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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
STATE OF CALIFORNIA

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11 In the Matter of:

12 ESAU HERRERA FOR ASSEMBLY  
2016, ESAU HERRERA, AND  
13 REBECCA RIVERA,

14 Respondents.

FPPC Case No. 2017/00849

STIPULATION, DECISION AND ORDER

15  
16 **INTRODUCTION**

17 Respondent Esau Herrera (“Herrera”) is an experienced candidate and officeholder. Herrera ran  
18 unsuccessfully for Assembly District 27 in the June 7, 2016 Primary Election. His candidate-controlled  
19 committee was Esau Herrera for Assembly 2016 (“2016 Assembly Committee”). Rebecca Rivera  
20 (“Rivera”) served as the treasurer for the 2016 Assembly Committee. The 2016 Assembly Committee,  
21 Herrera, and Rivera violated the Political Reform Act<sup>1</sup> (“Act”) by failing to timely file campaign  
22 statements and accepting an over the limit contribution.

23 **SUMMARY OF THE LAW**

24 All statutory references and discussions of law pertain to the Act’s provisions as they existed at the  
25 time of the violations.

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

2                   When enacting the Political Reform Act, the people of California found and declared that previous  
3 laws regulating political practices suffered from inadequate enforcement by state and local authorities.<sup>1</sup>  
4 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”<sup>2</sup>

5                   One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in  
6 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper  
7 practices are inhibited.<sup>3</sup> Along these lines, the Act includes a comprehensive campaign reporting system.<sup>4</sup>  
8 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be  
9 “vigorously enforced.”<sup>5</sup>

10   **Definition of Committee**

11                   A “committee” included any person or combination of persons who received contributions totaling  
12 \$2,000 or more in a calendar year.<sup>6</sup> This type of committee is commonly referred to as a “recipient  
13 committee.” A recipient committee controlled by a candidate is called a controlled committee.

14   **Semi-annual Campaign Statements**

15                   A controlled committee must file two semi-annual campaign statements each year no later than  
16 July 31 for the period ending June 30 and no later than January 31 for the period ending December 31.<sup>7</sup>  
17 Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a  
18 statement shall be extended to the next regular business day.<sup>8</sup>

19   **Pre-Election Campaign Statements**

20                   A controlled committee must file two pre-election campaign statements before the election in which  
21 the candidate is listed on the ballot.<sup>9</sup> A committee must file a first pre-election campaign statement no later  
22 than 40 days before the election for the reporting period ending 45 days before the election. A committee  
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25 <sup>1</sup> Section 81001, subdivision (h).

26 <sup>2</sup> Section 81003.

27 <sup>3</sup> Section 81002, subdivision (a).

28 <sup>4</sup> Sections 84200, *et seq.*

<sup>5</sup> Section 81002, subdivision (f).

<sup>6</sup> Section 82013, subdivision (a).

<sup>7</sup> Section 84200, subdivision (a).

<sup>8</sup> Regulation 18116, subdivision (a).

<sup>9</sup> Section 84200.5.

1 must file a second pre-election statement no later than 12 days before the election for the reporting period  
2 ending 17 days before the election.<sup>10</sup> Whenever the deadline falls on a Saturday, Sunday, or official state  
3 holiday, the filing deadline for a statement shall be extended to the next regular business day.<sup>11</sup>

4 For the June 6, 2016 Primary Election, the first pre-election reporting period was for January 1,  
5 2016 through April 23, 2016 and was due on April 28, 2016. The second pre-election reporting period was  
6 for April 24, 2016 through May 21, 2016 and was due on May 26, 2016.

### 7 **Contribution Limits for Candidates of Statewide Offices**

8 A candidate for statewide elective office, including the office of Assembly or Senate, may not  
9 accept from a person, any contribution totaling more than the contribution limit in effect during the  
10 election.<sup>12</sup> During the period of January 1, 2015 through December 31, 2016, the contribution limit in effect  
11 for candidates for the Assembly was \$4,200 per person per primary or general election.<sup>13</sup> Campaign  
12 contributions include payments, forgiveness of a loan, payment of a loan by a third party, or an enforceable  
13 promise to make a payment, including non-monetary or in-kind contributions.<sup>14</sup> A loan received by a  
14 candidate or committee is a contribution unless the loan is received from a commercial lending institution  
15 in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for  
16 political purposes.<sup>15</sup>

### 17 **Candidate and Treasurer Liability**

18 Under the Act, it is the duty of the candidate and the treasurer of a controlled committee to ensure  
19 that the committee complies with all the requirements of the Act concerning the receipt, expenditure, and  
20 reporting of funds.<sup>16</sup> The candidate and treasurer may be held jointly and severally liable, along with the  
21 committee, for violations committed by the committee.<sup>17</sup>

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26 <sup>10</sup> Sections 84200.8.

27 <sup>11</sup> Regulation 18116, subdivision (a).

28 <sup>12</sup> Section 82024, Section 85301, subdivision (a).

<sup>13</sup> Former Regulation 18545, subdivision (a) (2015).

<sup>14</sup> Section 82015.

<sup>15</sup> Section 84213.

<sup>16</sup> Sections 81004, 84100, 84213, and Regulation 18427.

<sup>17</sup> Sections 83116.5 and 91006.

1 **SUMMARY OF THE FACTS**

2 Herrera ran for but was unsuccessful in his candidacy for the Assembly District 27 in the June 6,  
3 2016 Primary Election. The 2016 Assembly Committee qualified on or about March 7, 2016, according to  
4 a Statement of Organization filed on March 18, 2016. Rivera served as the treasurer for this committee.  
5 For the primary, the 2016 Assembly Committee reported a total of approximately \$66,254 in contributions  
6 and approximately \$62,587 in expenditures. The 2016 Assembly Committee was terminated with the  
7 Secretary of State according to a Statement of Organization filed on May 3, 2018.

8 As a candidate on the ballot, Herrera was required to file two pre-election statements. The first pre-  
9 election statement for the reporting period of January 1, 2016 through April 23, 2016 was due on April 28,  
10 2016. The 2016 Assembly Committee filed this statement on May 2, 2016, four days late. The 2016  
11 Assembly Committee filed the second pre-election statement timely. The semiannual campaign statement  
12 for the reporting period of May 22, 2016 through June 30, 2016 was due on August 1, 2016. The 2016  
13 Assembly Committee filed this statement 640 days late on May 3, 2018. The semiannual campaign  
14 statement for the reporting period of July 1, 2016 through December 31, 2016 was due on January 31,  
15 2017. The 2016 Assembly Committee filed this statement 457 days late on May 3, 2018.

16 In addition to failing to timely file campaign statements, the 2016 Assembly Committee, Herrera,  
17 and Rivera accepted a contribution that was over the legal contribution limit of \$4,200 per person per  
18 election. On or about April 12, 2016, Respondents received two checks from David B. Townsley. The first  
19 check was for \$4,200. The second check from Townsley was for \$40,000 and was reported as a loan. Both  
20 checks were deposited into the committee bank account on or around April 13, 2016 and were timely  
21 reported on a 24-hour report and reported on the first pre-election campaign statement. Herrera was  
22 permitted to raise funds for the general election prior to the primary election. Therefore, of the \$40,000  
23 loan, \$4,200 could have been attributed to the general election. However, the additional funds, totaling  
24 \$35,800, was in excess of the contribution limits at the time and should not have been accepted. The 2016  
25 Assembly Committee paid back the entirety of the \$40,000 loan to Townsley on or around June 29, 2016,  
26 after the primary election. Based on bank records, it does not appear that the money was ever spent.  
27 However, the deposit and reporting of the contributions from Townsley made the cash balance of Herrera's  
28 campaign funds look much larger than it would have if the contribution limits had been observed.

1 **VIOLATIONS**

2 **Count 1: Failure to Timely File Campaign Statements**

3 The 2016 Assembly Committee, Herrera, and Rivera failed to timely file a pre-election statement  
4 for the reporting period of January 1, 2016 through April 23, 2016 by the deadline of April 28, 2016, in  
5 violation of Government Code section 84200.5.

6 The 2016 Assembly Committee, Herrera, and Rivera failed to timely file two semiannual campaign  
7 statements, for the reporting periods of May 22, 2016 through June 30, 2016 by the deadline of August 1,  
8 2016, and for the reporting period of July 1, 2016 through December 31, 2016 by the deadline of January  
9 31, 2017, in violation of Government Code section 84200.

10 **Count 2: Acceptance of an Over the Limit Campaign Contribution**

11 The 2016 Assembly Committee, Herrera, and Rivera accepted an over the limit contribution of  
12 \$40,000 from David Townsley on or around April 12, 2016, in violation of Section 85301, subdivision (a)  
13 and Regulation 18545, subdivision (c).

14 **PROPOSED PENALTY**

15 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
16 count.<sup>18</sup> Thus, the maximum penalty that may be imposed here is \$10,000.

17 In determining the appropriate penalty for a particular violation of the Act, the Commission  
18 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission  
19 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention  
20 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)  
21 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were  
22 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>19</sup>

23 The failure to timely file campaign statements, particularly those statements regarding an election  
24 cycle, deprives the public of important, time-sensitive information about the campaign’s activity.  
25 Accepting a campaign contribution in excess of the limits is one of the more serious violations because  
26 over-the-limit contributions provide an unfair advantage to one candidate over others who observe the  
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28 <sup>18</sup> Section 83116, subdivision (c).

<sup>19</sup> Regulation 18361.5, subdivision (d).

1 rules. Herrera has a history of enforcement. *In the Matter of Esau Ruiz Herrera, Esau Herrera for School*  
2 *Board 2014*, FPPC Case No 15/1386, the Commission approved a streamline settlement for failure to file  
3 a 24-hour report and failure to file a post-election semiannual report (2 counts). Another matter did not  
4 involve a violation at issue, but rather was related to Herrera’s failure to report gifts on a statement of  
5 economic interest.

6 In determining a penalty, the Commission considers penalties in prior cases with comparable  
7 violations. For Count 1, a comparable case is *In the Matter of Cheryl Hansen for County Superintendent*  
8 *of Schools 2018, Cheryl Hansen, and William Beemer*, FPPC Case No. 18/586 (The Commission approved  
9 a stipulation on September 19, 2019.) Respondents failed to timely file pre-election campaign statements  
10 and semiannual campaign statements in connection with a Primary. Respondents were charged for all three  
11 filings related to the Primary and the Commission imposed a penalty of \$2,000. A similar penalty is  
12 warranted here, because although Herrera filed the second pre-election campaign statement timely, unlike  
13 Hansen, he is an experienced filer and has paid a penalty for the same violation in the past. Therefore, a  
14 penalty of \$2,000 is recommended for Count 1.

15 For Count 2, a comparable case is *In the Matter of Gray for Assembly 2014, Adam Gray, and*  
16 *Douglas L. White*, FPPC Case No. 16/455 (The Commission approved a stipulation on August 17, 2017.)  
17 The candidate and his candidate-controlled committee accepted two contributions from a single source that  
18 in combination was in excess of the prescribed contribution limits. The Commission imposed a penalty of  
19 \$3,000 for this count.

20 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a  
21 total penalty of \$5,000 is recommended.

22 **CONCLUSION**

23 Esau Herrera for Assembly 2016, Esau Herrera, and Rebecca Rivera hereby agree as follows:

- 24 1. Respondents violated the Act as described in the foregoing pages, which are a true and  
25 accurate summary of the facts in this matter.
- 26 2. This stipulation will be submitted for consideration by the Fair Political Practices  
27 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
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1           3.       This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
2 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
3 liability of Respondents pursuant to Section 83116.

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

11           5.       Respondents agree to the issuance of the decision and order set forth below. Also,  
12 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
13 \$5,000. One or more payments totaling said amount—to be paid to the General Fund of the State of  
14 California—is/are submitted with this stipulation as full payment of the administrative penalty described  
15 above, and same shall be held by the State of California until the Commission issues its decision and order  
16 regarding this matter.

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

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

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27 Dated: \_\_\_\_\_

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

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

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Esau Herrera, individually and on behalf of  
Esau Herrera for Assembly 2016

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

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Rebecca Rivera, Treasurer  
Esau Herrera for Assembly 2016



1           The foregoing stipulation of the parties “In the Matter of Esau Herrera for Assembly 2016, Esau  
2 Herrera, and Rebecca Rivera,” FPPC Case No. 2017/0849 is hereby accepted as the final decision and  
3 order of the Fair 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: \_\_\_\_\_

8           \_\_\_\_\_ Richard C. Miadich, Chair  
9           Fair Political Practices Commission  
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