at 2 n.1.

³⁸ *Id.*

³⁹ See Cal. Gov’t Code §§ 82047, 85301 (defining a “person” as “an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert” in the context of valid contributor source in California elections); see also California Fair Political Practices Commission, <https://fppc.ca.gov/learn/campaign-rules/state-contribution-limits.html>; California State Contribution Limits, https://fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/2023_Contribution_Limits_Chart_Final.pdf (listing current contribution limits for state and local candidates per election).

⁴⁰ Committee Resp. at 1-2.

⁴¹ See *id.*, Exs. B, D; see also Committee Resp. at 2, n.1.

⁴² This Respondent stated in its Response that it was entitled to make federal contributions because of its S-Corporation status.

Fresno Plumbing and Heating, Inc.	\$1,000
Gill Insurance Agency, Inc.	\$500
Ginder Real Estate	\$2,900
HSG Farmers, Inc.	\$2,000
Indart Group, Inc.	\$1,000
Red Caboose Café, Inc.	\$500
Valley Metal Finishing, Inc.	\$1,500
WA Funding, Inc.	\$1,000
Total	\$22,600

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 2 Regarding the LLC contributions, the Amended Complaint alleges that they too were
 3 impermissible.⁴³ According to a review of the Committee's disclosure reports, these six
 4 contributions total \$17,000, as shown in the table below. All six LLCs have either partnership or
 5 sole-proprietorship attributions, which would indicate that the contributions are permissible. For
 6 instance, River Ranch Citrus, LLC's partnership attribution in the Committee's FEC filing shows
 7 split memo notations, acknowledging the contribution of each of its four identified partners,
 8 according to their partnership share, *i.e.*, two \$833.33 contributions, and two \$416.67
 9 contributions, totaling \$2,500.⁴⁴

LIMITED LIABILITY COMPANY	CONTRIBUTION
Beal Developments, LLC	\$2,900

⁴³ Amended Compl. at 1-2.

⁴⁴ Committee Resp., Ex. A.

Cooper River Ranch Villages, LLC	\$2,900
Palm Place Investments, LLC	\$2,900
River Ranch Citrus, LLC	\$2,500
TriValley Development Group, LLC	\$2,900
Westech Systems, LLC	\$2,900
Total	\$17,000

1 In sum, the Complaint alleges impermissible contributions from 16 corporations and six
 2 LLCs. As explained above, of the 16 alleged corporate Respondents, one, Coehlo West, was
 3 mistakenly identified by the Complaint as a corporation, but it is actually a partnership and thus
 4 permitted to make contributions. The 15 impermissible corporate contributions total \$22,600.
 5 As for the LLC contributions, which total \$17,000, each had accompanying attribution
 6 information that signified the LLC is a partnership and that the contribution is permissible.
 7 Accordingly, the Commission should exercise its prosecutorial discretion and dismiss the
 8 allegations that the Committee and Magsig knowingly accepted prohibited corporate
 9 contributions, given the low amount in violation and in light of the Committee's refund of the
 10 contributions.⁴⁵ The Commission should also dismiss as a matter of prosecutorial discretion the
 11 allegations against the individual 15 corporations because of the modest amounts in dispute.⁴⁶
 12 As for the misidentified partnership and the 6 LLCs, the Commission should find no reason to
 13 believe they violated the Act.

⁴⁵ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

⁴⁶ *See id.*

1 **IV. RECOMMENDATIONS**

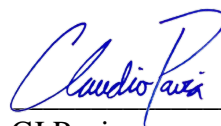
- 2 1. Dismiss as a matter of prosecutorial discretion the allegation that Magsig for
3 Congress, and Melissa Allen, in her official capacity as treasurer, and Nathaniel
4 Magsig violated 52 U.S.C. § 30118(a);
5
- 6 2. Dismiss as a matter of prosecutorial discretion the allegations that Andrew Tuell
7 Concrete, Inc.; Borges Brothers, Inc., dba All American Construction and
8 Roofing Group; Buckingham Property Management; Cen Cal Title, Inc.;
9 Community Vocation Services Inc.; Efrain Yanez Construction, Inc.; Finegan
10 Dealer Group North dba Clovis Chrysler Dodge Jeep Ram; Fresno Plumbing and
11 Heating, Inc.; Gill Insurance Agency, Inc.; Ginder Real Estate; HSG Farmers,
12 Inc.; The Indart Group, Inc.; The Red Caboose Café, Inc.; Valley Metal Finishing,
13 Inc.; and WA Funding, Inc. violated 52 U.S.C. § 30118(a);
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- 15 3. Find no reason to believe that Beal Developments, LLC; Coelho West; Cooper
16 River Ranch Villages, LLC; Palm Place Investments, LLC; River Ranch Citrus,
17 LLC; TriValley Development Group, LLC; Westech Systems, LLC violated 52
18 U.S.C. § 30118(a);
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- 20 4. Approve the appropriate letters; and
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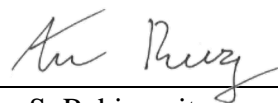
5. Close the file.

Lisa J. Stevenson
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Aaron S. Rabinowitz
Assistant General Counsel



Rocelyn Halili
Attorney

May 17, 2023
Date