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

10  
11 In the Matter of:

12 PHILLIP CHEN and PHILLIP CHEN  
13 FOR ASSEMBLY 2014

14 Respondents.

FPPC No. 14/567

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16 STIPULATION, DECISION, AND ORDER

17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondents Phillip  
19 Chen and Phillip Chen for Assembly 2014 (Respondents) hereby agree that this Stipulation will be  
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled  
21 meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this  
23 matter and to reach a final disposition without the necessity of holding an additional administrative  
24 hearing to determine the liability of Respondents.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
28 personally appear at any administrative hearing held in this matter, to be represented by an attorney at

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

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by  
5 exceeding the voluntary expenditure limit in violation of Government Code section 85400, subdivision  
6 (a)(1) as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though  
7 fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
9 Respondents also agree to the Commission imposing an administrative penalty in the total amount of  
10 Three Thousand Dollars (\$2,500). Respondents submitted with this Stipulation a cashier's check from  
11 Respondents in said amount, made payable to the "General Fund of the State of California," as full  
12 payment of the administrative penalty that shall be held by the State of California until the Commission  
13 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission  
14 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days  
15 after the Commission meeting at which the Stipulation is rejected, all payments tendered by  
16 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents  
17 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary  
18 hearing before the Commission becomes necessary, neither any member of the Commission, nor the  
19 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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23 Dated: \_\_\_\_\_  
24 Gary S. Winuk, on behalf of the Enforcement Division  
25 Fair Political Practices Commission

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27 Dated: \_\_\_\_\_  
28 Phillip Chen, individually, and on behalf of Phillip  
Chen for Assembly 2014

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Phillip Chen and Phillip Chen for Assembly 2014,” FPPC No. 14/567, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: \_\_\_\_\_  
Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Phillip Chen (Respondent Chen) ran for the State Assembly in the 2014 Primary Election. Respondent Phillip Chen for Assembly 2014 (Respondent Committee) was his campaign committee. The Political Reform Act (the “Act”)<sup>1</sup> affords candidates for California State Assembly the option of accepting voluntary expenditure limits. Special designation on the sample ballot is given to those candidates who choose to accept the limits; also, they are allowed to purchase space to place a statement in the voter information portion of the sample ballot. In 2014, the voluntary expenditure limit for such candidates was \$544,000 for the primary election. Respondents violated the Act by exceeding the voluntary expenditure limit.

For purposes of this stipulation, Respondents’ violation of the Act is as follows:

Count 1: Respondents accepted voluntary expenditure limits for the 2014 Primary election but exceeded the voluntary expenditure limit in violation of Section 85400, subdivision (a)(1).

### **SUMMARY OF THE LAW**

#### **Definition of Controlled Committee**

Section 82013, subdivision (a), defines a “committee” to include any person or combination of persons who receives contributions totaling \$1,000 or more in a calendar year. This type of committee commonly is referred to as a “recipient committee.” Under Section 82016, a recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

#### **Voluntary Expenditure Ceilings**

Assembly candidates have the option of accepting voluntary expenditure limits. Special designation on the sample ballot is given to those candidates who choose to accept the limits; also, they are allowed to purchase space to place a statement in the voter information portion of the sample ballot that does not exceed 250 words. (See Sections 85400-85403, 85600, and 85601.) The exact amount of the voluntary expenditure limit is subject to a cost-of-living adjustment every odd-numbered year. (Section 83124.) In 2014, the voluntary expenditure limit

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<sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the 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.

for candidates for the State Assembly was \$544,000 for the primary election. (Regulation 18545, subd. (b)(1).)

### **SUMMARY OF THE FACTS**

Respondent Chen ran for State Assembly in 2014. He finished third in the primary, approximately 1,600 votes behind the second place finisher so he did not qualify for the general election. For the primary election, Respondent Chen chose to accept the voluntary expenditure limit. Respondent Chen took advantage of the option afforded to those who accept the expenditure limit and purchased space to place a statement on the primary election sample ballot.

Respondents reported total expenditures of \$55,797.86 in 2013. Respondents' pre-election statement that covered the March 18, 2014 through May 17, 2014 period reported total expenditures for the year of \$446,288.84. After that statement period but before the primary election on June 3, 2014, Respondents' total expenditures for the election exceeded \$544,000, the expenditure limit. Respondents' total campaign expenditures for the first half of 2014 were \$596,052.06. So Respondents expenditures for the election totaled about \$651,850.

Respondents contend that exceeding the expenditure limit was unintentional and the result of a delay in Respondents receiving financial information necessary to determine their total expenditures. Respondents also contend that upon realizing they exceeded the expenditure limit, Respondent Committee ceased spending money on the campaign. Respondents self-reported the violation to the Fair Political Practices Commission ("Commission").

### **Count 1**

### **Exceeding Voluntary Expenditure Limit**

Respondents accepted the voluntary expenditure limit for the 2014 primary election and subsequently exceeded the limit in violation of Section 85400, subdivision (a)(1) and Regulation 18545, subdivision (b)(1).

### **CONCLUSION**

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in the context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Violating the voluntary expenditure ceiling is a serious violation of the Act. When a candidate for Assembly accepts the voluntary expenditure limits, he receives the benefit of special designation on the sample ballot as having accepted the limits. However, this special designation results in deception of the public if it turns out that the candidate did not in fact adhere to the limits that he accepted (and for which he received special designation). Also, when a candidate accepts the voluntary limits, he receives the advantage of being allowed to purchase space to make a brief statement on the sample ballot. If such a candidate does not in fact comply with the voluntary limits, then his statement on the sample ballot becomes an unfair advantage over his opponent.

As a result of the serious nature of exceeding voluntary expenditure limits, penalties for violating Section 85400 are typically in the mid to high range. For example, *In the Matter of Mervyn Dymally, Friends of Dymally, and Ida E. Yarbrough*, FPPC Case No. 02/829, (Commission approved a stipulated decision on September 12, 2006) involved a successful candidate for State Assembly who exceeded the voluntary expenditure limit in the primary election by about 21%. The candidate won the election. The respondents in that case self-reported the violation and agreed to pay a penalty of \$3,800 for the violation. More recently, *In the Matter of Pedro Rios and Pedro Rios for Assembly 2012*, FPPC No. 14/19 (Commission approved a stipulated decision on November 20, 2014) involved a candidate for State Assembly who exceeded the voluntary expenditure limit in the 2012 general election by about 10%.<sup>2</sup> The candidate did not win the election. The respondents in that case agreed to pay a penalty of \$3,000 for the violation.

In this case, the percentage by which Respondents exceeded the voluntary expenditure limit is between the amounts in the *Pedro Rios* and *Mervyn Dymally* cases. Like the *Pedro Rios* case, Respondent Chen did not win the election. Unlike either of the comparable cases, Respondent Chen lost in the primary so the total amount of Respondents' expenditures was lower than the comparable cases. To their credit, Respondents self-reported the violation, ceased all campaign expenditures upon realizing they had exceeded the limit, and agreed to settle the case prior to any formal administrative proceedings.

### **PROPOSED PENALTY**

After considering the factors listed in Regulation §18361.5, as well as penalties in prior similar cases, a penalty of \$2,500 is recommended.

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<sup>2</sup> The voluntary expenditure limit was \$909,000 and the respondents' expenditures totaled \$1,001,917.