

**RECEIVED**

By Office of the Commission Secretary at 12:10 pm, Sep 14, 2022



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

September 14, 2022

**MEMORANDUM**

TO: The Commission

THROUGH: Alec Palmer *AP*  
Staff Director

FROM: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Debbie Chacona *DC*  
Assistant Staff Director  
Reports Analysis Division

BY: Kristin D. Roser/Ben Holly *KDR BH*  
Reports Analysis Division  
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2022 12-Day Pre-Primary Report (Hawaii) for the Administrative Fine Program

Attached is a list of a political committee and its treasurer who failed to timely file the 2022 12-Day Pre-Primary Report for the Hawaii Primary Election in accordance with 52 U.S.C. § 30104(a). The 12-Day Pre-Primary Report was due on August 1, 2022 and the Primary Election was held on August 13, 2022.

The committee listed on the attached RTB Circulation Report failed to file the election sensitive report by the required due date. Election sensitive reports filed more than four days prior to the election are considered late, and reports not filed more than four days prior to the election are considered not filed. In accordance with the schedule of civil money penalties for reports at 11 CFR § 111.43, the committee should be assessed the civil money penalty highlighted on the attached circulation report.

**Recommendation**

1. Find reason to believe that the political committee and its treasurer, in their official capacity, listed on the RTB Circulation Report violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the RTB Circulation Report.
2. Send the appropriate letter.

Federal Election Commission  
Reason to Believe Circulation Report  
2022 PRE-PRIMARY Election Sensitive 08/01/2022 AUTH (HI)

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
4389	C00788695	SERGIO ALCUBILLA FOR CONGRESS	SERGIO JOSEPHUS ALCUBILLA	SERGIO ALCUBILLA	\$208,386	0		Not Filed	\$69,462 (est)	\$4,768

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 4389  
 Reason To Believe Recommendation – )  
 2022 12-Day Pre-Primary Report )  
 (Hawaii) for the Administrative Fine )  
 Program )

CERTIFICATION

I, Vicktoria J. Allen, Acting Deputy Secretary of the Federal Election Commission, do hereby certify that on September 16, 2022, the Commission decided by a vote of 5-0 to take the following actions in AF 4389:

1. Find reason to believe that Sergio Alcubilla for Congress and Sergio Alcubilla in their official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty would be the amount of \$4,768.
2. Send the appropriate letter.

Commissioners Broussard, Dickerson, Lindenbaum, Trainor, and Weintraub voted affirmatively for the decision. Commissioner Cooksey did not vote.



Attest:

**Vicktoria J  
Allen**

Digitally signed by Vicktoria  
J Allen  
Date: 2022.09.16 16:40:30  
-04'00'

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Vicktoria J. Allen  
Acting Deputy Secretary of the  
Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AF

September 21, 2022

Sergio Alcubilla, in official capacity as Treasurer  
Sergio Alcubilla for Congress  
PO Box 1991  
Honolulu, HI 96805

C00788695

AF#: 4389

Dear Sergio Alcubilla,

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a 12-Day Pre-Primary Report of Receipts and Disbursements in any calendar year during which there is a regularly scheduled election for which the candidate is seeking election or nomination for election. This report, covering the period July 1, 2022 through July 24, 2022, shall be filed no later than August 1, 2022. 52 U.S.C. § 30104(a). Because records at the Commission indicate that you did not file this report prior to four (4) days before the election, the report is considered not filed for the purpose of calculating the civil money penalty. You should file the report if you have not already done so.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109g(a)(4). On September 16, 2022, the FEC found that there is reason to believe ("RTB") that Sergio Alcubilla for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before August 1, 2022. Based on the FEC's schedules of civil money penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$4,768. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. *See* <https://www.fec.gov/af/pay.shtml> 11 C.F.R. § 111.34. Your payment of \$4,768 is due within forty (40) days of the finding, or by October 26, 2022, and is based on these factors:

Sensitivity of Report: Election Sensitive  
Level of Activity: \$69,462  
Number of Days Late: Not Filed  
Number of Previous Civil Money Penalties Assessed: 0

SERGIO ALCUBILLA FOR CONGRESS

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At this juncture, the following courses of action are available to you:

**1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty**

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or October 26, 2022. 11 C.F.R. § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 C.F.R. § 111.36(c).

Please note, all challenges to an RTB finding and/or calculated civil money penalty should be converted to PDF (Portable Document Format) and emailed to [administrativefines@fec.gov](mailto:administrativefines@fec.gov). The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted challenges will be deemed received on the date they are electronically received by staff.

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 C.F.R. § 111.35(b). For a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 C.F.R. § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 C.F.R. § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S.

SERGIO ALCUBILLA FOR CONGRESS

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District Court under 52 U.S.C. § 30109. 11 C.F.R. § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address, and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

## **2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge**

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Sergio Alcantara for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.* The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 C.F.R. § 111.51(a)(2).

## **3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

## **NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS**

### **4. Partial Payments**

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

### **5. Settlement Offers**

Any offer to settle or compromise a debt owed to the Commission, including making a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty

SERGIO ALCUBILLA FOR CONGRESS

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amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 C.F.R. § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <https://www.fec.gov/af/pay.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Ben Holly in the Reports Analysis Division at our toll-free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll-free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Allen J. Dickerson  
Chairman

#### **ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at RTB is \$4,768 for the Pre-Primary Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit [www.fec.gov/af/pay.shtml](http://www.fec.gov/af/pay.shtml) to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details below to complete the required fields. For additional payment options, please contact Ben Holly in the Reports Analysis Division at our toll-free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

COMMITTEE NAME: Sergio Alcupilla for Congress

SERGIO ALCUBILLA FOR CONGRESS

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FEC ID#: C00788695

AF#: 4389

PAYMENT DUE DATE: October 26, 2022

PAYMENT AMOUNT DUE: \$4,768



**RECEIVED**

By Office of the Commission Secretary at 11:14 am, May 22, 2023



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

May 22, 2023

**MEMORANDUM**

TO: The Commission

THROUGH: Alec Palmer *AP*  
Staff Director

FROM: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Debbie Chacona *DC*  
Assistant Staff Director  
Reports Analysis Division

BY: Kristin D. Roser *KDR* / Ben Holly *BH*  
Reports Analysis Division  
Compliance Branch

SUBJECT: Administrative Fine Program – Final Determination Recommendation for the 2022 12-Day Pre-Primary Report (Hawaii)

Attached is a list identifying a political committee and its treasurer against which the Commission has found reason to believe (RTB) and assessed a proposed civil money penalty calculated at RTB for failure to file or failure to timely file the 2022 12-Day Pre-Primary Report. The committee has not paid the civil money penalty requested at RTB and has been given at least forty (40) days from the date of the Commission's RTB finding to remit payment.

In accordance with 11 CFR § 111.40, the Commission shall send a final determination notice to the respondent that has not paid the civil money penalty.

**RAD Recommendation**

- (1) Make a final determination that the political committee and its treasurer, in their official capacity, listed on the attached report violated 52 U.S.C. § 30104(a) and assess the final civil money penalty so indicated.
- (2) Send the appropriate letter.

Federal Election Commission  
FD Circulation Report Fine Not Paid  
2022 PRE-PRIMARY Election Sensitive 08/01/2022 AUTH (HI)

AF#	Committee Name	Candidate Name	Committee ID	Treasurer	Receipt Date	Days Late	LOA	PV	RTB Date	RTB Penalty	Days Since RTB	FD Penalty
4389	SERGIO ALCUBILLA FOR CONGRESS	SERGIO JOSEPHUS ALCUBILLA	C00788695	SERGIO ALCUBILLA		Not Filed	\$69,462 (est)	0	09/16/2022	\$4,768	248	\$4,768

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 Administrative Fine Program – Final )  
 Determination Recommendation for the )  
 2022 12-Day Pre-Primary Report (Hawaii): )  
 SERGIO ALCUBILLA FOR CONGRESS, ) AF# 4389  
 and ALCUBILLA, SERGIO MR. as )  
 treasurer; )

CERTIFICATION

I, Vicktoria J. Allen, Deputy Secretary of the Federal Election Commission, do hereby certify that on May 24, 2023 the Commission took the following actions on the Administrative Fine Program – Final Determination Recommendation for the 2022 12-Day Pre-Primary Report (Hawaii), as recommended in the Reports Analysis Division's Memorandum dated May 22, 2023, on the following committee:

AF#4389 Decided by a vote of 6-0 to: (1) make a final determination that SERGIO ALCUBILLA FOR CONGRESS, and ALCUBILLA, SERGIO MR. in their official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess the final civil money penalty so indicated; (2) send the appropriate letter. Commissioners Broussard, Cooksey, Dickerson, Lindenbaum, Trainor, and Weintraub voted affirmatively for the decision.

Attest:



May 24, 2023  
 Date

**Vicktoria J Allen**

Digitally signed by Vicktoria J  
 Allen  
 Date: 2023.05.24 16:28:17 -04'00'

Vicktoria J. Allen  
 Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AF

May 25, 2023

Sergio Alcubilla, in official capacity as Treasurer  
Sergio Alcubilla for Congress  
PO Box 1991  
Honolulu, HI 96805

C00788695

AF#: 4389  
FINE: \$4,768

Dear Sergio Alcubilla,

On September 16, 2022, the Federal Election Commission (the "Commission" or "FEC") found reason to believe ("RTB") that Sergio Alcubilla for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) for filing late or failing to file the 2022 Pre-Primary Report. By letter dated September 21, 2022, the Commission notified you of the RTB finding and the civil money penalty calculated at the RTB stage to be \$4,768, in accordance with the schedule of penalties at 11 C.F.R. § 111.43. Within forty (40) days of the Commission's RTB finding, you, in your official capacity as treasurer, were required to either transmit payment of the calculated civil money penalty or submit a written response challenging either the RTB finding or the calculated civil money penalty. You must also file the Pre-Primary Report if you have not already done so.

The FEC did not receive payment of the calculated civil money penalty or a written response within the time permitted. The Commission made a final determination on May 24, 2023 that Sergio Alcubilla for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assessed a civil money penalty in the amount of \$4,768, in accordance with 11 C.F.R. § 111.43. The civil money penalty is based on these factors:

Election Sensitivity of Report: Election Sensitive  
Level of Activity: \$69,462  
Number of Days Late: Not Filed  
Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

SERGIO ALCUBILLA FOR CONGRESS

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**1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty**

If you choose to appeal the final determination, you must submit a written petition, within thirty (30) days of receipt of this letter, to the U.S. District Court for the district in which the committee or you reside or transact business, requesting that the final determination be modified or set aside. See 52 U.S.C. § 30109(a)(4)(C)(iii). If you did not timely raise a factual argument in a challenge to the Commission's RTB finding, your right to present such an argument in an appeal to the U.S. District Court under 52 U.S.C. § 30109 shall be deemed waived. 11 C.F.R. § 111.38.

**2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal**

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, et seq. If you do not pay this debt within thirty (30) days and do not appeal the Commission's final determination to the U.S. District Court (see above), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Treasury will contact you to request payment within five (5) days of the receiving the debt. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency. If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

**3. If You Choose to Pay the Civil Money Penalty**

If you decide to pay the civil money penalty, please follow the payment instructions below. You should make payment within thirty (30) days of receipt of this letter.

SERGIO ALCUBILLA FOR CONGRESS

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You may remit payment by Automated Clearinghouse ("ACH") withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit <http://www.fec.gov/af/pay.shtml> to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details above to complete the required fields.

## **NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS**

### **Partial Payments**

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

### **Settlement Offers**

Any offer to settle or compromise a debt owed to the Commission will be rejected. This includes a payment in an amount less than the civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within thirty (30) days from the date of this notification.

If you have any questions regarding the payment of the civil money penalty, please contact Ben Holly at Federal Election Commission, 1050 First St., NE, Washington, DC 20002, or our toll-free number (800) 424-9530 (at the prompt, press 5) or (202) 694-1130.

On behalf of the Commission,



Dara Lindenbaum  
Chair

SERGIO ALCUBILLA FOR CONGRESS

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