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

11
12 In the Matter of:

13 BARRY CHANG FOR ASSEMBLY
2016 and BARRY CHANG,

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15 Respondents.
16

FPPC No. 16/446

STIPULATION, DECISION, AND ORDER

17 **INTRODUCTION**

18 Respondent Barry Chang (“Chang”) was an unsuccessful candidate for District 24 of the
19 California State Assembly in the June 7, 2016 Primary Election. Respondent Barry Chang for Assembly
20 2016 (the “Committee”) is his candidate-controlled committee. Chang was the Committee’s treasurer
21 since April 28, 2016. Respondents violated the Political Reform Act (the “Act”),¹ by failing to timely file
22 \$5,000 reports, failing to include occupation and employer information for contributors in campaign
23 statements, failing to timely file 24-hour contribution reports, and accepting contributions over the limit.

24 **SUMMARY OF THE LAW**

25 The violations in this case occurred in 2015 and 2016, and all legal references and discussions of
26 law pertain to the Act’s provisions as they existed at that time. The parties entered into a tolling agreement
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28 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 with the Enforcement Division regarding the applicable statutes of limitations, which was effective as of
2 July 19, 2020.

3 Need for Liberal Construction and Vigorous Enforcement of the Act

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

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

12 Committees

13 A committee will qualify as a “recipient committee” when it receives two thousand dollars
14 (\$2,000) or more in contributions during a single calendar year.⁷ A committee is a “controlled committee”
15 when it is controlled directly or indirectly by a candidate.⁸

16 \$5,000 Reports

17 Any candidate for elective state office who meets or exceeds a \$25,000 threshold of total
18 cumulative reportable amount of contributions received, expenditures made, loans made, or loans
19 received must file online or electronically with the Secretary of State a report disclosing receipt of
20 contributions of \$5,000 or more received at any time other than during an election cycle.⁹ The recipient
21 of the \$5,000 or more contribution must disclose their full name and street address; the date and amount
22 of the contribution; whether the contribution was made in the form of a loan; and the contributor’s full

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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.*

⁶ Section 81002, subd. (f).

⁷ Section 82013, subd. (a).

⁸ Section 82016, subd. (a).

⁹ Section 85309, subd. (c). See Section 84605, subd. (a)(1).

1 name, street address, occupation, and employer or name of the business.¹⁰ The \$5,000 report must be
2 filed within 10 business days of receipt of the contribution.¹¹

3 Campaign Statements

4 A controlled committee must periodically file campaign statements while it remains open.¹² Each
5 campaign statement must contain, among other things, the street address, occupation, and employer name
6 for every person that contributed \$100 or more during the period covered by each campaign statement.¹³

7 A contribution need not be reported nor be deemed accepted if it is not cashed, negotiated, or
8 deposited and is returned to the contributor before the closing date of the campaign statement on which
9 the contribution would otherwise be reported.¹⁴

10 24-Hour Contribution Reports

11 A late contribution is a contribution that totals in the aggregate \$1,000 or more that is made to or
12 received by a candidate, a controlled committee, or a primarily formed committee during the 90-day
13 period preceding the date of the election, or on the date of the election, at which the candidate or measure
14 is to be voted on.¹⁵ Each candidate or controlled committee that makes or receives a late contribution
15 must report it to their filing officer within 24 hours of the time the late contribution is made or received.¹⁶

16 The 90-day period prior to the June 7, 2016 election began on March 9, 2016.

17 Limits on Campaign Contributions

18 The Act imposes campaign contribution limits with respect to the making and receiving of certain
19 contributions. These limits are adjusted periodically, and different limits apply depending upon who is
20 contributing and who is receiving.¹⁷ A candidate for statewide elective office, including the office of
21 Assembly or Senate, may not accept from a person, any contribution totaling more than the contribution
22 limit in effect during the election.¹⁸ The contributions of an entity whose contributions are directed and
23 controlled by any individual must be aggregated with contributions made by that individual and any other
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25 ¹⁰ Section 85309, subd. (c). See Section 84203, subd. (a).

26 ¹¹ Section 85309, subd. (c).

27 ¹² Sections 84200, subd. (a), and 84200.5, subd. (a).

28 ¹³ Section 84211, subd. (f).

¹⁴ Section 84211, subd. (q).

¹⁵ Section 82036, subd. (a).

¹⁶ Section 84203.

¹⁷ Section 85301.

¹⁸ Sections 82024 and 85301, subd. (a).

1 entity whose contributions are directed and controlled by the same individual.¹⁹ During the period of
2 January 1, 2015 through December 31, 2016, a candidate for the State Assembly could not accept
3 contributions totaling more than \$4,200 per election.²⁰

4 Joint and Several Liability

5 It is the duty of the candidate and the treasurer of a controlled committee to ensure that the
6 committee complies with all the requirements of the Act concerning the receipt, expenditure, and
7 reporting of funds.²¹ The candidate and treasurer may be held jointly and severally liable, along with the
8 committee, for violations committed by the committee.²²

9 **SUMMARY OF THE FACTS**

10 Chang had served as an elected official since 1995, namely as a member of the Cupertino Union
11 School District Board of Trustees, Cupertino Public Safety Commission, and Cupertino City Council. By
12 campaigning for and holding these offices, Chang has had experience with the Act. Furthermore, the
13 Commission approved a stipulated agreement on March 17, 2016 for FPPC No. 14/1275, In the Matter
14 of Barry Chang, Barry Chang for City Council 2014, Sue Chang, and Barry Chang for Assembly 2014,
15 for which Chang accepted liability for failing to disclose occupation and employer information for
16 contributors from his 2014 campaign for the State Assembly. FPPC No. 14/1275 is not considered a prior
17 enforcement history for Chang because it was resolved after most of the violations in this current case
18 occurred.

19 Chang also was an unsuccessful candidate for the State Assembly in the June 7, 2016 Primary
20 Election, receiving 10.9 percent of the vote.

21 The Committee filed an initial statement of organization on August 3, 2015 with the Secretary of
22 State (“SOS”), indicating that it qualified as a committee that same day.

23 \$5,000 Reports

24 The Committee and Chang received the following contributions of \$5,000 or more outside of an
25 election cycle but did not file \$5,000 reports to disclose them within 10 days of receipt:
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27 ¹⁹ Section 85311, subd. (b).

28 ²⁰ Section 85301, subd. (a); Former Regulation 18545, subd. (a)(1).

²¹ Sections 81004, 84100, and 84213; Regulation 18427.

²² Sections 83116.5 and 91006.

Contribution Date	Contributor	Amount
July 27, 2015	Richard Furtado	\$8,400
	M-E Engineers, Inc.	\$8,400
	South Bay Construction	\$8,400
	Redwood Electric Group	\$8,400
October 10, 2015	Larry Paterson	\$8,400
November 24, 2015	Wong Electric, Inc.	\$8,400
December 4, 2015	Pacific Breeze Mechanical, Inc.	\$8,400
December 8, 2015	Cameron Peach	\$8,400
December 9, 2015	Donald Carnathan	\$8,400
December 11, 2015	JB Cahoon	\$8,400
December 21, 2015	I LIFE, Inc.	\$8,400
	Caixing Xie	\$8,400
	Welkin International Industrial, Inc.	\$8,400
	BAYCA, Inc.	\$8,400
December 22, 2015	Coco Tan	\$8,400
	Yu Li	\$8,400
	Yahua Liu	\$8,400
	Barry Chang for Assembly 2014	\$20,000
December 24, 2015	Mark Tersini	\$8,400
	Ken Tersini	\$8,400
December 29, 2015	Everest, Inc.	\$8,400
December 30, 2015	Peter Huang	\$8,000
	Suzan Grisanti	\$8,000
	Yibin Wen	\$8,400
	MS 85 LLC	\$8,400
	Golden Fremont, Inc.	\$8,400
	Tropicana Russell, Inc.	\$8,400
	Wavecho LLC	\$8,400
	Dakota Brothers, Inc.	\$8,400
	Tiptoe Properties, LLC	\$8,400
	Marina Brothers, Inc.	\$8,400
	Sue Chang	\$20,000
January 8, 2016	Marina Food LLC dba Marina Grocery	\$8,400
	Welkin International Industrial	\$8,400 ²³
February 8, 2016	Helix Electric	\$8,400
	Total:	\$316,400

All 35 contributions, however, were disclosed before the June 7, 2016 Primary Election on timely filed campaign statements.

²³ A campaign statement for the reporting period of January 1, 2016 through April 23, 2016, filed on April 28, 2016, shows that this contribution was returned on April 22, 2016. This contribution was deposited to the Committee's bank account, so it is deemed to have been accepted by the Committee and Chang.

1 Missing Contributor Information

2 The Committee and Chang failed to accurately disclose the street address, occupation, and/or
3 employer information for some contributors. On the semi-annual campaign statement for the reporting
4 period of July 1, 2015 through December 31, 2015, the Committee and Chang failed to disclose the
5 employer and occupation of 19 contributors, of which one contributor also did not show a street address.
6 On the pre-election campaign statement for the reporting period of January 1, 2016 through April 23,
7 2016, the Committee and Chang failed to disclose the employer and occupation of two contributors. On
8 the semi-annual campaign statement for the reporting period of May 22, 2016 through June 30, 2016, the
9 Committee and Chang failed to disclose the employer and occupation of one contributor.

10

Reporting Period	# of Contributions with Undisclosed Information	Total Contributions with Undisclosed Information	Total Contributions for Reporting Period
July 1, 2015 – December 31, 2015	19	\$95,100.00 (28.2%)	\$336,708.69
January 1, 2016 – April 23, 2016	2	\$200.00 (0.0065%)	\$30,899.00
April 24, 2016 – May 21, 2016	0	\$0.00 (0%)	\$132,009.19
May 22, 2016 – June 30, 2016	1	\$4,200.00 (3.5%)	\$118,800.00
Total:	22	\$99,500 (17.5%)	\$568,416.88

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17 The Committee and Chang filed amended campaign statements prior to the June 7, 2016 Primary
18 Election that provided additional contributor information; however, approximately half of the
19 contributions mentioned above were not adequately corrected by those amendments.

20 24-Hour Contribution Report

21 The Committee and Chang received 44 late contributions prior to the June 7, 2016 Primary
22 Election. Of the 44 late contributions, the Committee and Chang did not timely file a 24-hour contribution
23 report to disclose four late contributions, as shown in the following chart:

24

Contribution Date	Contributor	Amount	Filed Date
May 29, 2016	Devcon Construction	\$8,400	May 31, 2016
	Gary J. Filizetti	\$8,400	
	Joseph J. Albancse, Inc.	\$2,500	
	Sanco Pipelines, Inc.	\$2,000	
	Total:	\$21,300	

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1 Contributions Over the Limit

2 Chang personally solicited contributions from local businesses and individuals to support his
3 campaign. Chang called and met with Caixing Xie to ask that they make contributions to the Committee
4 as an individual and through the various business entities they direct and control. As a result of these
5 solicitations, Caixing Xie made the following contributions to the Committee and Chang, as reported on
6 the Committee’s campaign statements:

7

Name	Contribution Date	Affiliation at Time of Contribution	Amount
Caixing Xie	December 21, 2015	Self	\$8,400
Welkin International Industrial, Inc.	December 21, 2015	Caixing Xie – Director, President, CFO, Shareholder	\$8,300
CQQC, Inc.	December 22, 2015	Caixing Xie - Director	\$8,400

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11 Welkin International Industrial, Inc. and CQQC, Inc. are corporations that were directed and
12 controlled by Caixing Xie at the time when they made the contributions listed above. Therefore, Caixing
13 Xie contributed \$25,100, in aggregation, to the Chang Committee, exceeding the contribution limit by
14 \$16,700.

15 **VIOLATIONS**

16 Count 1: Failure to Timely File \$5,000 Reports

17 The Committee and Chang failed to timely file a \$5,000 report for 10 contributions received from
18 July 27, 2015 through December 11, 2015, in violation of Government Code section 85309, subdivision
19 (c).

20 Count 2: Failure to Timely File \$5,000 Reports

21 The Committee and Chang failed to timely file a \$5,000 report for 11 contributions received from
22 December 21, 2015 through December 29, 2015, in violation of Government Code section 85309,
23 subdivision (c).

24 Count 3: Failure to Timely File \$5,000 Reports

25 The Committee and Chang failed to timely file a \$5,000 report for 14 contributions received from
26 December 30, 2015 through December 29, 2015, in violation of Government Code section 85309,
27 subdivision (c).

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1 Count 4: Failure to Timely Disclose Complete Contributor Information

2 The Committee and Chang failed to timely disclose complete contributor information on
3 campaign statements, in violation of Government Code section 84211, subdivision (f).

4 Count 5: Failure to Timely File a 24-Hour Contribution Report

5 The Committee and Chang failed to timely file a 24-hour contribution report for four late
6 contributions, in violation of Government Code section 84203.

7 Count 6: Acceptance of Contributions Over the Limit

8 The Committee and Chang accepted aggregated contributions over the limit from Caixing Xie, in
9 violation of Government Code section 85301, subdivision (a), and Regulation 18545, subdivision (a)(1).

10 **PROPOSED PENALTY**

11 This matter consists of six counts. The maximum penalty that may be imposed is \$5,000 per
12 count. Thus, the maximum penalty that may be imposed is \$30,000. Accepting contributions over the
13 limit is a violation that does not qualify for the streamline program.

14 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
15 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
16 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
17 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
18 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the
19 specific violation; (2) The level of experience of the violator with the requirements of the Political
20 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
21 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
22 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
23 staff or any other governmental agency in a manner not constituting complete defense under Government
24 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
25 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
26 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.²⁴

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²⁴ Regulation 18361.5, subd. (e).

1 The over-the-limit contributions caused serious public harm, as they resulted in a lack of
2 transparency for the public into Chang’s campaign, but the \$5,000 report and 24-hour contribution report
3 violations were mitigated by their timely reporting on the Committee’s campaign statements. Chang had
4 been an elected official since 1995, so they had experience with the requirements of the Act. Chang
5 directly solicited contributions from Caixing Xie, but Chang contends that they did not intend to conceal,
6 deceive, or mislead the public regarding the over-the-limit contributions or other violations present in
7 this matter.

8 The violations present in this matter seem to have been negligent, as Chang contends that they
9 were unfamiliar with parts of the Act concerning the \$5,000 reports and aggregated contributions.
10 Further, the Committee and Chang timely filed 24-hour contribution reports for 40 other late
11 contributions. However, the extent of the Committee and Chang’s failure to file any \$5,000 reports and
12 failure to disclose complete contributor information indicates a pattern, while the 24-hour reporting
13 violation seems to have been an isolated incident. The Enforcement Division did not find that the
14 Committee or Chang consulted the Commission staff or any other governmental agency, but the
15 Committee and Chang voluntarily filed amendments to campaign statements to remedy their reporting
16 violations.

17 The Commission also considers penalties in prior cases with comparable violations. Recent cases
18 with a similar violation include the following:

19 Counts 1-3

20 *In the Matter of Marc Levine, Elevate California: Yes on 2, Marc Levine Ballot Issue Committee,*
21 *and Philip Bruce Rafal; FPPC No. 17/607.* (The Commission approved a stipulated agreement on
22 July 18, 2019.) Respondents received two \$50,000 contributions, which amounted to approximately 85
23 percent of the contributions received, but they failed to report the two contributions within 10 business
24 days of receipt by filing a \$5,000 report. The two contributions were reported before the election on a
25 timely filed pre-election campaign statement. The Commission approved a penalty of \$2,000 for this
26 violation.

27 The Committee and Chang failed to report a total of \$316,400 in \$5,000 reports, which was
28 approximately 17.5 percent of the total contributions received prior to the June 7, 2016 Primary Election.

1 As in *Levine*, the Committee and Chang reported the 35 contributions before the election on timely filed
2 campaign statements. For these reasons, a penalty of \$2,500 is recommended for each count.

3 Count 4

4 *In the Matter of Re-Elect Magdalena Carrasco for City Council D5 2018, Magdalena Carrasco,*
5 *and Huascar Castro*; FPPC No. 18/1404. (The Commission approved a stipulated agreement on
6 April 16, 2020.) Respondents failed to report complete contributor information for a total of 76
7 contributors on four campaign statements. Respondents had received a total of \$24,100 from those
8 contributors, and those contributions amounted to approximately 26 percent of the total contributions
9 received. Respondents amended each of their campaign statements to include complete contributor
10 information for all but two contributors. The Commission approved a penalty of \$1,500 for this violation.

11 While the Committee and Chang failed to report complete contributor information for a quarter
12 of the contributors in *Re-Elect Magdalena*, they had received around four times the amount in
13 contributions from those contributors. As in *Re-Elect Magdalena*, the Committee and Chang amended
14 each of their campaign statements to include complete contributor information, although only nine of the
15 22 contributions with incomplete information were remedied. For these reasons, a penalty of \$2,500 is
16 recommended.

17 Count 5

18 *In the Matter of Committee for Safe Vallejo Schools – Yes on Measure S, Deborah Dickson, and*
19 *Michael Nichelini*; FPPC No. 19/448. (The Commission approved a stipulated agreement on
20 October 15, 2020.) Respondents failed to timely file 24-hour contributions reports to disclose 12 late
21 contributions that totaled \$25,000. Five of those late contributions were received within 16 days before
22 the election. All 12 late contributions were disclosed on 24-hour contributions reports prior to the
23 election. The Commission approved a penalty of \$2,500 for this violation.

24 Although the Committee and Chang failed to disclose a third of the late contributions in *Safe*
25 *Vallejo Schools*, those late contributions summed up to a similar total. The Committee and Chang
26 received those late contributions within the 16 days before the election. Like in *Safe Vallejo Schools*,
27 those four late contributions were disclosed on 24-hour contribution reports prior to the election. For
28 these reasons, a penalty of \$2,500 is recommended.

1 Count 6

2 *In the Matter of Esau Herrera for Assembly 2016, Esau Herrera, and Rebecca Rivera*; FPPC No.
3 17/849. (The Commission approved a stipulated agreement on January 21, 2021.) In 2016, when a
4 candidate for the State Assembly could not accept contributions totaling more than \$4,200 per election,
5 Respondents received two contributions totaling \$44,200 from one contributor. The two contributions
6 were deposited into Respondents' campaign bank account and were timely reported on a 24-hour
7 contribution report and campaign statement prior to the election. Respondents accepted \$35,800 in excess
8 of the contribution limits at the time. The Commission approved a penalty of \$3,000 for this violation.

9 Like *Herrera*, the Committee and Chang received aggregated contributions over the limit from
10 only one contributor. However, contributions from Caixing Xie's business entities were not reported
11 under their name, and it was not otherwise evident on the campaign statements that the contributions
12 should have been aggregated. As a result, the public did not receive any disclosure regarding Caixing
13 Xie's affiliations to the business entities that they directed and controlled and were unaware that the
14 Committee and Chang accepted contributions over the limit from them. Caixing Xie contributed \$25,100,
15 in aggregation, to the Chang Committee, exceeding the contribution limit by \$16,700. While these
16 contributions were timely reported on campaign statements prior to the election, the three contributions
17 received in 2015 also were not timely disclosed on a \$5,000 report. Although Chang directly solicited
18 contributions from Caixing Xie, Chang contends that they did not intend to conceal, deceive, or mislead
19 the public regarding the over-the-limit contributions. For these reasons, a penalty of \$4,500 is
20 recommended for each count.

21 In summary, the following penalties are recommended:

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Count #	Violation	Penalty Amount
1	Failure to Timely File \$5,000 Reports	\$2,500
2	Failure to Timely File \$5,000 Reports	\$2,500
3	Failure to Timely File \$5,000 Reports	\$2,500
4	Failure to Failure to Disclose Complete Contributor Information	\$2,500
5	Failure to Timely File a 24-Hour Contribution Report	\$2,500
6	Acceptance of Contributions Over the Limit	\$4,500
		Total: \$17,000

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1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents Barry Chang for Assembly 2016 and Barry Chang hereby agree as follows:

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

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

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

11 4. Respondents have consulted with their attorney, Gary Winuk of Kaufman Legal Group
12 LLP, and understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth
13 in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
14 limited to, the right to appear personally at any administrative hearing held in this matter, to be
15 represented by an attorney at the Respondents’ own expense, to confront and cross-examine all witnesses
16 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
17 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
18 reviewed.

19 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the
20 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
21 \$17,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
22 Fund of the State of California—is/are submitted with this stipulation as full payment of the
23 administrative penalty described above, and same shall be held by the State of California until the
24 Commission issues its decision and order regarding the matter.

25 6. If the Commission declines to approve this stipulation—then this stipulation shall become
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
27 rejected, all payments tendered by the Respondents in connection with this stipulation shall be reimbursed
28 to the Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing

1 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
2 Director, shall be disqualified because of prior consideration of this Stipulation.

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

6
7 Dated: _____
8 Angela J. Brereton, Chief of Enforcement
9 Fair Political Practices Commission

10 Dated: _____
11 Barry Chang, individually and on behalf of Barry
12 Chang for Assembly 2016

