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

10
11 In the Matter of:

12 GRAY FOR ASSEMBLY 2014, ADAM
13 GRAY, AND DOUGLAS L. WHITE,
14 Respondents.

FPPC Case No. 16/455

STIPULATION, DECISION AND ORDER

15 INTRODUCTION

16 In 2014, Adam Gray (“Gray”) sought re-election to the State Assembly and, in conjunction
17 therewith, created the committee Gray for Assembly 2014 (the “Committee”). The treasurer of the
18 Committee was Douglas L. White (“White”) of Churchwell White LLP.

19 The Committee was the subject of an audit by the Franchise Tax Board (“FTB”), which covered
20 the time period of January 1, 2013 to June 30, 2015. The audit revealed that the Committee committed
21 various violations of the Political Reform Act (the “Act”),¹ including the Committee’s failure to timely
22 file (i) a 24-hour independent expenditure report for two expenditures made in support of Proposition 41
23 on the June 3, 2014 ballot; (ii) 24-hour contribution reports for four different contributions received prior
24 to and on the June 2014 election date; and (iii) a \$5,000 contribution report for one contribution received
25 in July 2013. Further, the Committee accepted campaign contributions from a single source in excess of

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 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.

1 the contribution limits by \$5,000.

2 SUMMARY OF THE LAW

3 The Act and its regulations are amended from time to time. The violations in this case occurred
4 in 2013 and 2014. For this reason, all legal references and discussions of law pertain to the Act’s
5 provisions as they existed at that time.

6 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

7 When enacting the Act, the people of California found and declared that previous laws regulating
8 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
9 the Act is to be construed liberally to accomplish its purposes.³

10 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
12 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting
13 system—and the true sources of campaign contributions may not be concealed.⁵ Another purpose of the
14 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁶

15 Duty to File 24-Hour Independent Expenditure Reports

16 When a committee makes a late independent expenditure, the committee must disclose the
17 expenditure in a 24-hour independent expenditure report filed at each office with which the committee is
18 required to file its next campaign statement within 24 hours of making the late independent expenditure.⁷
19 A “late independent expenditure” means any independent expenditure which totals in the aggregate
20 \$1,000 or more and is made for or against any specific candidate or measure involved in an election
21 within 90 days before the date of the election.⁸

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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, et seq., and 84301.

⁶ Section 81002, subd. (f).

⁷ Section 84204.

⁸ Section 82036.5.

1 Duty to File 24-Hour Contribution Reports

2 Each candidate or committee that makes or receives a late contribution must file a report within
3 24 hours of making or receiving the contribution.⁹ A “late contribution” includes a contribution
4 aggregating \$1,000 or more that is made or received by a candidate or his controlled committee within 90
5 days before the date of the election.¹⁰ Further, the Act requires that any candidate or committee required
6 to file campaign statements and reports in connection with a state elective office online or electronically
7 must file a report with the Secretary of State disclosing receipt of a contribution of \$1,000 or more
8 received during an election cycle within 24 hours of receipt of the contribution.¹¹ The election cycle is
9 the period of time commencing 90 days prior to an election and ending on the date of the election.¹²

10 Duty to Report Contributions of \$5,000 or More

11 A candidate for elective state office is required to report to the Secretary of State within ten
12 business days of receipt of every contribution of \$5,000 or more that is received at any time other than
13 the election cycle.¹³ The election cycle is the period of time commencing 90 days prior to an election
14 and ending on the date of the election.¹⁴

15 Limits on Campaign Contributions

16 The Act imposes campaign contribution limits with respect to the making and receiving of certain
17 contributions. These limits are adjusted periodically, and different limits apply depending upon who is
18 contributing and who is receiving.¹⁵

19 In 2014, a person, other than a small contributor committee or political party committee, wishing
20 to contribute to a candidate for the State Assembly could not contribute more than \$4,100 per election;
21 and a candidate for the State Assembly could not accept from a person any contribution totaling more
22 than \$4,100 per election.¹⁶

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24 ⁹ Section 84203.

¹⁰ Section 82036.

25 ¹¹ Sections 84605 and 85309, subd. (a).

¹² Section 85204.

26 ¹³ Section 85309, subd. (c).

¹⁴ Section 85204.

27 ¹⁵ See Section 85301, subd. (a), as well as Sections 83124, 85303, and 85305, which prohibit the making and
28 acceptance of over-the-limit contributions.

¹⁶ Section 85301, subd. (a); Regulation 18545, subd. (a)(1).

1 Joint and Several Liability of Candidate, Committee, and Treasurer

2 It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁷ A
3 treasurer may be held jointly and severally liable, along with the candidate and the committee, for
4 violations committed by the committee.¹⁸

5 **SUMMARY OF THE FACTS**

6 According to its campaign filings, the Committee first qualified as a committee on January 28,
7 2013 and was created as a controlled committee supporting Gray’s 2014 campaign for the State
8 Assembly, District 21. During Gray’s campaign, the Committee received a total of \$1,651,202.77 in
9 contributions and made \$1,754,320.59 in expenditures. In the June 2014 Primary Election, Gray
10 garnered 95.3 percent of the vote; and in the November 2014 General Election, he defeated his opponent
11 with 53.4 percent of the vote. Gray was also successfully re-elected in 2016.

12 Campaign Expenditure Reporting

13 Proposition 41 was a statewide ballot measure on the June 3, 2014 Primary Election ballot. On
14 April 29, 2014, the Committee made two different independent expenditures in support of Proposition
15 41. In particular, the Committee made expenditures of \$2,020.25 and \$22,864 in conjunction with the
16 production of radio advertisements broadcast in the Merced and Modesto markets. Because the
17 independent expenditures were made during the 90-day period preceding the election, the Committee
18 was required to file a 24-hour independent expenditure report within 24 hours of making the independent
19 expenditures. However, the Committee filed the respective report, 34 days late, on the date of the
20 election. Further, the subject independent expenditures were not reported on the appropriate portion
21 (Schedule D – Summary of Expenditures Supporting/Opposing Other Candidates, Measures and
22 Committees) of the campaign statement covering the applicable time period (March 8, 2014 to May 17,
23 2014) until an amendment was filed on August 1, 2014, months after the election.¹⁹

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27 ¹⁷ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

28 ¹⁸ Sections 83116.5 and 91006.

¹⁹ The payment associated with the \$22,864 independent expenditure was reported on Schedule E – Payments Made of the original version of the pertinent campaign statement, thus not identifying the proposition supported.

1 Campaign Contribution Reporting

2 On July 18, 2013, the Committee received a contribution in the amount of \$6,500 from the
3 American Federation of State, County, & Municipal Employees Small Contributor Committee. As a
4 contribution of \$5,000 or more received outside of the election cycle, the Committee was required to file
5 a \$5,000 contribution report within ten business days of receiving the contribution; therefore, the due
6 date for the report was August 1, 2013. Despite this requirement, the Committee did not file the pertinent
7 report until August 8, 2013.

8 The Committee also received the following contributions during the 90-day period before the
9 June 3, 2014 Primary Election (including the day of the election):

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Date	Contributor	Amount
March 27, 2014	The Procter & Gamble Company	\$1,000
June 3, 2014	California Real Estate Political Action Committee	\$8,200
June 3, 2014	Caterpillar Employees PAC	\$2,000
June 3, 2014	Genentech, Inc.	\$1,500

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14 Despite the fact that the Committee was required to file 24-hour contribution reports within 24
15 hours of receiving each of the contributions above, it did not do so, instead filing the report disclosing the
16 March 27, 2014 contribution three days late, and the report disclosing the three June 3, 2014
17 contributions nine days late.

18 Acceptance of Contributions Over the Limit

19 On August 19, 2013, the Committee received a contribution in the amount of \$5,000 from IBEW
20 Local Union 1245 (“IBEW”). On October 28, 2014, the Committee received a second contribution from
21 IBEW, this time in the amount of \$8,200. Therefore, in aggregate, the Committee received \$13,200 in
22 contributions from IBEW in conjunction with the 2014 Primary and General Elections. In 2014,
23 candidates for the State Assembly were only permitted to accept a maximum of \$4,100 from a person for
24 each election. As a result, the most the Committee could have accepted from IBEW was \$8,200.
25 Despite the Committee’s acceptance of \$5,000 in excess of the prescribed limits, the Committee failed to
26 reimburse this amount to IBW, but has done so in conjunction with this stipulated settlement.

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1 **VIOLATIONS**

2 Count 1: Failure to Timely File 24-Hour Independent Expenditure Report

3 The Committee, Gray, and White failed to timely file a 24-hour independent expenditure report
4 for two expenditures amounting to \$24,884 made on April 29, 2014, in violation of Section 84204.

5 Count 2: Failure to Timely File 24-Hour Contribution Reports

6 The Committee, Gray, and White failed to timely file a 24-hour late contribution report for four
7 different contributions amounting to \$12,700, in violation of Sections 84203 and 85309, subdivision (a).

8 Count 3: Failure to Timely File \$5,000 Contribution Report

9 The Committee, Gray, and White failed to timely file a \$5,000 contribution report for a
10 contribution of \$6,500, received on July 18, 2013, in violation of Section 85309, subdivision (c).

11 Count 4: Accepting Contributions Over the Limit

12 The Committee, Gray, and White accepted campaign contributions from a person that exceeded
13 the campaign contribution limit for candidates for State Assembly, in violation of Section 85301,
14 subdivision (a); and Regulation 18545, subdivision (a)(1).

15 **PROPOSED PENALTY**

16 This matter consists of four counts. The maximum penalty that may be imposed is \$5,000 per
17 count. Thus, the maximum penalty that may be imposed is \$20,000.²⁰

18 In determining the appropriate penalty for a particular violation of the Act, the Fair Political
19 Practices Commission (the "Commission") considers the facts of the case, the public harm involved, and
20 the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the
21 violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the
22 violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a
23 pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f)
24 whether the violator has a prior record of violations.²¹ Additionally, the Commission considers penalties
25 in prior cases with comparable violations.

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28 ²⁰ Section 83116, subd. (c).

²¹ Regulation 18361.5, subd. (d).

1 The public harm inherent in campaign reporting violations is that the public is deprived of
2 important, time-sensitive information regarding political contributions. Generally, these types of
3 violations are considered to be more serious where the public is deprived of information that was
4 required to be disclosed before an election because this has the potential to affect how votes are cast—so
5 greater public harm is involved, and a higher penalty is warranted. Another factor that influences the
6 amount of the penalty is whether the public harm was mitigated because some of the reportable activity
7 was disclosed to the public on another campaign filing.

8 The typical penalty levied for the failure to file 24-hour independent expenditure reports has
9 historically fallen in the middle range of available penalties. Comparable cases in which a penalty was
10 charged for violating Section 84204 include the following:

11 • *In the Matter of Voters for Good Government and Billie Martinez, Principal Officer;*
12 FPPC No. 14/348. Respondents made an independent expenditure associated with a mass mailer
13 opposing a local candidate in the amount of \$1,081. However, Respondents failed to report the
14 expenditure on a timely-filed 24-hour independent expenditure report, as was required. Further,
15 Respondents failed to report the expenditure on the applicable semi-annual campaign statement, until an
16 amendment was filed months later. In January 2015, the Commission imposed a penalty of \$2,000 on
17 one count.

18 • *In the Matter of Brown for Governor 2010-Sponsored by the San Diego and Imperial*
19 *Counties Labor Council: El Cambio Empieza el Martes to Support Jerry and Xavier Martinez;* FPPC No.
20 13/087. Respondents made independent expenditures amounting to \$126,184, but failed to timely file
21 24-hour independent expenditure reports disclosing same, as was required. In April 2014, the
22 Commission imposed a penalty of \$3,000 on one count.

23 Comparable cases in which a penalty was charged for violating Section 84203 include the
24 following:

25 • *In the Matter of Yes on Measure U – Kids Need U and Kelly Brown;* FPPC No. 16/19824.
26 Respondents failed to timely file 24-hour contribution reports for 15 different contributions amounting to
27 \$70,500. The contributions were eventually reported on a 24-hour report, albeit late. In January 2017,
28 the Commission imposed a penalty of \$2,000 on one count.

1 • *In the Matter of Douglas Hanson, Committee to Re-Elect Hanson for City Council 2016,*
2 *and Claudette Pais*; FPPC No. 16/19682. Respondents, a candidate, his controlled committee, and its
3 treasurer, failed to timely file 24-hour contribution reports for seven contributions totaling \$8,200. All of
4 the subject contributions were reported on the appropriate timely-filed pre-election campaign statements,
5 as well as a late-filed 24-hour report. In December 2016, the Commission imposed a penalty of \$2,000
6 on one count.

7 The typical penalty levied for the failure to file \$5,000 contribution reports has historically fallen
8 in the mid-to-low range of available penalties, depending on the facts of the case. Comparable cases in
9 which a penalty was charged for violating Section 85309, subdivision (c), include the following:

10 • *In the Matter of Kenneth Dickson and Kenneth Dickson for 67th Assembly 2012*; FPPC
11 No. 14/025. Respondents, a candidate for State Assembly and his candidate controlled committee, failed
12 to file \$5,000 contribution reports in connection with two contributions made from the candidate himself
13 totaling \$101,545. In mitigation, the respondents reported the subject contributions on semiannual
14 statements, the contributions were the only received by the committee during the pertinent reporting
15 period, and the respondents did not have a history of enforcement actions and cooperated with auditors.
16 In April 2014, the Commission imposed a penalty of \$1,000 on one count.

17 Accepting a campaign contribution in excess of the campaign contribution limit is one of the
18 more serious violations of the Act because it allows for the circumvention of the limits on campaign
19 contributions prescribed by California's voters and provides an unfair advantage to one candidate over
20 another in an election. Prior Commission cases involving receipt of campaign contributions over the
21 limit typically have resulted in penalties in the mid-to-high range. Comparable cases in which a penalty
22 was charged for violating Section 85301, subdivision (a), include the following:

23 • *In the Matter of David Hadley, David Hadley for Assembly 2014, and Kelly Lawler*; FPPC
24 No. 14/1201. Respondents, a candidate, his controlled committee, and its treasurer, accepted a campaign
25 contribution in the amount of \$45,000 from a primarily-formed committee, which exceeded the
26 contribution limit of \$4,100 for persons. Respondents accepted the contribution based on the mistaken
27 belief that the contributor was a political party committee. Within 24 hours of learning of the error,
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1 Respondents reimbursed the excess amount to the contributor. In November 2014, the Commission
2 imposed a penalty of \$2,500 on one count.

3 All of the violations charged against the Committee are aggravated considering both Gray and
4 White's experience and familiarity with the Act. As mentioned, Gray has been a member of the State
5 Assembly since 2012 and, prior to that time, was involved with various different political committees.
6 White is a partner at a law firm specializing in political law. In mitigation, the Enforcement Division's
7 investigation did not find any evidence that the violations contained herein were intentional.

8 As to Count 1, similar to the respondents in *Voters for Good Government*, the Respondents here
9 not only failed to timely file a required 24-hour independent expenditure report, but further failed to
10 appropriately report the amounts on a timely-filed campaign statement. Given the larger amount at issue
11 here, as compared to *Voters for Good Government*, and considering Respondents' familiarity and
12 experience with the Act, the appropriate penalty for this violation falls in the middle of the two
13 comparable cases.

14 As to Counts 2 and 3, the violations here are similar to those at issue in the comparable cases, and
15 therefore warrant similar penalties.

16 As to Count 4, the violation here is aggravated by the fact that, unlike the respondents in *Hadley*,
17 Respondents here failed to reimburse the excess contribution amount to the contributing party until this
18 stipulation was consummated. This distinction, combined with Respondents' experience with the Act,
19 warrants a penalty higher than that assessed in the comparable *Hadley* case.

20 Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	24-Hour Independent Expenditure Report	\$2,500
2	24-Hour Contribution Reports	\$2,000
3	\$5,000 Contribution Report	\$1,000
4	Contributions Over the Limit	\$3,000
	TOTAL:	\$8,500

26 CONCLUSION

27 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
28 Respondents Gray for Assembly 2014, Adam Gray, and Douglas L. White, hereby agree as follows:

1 1. The Respondents violated the Act as described in the foregoing pages, which are a true
2 and accurate summary of the facts in this matter.

3 2. This stipulation will be submitted for consideration by the Fair Political Practices
4 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

5 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
6 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
7 liability of the Respondents pursuant to Section 83116.

8 4. The Respondents understand, and hereby knowingly and voluntarily waive, any and all
9 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
10 This includes, but is not limited to, the right to appear personally at any administrative hearing held in
11 this matter, to be represented by an attorney at the Respondents' own expense, to confront and cross-
12 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an
13 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter
14 judicially reviewed.

15 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the
16 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
17 \$8,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
18 Fund of the State of California—is/are submitted with this stipulation as full payment of the
19 administrative penalty described above, and same shall be held by the State of California until the
20 Commission issues its decision and order regarding this matter.

21 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
22 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
23 rejected, all payments tendered by the Respondents in connection with this stipulation shall be
24 reimbursed to the Respondents. If this stipulation is not approved by the Commission, and if a full
25 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
26 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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7. The parties to this agreement may execute their respective signature pages separately. A copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax or as a PDF email attachment is as effective and binding as the original.

Dated: _____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
Adam Gray, individually and on behalf of
Gray for Assembly 2014

Dated: _____
Douglas L. White, individually and on behalf of
Gray for Assembly 2014

1 The foregoing stipulation of the parties “In the Matter of Gray for Assembly 2014, Adam Gray, and
2 Douglas L. White,” FPPC Case No. 16/455 is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

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9 Joann Remke, Chair
10 Fair Political Practices Commission
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