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

10  
11 In the Matter of:

12 ADAM GRAY, ADAM GRAY FOR  
13 ASSEMBLY 2012, and BARRY  
14 MATHEWS,

15 Respondents

FPPC No. 14/579

16 STIPULATION, DECISION, AND ORDER

17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondents Adam  
19 Gray, Adam Gray for Assembly 2012, and Barry Mathews (Respondents) hereby agree that this  
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next  
21 regularly scheduled 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 failing  
5 to timely disclose a contribution on a semi-annual campaign statement in violation of Government Code  
6 sections 84211, subdivision (f), as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated  
7 by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in  
8 this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
10 Respondents also agree to the Commission imposing an administrative penalty in the total amount of  
11 Two Thousand Dollars (\$2,000). Respondents submitted with this Stipulation a cashier's check from  
12 Respondents in said amount, made payable to the "General Fund of the State of California," as full  
13 payment of the administrative penalty that shall be held by the State of California until the Commission  
14 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission  
15 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days  
16 after the Commission meeting at which the Stipulation is rejected, all payments tendered by  
17 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents  
18 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary  
19 hearing before the Commission becomes necessary, neither any member of the Commission, nor the  
20 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 Adam Gray, individually, and on behalf of Adam Gray  
for Assembly 2012

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Dated: \_\_\_\_\_  
Barry Mathews, individually, and on behalf of Adam  
Gray for Assembly 2012

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Adam Gray, Adam Gray for Assembly 2012, and Barry Mathews,” FPPC No. 14/579, 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 Adam Gray (“Respondent Gray”) was elected to the State Assembly in 2012. Respondent Adam Gray for Assembly 2012 (“Respondent Committee”) was his campaign committee and respondent Barry Mathews (“Respondent Treasurer”) was the treasurer. Under the Political Reform Act (the “Act”)<sup>1</sup>, candidates and committees must disclose all contributions received on campaign statements for the period during which the contribution is received. Respondents violated the Act by failing to timely disclose a contribution.

For purposes of this Stipulation, the proposed violation of the Act is as follows:

COUNT 1: Respondents failed to disclose a non-monetary contribution from Yocha Dehe Wintun Nation on their semi-annual campaign statement in violation of Section 84211, subdivision (f).

### SUMMARY OF THE LAW

#### Contributions

Under the Act, a “contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment for which full and adequate consideration is not received by the giver. (Section 82015.) The definition of “contribution” includes any goods or services received by a candidate or committee at no charge or at a discount from fair market value. (Regulation 18215, subdivision (b)(3).) This type of contribution is commonly referred to as a “non-monetary” or “in kind” contribution.

#### Contribution Disclosure

Section 84200, subdivision (a) requires elected officers, candidates, and committees to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.<sup>2</sup> Campaign statements must include information about all contributions received by the committee during the statement period. For cumulative contributions of \$100 or more received during a statement period, the statement must include the name, address, occupation, and employer of the contributor, as well as the amount and the date of the contribution. (Section 84211, subd. (f).)

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<sup>1</sup> The Political Reform 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.

<sup>2</sup> Under Regulation 18116, whenever the deadline to file a semi-annual statement falls on a Saturday, Sunday or official state holiday, the filing deadline shall be extended to the next regular business day.

### **Treasurer Liability**

Section 84100 provides that every committee shall have a treasurer. Under Section 84100 and Regulation §18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee and candidate, for any reporting violations. (Sections 83116.5 and 91006; Regulation 18316.6.)

### **SUMMARY OF THE FACTS AND VIOLATION**

Respondent Gray held a golf tournament fundraiser in December of 2011 at which he solicited campaign contributions. The fundraiser took place at the Yocha Dehe Golf Club. Yocha Dehe Wintun Nation ("Yocha Dehe") owns the golf club. The total cost of the tournament was \$4,049.58. Yocha Dehe credited Respondents \$1,900 towards the cost of the event as a non-monetary contribution. Respondents paid Yocha Dehe the balance owed of \$2,149.58.

Respondents did not timely disclose receiving a non-monetary contribution from Yocha Dehe on their campaign statement for the July 1, 2011 through December 31, 2011 statement period. Yocha Dehe also did not timely disclose making the non-monetary contribution to Respondents on its campaign statement or lobbyist employer report for that period. Respondents did disclose making the \$2,149.58 payment to Yocha Dehe.

Respondent filed an amended statement disclosing the contribution from Yocha Dehe in conjunction with this enforcement action. There is no evidence that Assembly Member Gray was personally aware of the unreported non-monetary contribution. The contribution was made through his campaign fundraiser.

### **Count 1**

#### **(Failure to Disclose Contribution on Campaign Statement)**

Respondents failed to disclose a \$1,900 contribution from Yocha Dehe Wintun Nation on Respondents' semi-annual campaign statement for the July 1, 2011 through December 31, 2011 statement period in violation of Section 84211, subdivision (f).

### **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 Fair Political Practices Commission ("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 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.

The Commission has recently approved stipulations in a few cases where the dollar amounts of the undisclosed contributions were similar to the amount Respondents failed to timely disclose in this case. For example, *In the Matter of Familias por Maywood aka Familias por Maywood Supporting Aguirre Magana Varela for Maywood City Council, Edward Varela, and Oscar Magaña*, FPPC No. 14/404 (Commission approved stipulation on June 19, 2014) resulted in a penalty of \$2,000 for one count of failure to timely disclose contributions of \$100 or more. In that case, the respondents failed to disclose cumulative contributions of \$100 or more from six contributors on a pre-election statement. The undisclosed contributions totaled \$1,183.30.

Similarly, *In the Matter of Fernando Vazquez, Vazquez for Downey City Council 2010, and Jane Leiderman*, FPPC No. 11/057 (Commission approved stipulation on March 15, 2012) resulted in a penalty of \$2,000 per count for two counts of failing to timely disclose contributions. The respondents failed to disclose ten contributions totaling \$1,600 on one pre-election statement, and nine contributions totaling approximately \$6,096 on the next pre-election statement.

Lastly, *In the Matter of Rosalinda Avitia, friends of Rosalinda Avitia for Tulare Local Healthcare District Area 2 Director, and Robert Montion* FPPC No. 12/965 (Commission approved stipulation and decision on September 19, 2013) resulted in a penalty of \$2,000 for respondents' failing to disclose nine contributions totaling \$2,200 during one statement period. The respondents also paid a penalty of \$1,500 for failing to disclose three contributions totaling \$400 during another statement period.

A central purpose of the Act is to ensure contributions in elections are fully and truthfully disclosed (Section 81002, subd. (a).) Respondents failed to timely disclose a \$1,900 contribution from a major donor for an event where Respondents solicited additional contributions. Yocha Dehe also did not timely disclose the contribution so the public had no way of knowing that the significant contribution took place until well after the election.

Respondent Gray previously received a warning letter for failing to file campaign statements, and paid a penalty of \$400 for failing to disclose receipt of a gift. But Respondents' violation appears to be the result of inadvertence, not an intent to deceive the public. Also, Respondents cooperated with the Commission in reaching an early settlement in this case.

### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, a penalty of \$2,000 is recommended.