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

10  
11 In the Matter of:

12 PEDRO RIOS and PEDRO RIOS FOR  
13 ASSEMBLY 2012,

14 Respondents.

FPPC No. 14/19

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Fair Political Practices Commission, and Respondents Pedro Rios and Pedro  
17 Rios for Assembly 2012, hereby agree that this Stipulation will be submitted for consideration by the Fair  
18 Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
20 matter and to reach a final disposition without the necessity of holding an additional administrative  
21 hearing to determine the liability of Respondents, pursuant to section 83116 of the Government Code.

22 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at  
26 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondents committed two  
2 violations of the Political Reform Act. Exhibit 1, which is attached hereto and incorporated by reference  
3 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

4 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,  
5 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of  
6 \$4,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General  
7 Fund of the State of California—is/are submitted with this Stipulation as full payment of the  
8 administrative penalty described above, and same shall be held by the State of California until the  
9 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the  
10 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)  
11 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered  
12 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents  
13 further stipulate and agree that in the event the Commission rejects the Stipulation and a full evidentiary  
14 hearing before the Commission becomes necessary, neither any member of the Commission, nor the  
15 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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18 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary S. Winuk, Chief of Enforcement  
Fair Political Practices Commission

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22 Dated: \_\_\_\_\_

\_\_\_\_\_  
Pedro Rios, individually and on behalf of Pedro Rios for  
Assembly 2012, Respondents

23  
24 **DECISION AND ORDER**

25 The foregoing Stipulation of the parties "In the Matter of Pedro Rios and Pedro Rios for  
26 Assembly 2012," FPPC No. 14/19, including all attached exhibits, is hereby accepted as the final

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1 decision and order of the Fair Political Practices Commission, effective upon execution below by the  
2 Chair.

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4 IT IS SO ORDERED.

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6 Dated: \_\_\_\_\_

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Joann Remke, Chair  
Fair Political Practices Commission

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## EXHIBIT 1

### INTRODUCTION

This case arises from a Franchise Tax Board audit report for calendar year 2012.

In 2012, Respondent Pedro Rios was a non-incumbent candidate for the California State Assembly, 32<sup>nd</sup> District. Respondent Pedro Rios for Assembly 2012 was his candidate controlled 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 2012, the voluntary expenditure limit for such candidates was \$909,000 for the general election.

Additionally, the Act requires candidates and their committees to disclose the receipt of contributions and the making of expenditures by filing campaign statements and reports by certain deadlines.

For purposes of this stipulation, Respondents’ violations of the Act are stated as follows:

- Count 1: For the 2012 election year, Respondents Pedro Rios and Pedro Rios for Assembly 2012, accepted voluntary expenditure limits, but in connection with the general election that year, they exceeded the voluntary expenditure limit by approximately \$92,917 in violation of Section 85400, subdivision (a)(1).
- Count 2: Respondents Pedro Rios and Pedro Rios for Assembly 2012 failed to file paper and electronic semi-annual campaign statements for the reporting period of January 1 through June 30, 2013 by the deadline of July 31, 2013, in violation of Sections 84200 and 84605.

### SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed in 2012 at the time of the violation described above.

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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.

### **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 2012, the voluntary expenditure limit for candidates for the California State Assembly was \$909,000 for the general election. (Regulation 18545, subd. (b)(1).)

### **Required Filing of Semi-Annual Campaign Statements**

At the core of the Act’s campaign reporting system is the requirement that candidates/committees must disclose their receipts and expenditures by filing campaign statements and reports. (See Sections 84200, et seq.) For example, semi-annual campaign statements must be filed 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. (Section 84200, subd. (a).)

In 2012, members of the legislature, candidates for such offices, and their controlled committees were required to file their campaign statements with the elections official in their county of domicile. Also, they were required to file online/electronically and in paper format with the Secretary of State. (See Sections 84215, subd. (a), and 84605.)

### **Joint and Several Liability**

If two or more persons are responsible for any violation of the Act, they are jointly and severally liable. (Section 91006.)

### **SUMMARY OF THE FACTS**

As stated above, in 2012, Respondent Pedro Rios was a non-incumbent candidate for the California State Assembly, 32<sup>nd</sup> District. Respondent Pedro Rios for Assembly 2012 was his

candidate controlled committee. Ultimately, Respondent Pedro Rios was defeated in the general election by Rudy Salas.

### **Count 1**

For the 2012 election year, Respondents Pedro Rios and Pedro Rios for Assembly 2012, accepted voluntary expenditure limits. As a result, in connection with the general election that year, Respondent Pedro Rios received the benefit of being designated in the sample ballot as having accepted the voluntary expenditure limits, and he was allowed to purchase space to include a brief statement in the sample ballot.

However, Respondents exceeded their voluntary expenditure limit by approximately \$92,917.

In this way, Respondents Pedro Rios and Pedro Rios for Assembly 2012 violated Section 85400, subdivision (a)(1).

### **Count 2**

Respondents Pedro Rios and Pedro Rios for Assembly 2012 failed to file paper and electronic semi-annual campaign statements for the reporting period of January 1 through June 30, 2013 by the deadline of July 31, 2013.

Ultimately, Respondents filed about nine months late, on or about May 2, 2014, after being contacted by the Enforcement Division. Reported receipts and expenditures were approximately \$4,248 and \$50,082, respectively.

In this way, Respondents violated Sections 84200 and 84605.

### **CONCLUSION**

This matter consists of one count. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed is \$5,000. (See Section 83116, subd. (c).)

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;

(3) Whether the violation was deliberate, negligent or inadvertent;

(4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);

(5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, violating the voluntary expenditure ceiling is a serious violation of the Act. When a candidate for California State 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.

The most recent known stipulation involving violation of Section 85400 imposed a penalty in the high range. (See *In the Matter of Mervyn Dymally, Friends of Dymally, and Ida E. Yarbrough*, FPPC Case No. 02/829, approved Sep. 12, 2006 [\$3,800 penalty imposed against experienced candidate for California State Assembly who self-reported himself to the Enforcement Division for exceeding the voluntary expenditure limit by 21% in connection with the primary election, which he won].)

In this case, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,000 for Count 1 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondents do not have a history of violating the Act. Additionally, the relative amount by which Respondents exceeded the voluntary expenditure limit was about one-half of the comparable case cited above (roughly 10% compared to 21%), and Respondents lost in the general election. Also, Respondents maintain that their violation was the result of unforeseen and unbudgeted last minute expenses that they were obligated to pay after the election.

Regarding Count 2, the public harm inherent in campaign reporting violations is that the public is deprived of important information regarding contributions and expenditures made in support of a candidate. A recent stipulation involving failure to file semi-annual campaign statements imposed a penalty in the low range. (See *In the Matter of Terri Valladolid and*

*Friends of Terri Valladolid for Southwestern College School Board 2010*, FPPC Case No. 13/191, approved Aug. 21, 2014 [\$1,000 penalty imposed per count for failure to timely file semi-annual campaign statements].)

In this case, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$1,000 for Count 2 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondents do not have a history of violating the Act. Additionally, the campaign statement in question was not required to be filed until after the general election (and Respondents lost in the election).

### **PROPOSED PENALTY**

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$4,000 is recommended.