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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
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12 In the Matter of ) FPPC No. 14/1071  
13 )  
14 BEN ALLEN, BEN ALLEN FOR STATE )  
SENATE 2014, and DAVID GOULD ) STIPULATION, DECISION and  
15 Respondents. ) ORDER  
16 )  
17 )

18 Complainant, Enforcement Division of the Fair Political Practices Commission, and  
19 Respondents Ben Allen, Ben Allen for State Senate 2014, and David Gould agree that this Stipulation  
20 will be submitted for consideration by the Fair Political Practices Commission at its next regularly  
21 scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
24 determine the liability of the Respondent, pursuant to Section 83116 of the Government Code.

25 Allen, Ben Allen for State Senate 2014, and Gould understand, and hereby knowingly and  
26 voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the  
27 Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of  
28 Regulations. This includes, but is not limited to, the right to personally appear at any administrative

1 hearing held in this matter, to be represented by an attorney at Allen, Ben Allen for State Senate 2014,  
2 and Gould's own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Allen, Ben Allen for State Senate 2014, and Gould  
6 violated the Political Reform Act by failing to timely disclose, on the second pre-election campaign  
7 statement for the March 18, 2014 through May 17, 2014 reporting period, in kind contributions in the  
8 form of reduced rent for their campaign headquarters in violation of Government Code Section 84211,  
9 subdivisions (a), (c) and (f) (1 count), and failing to timely disclose, on the first pre-election campaign  
10 statement for the July 1, 2014 through September 30, 2014 reporting period, in kind contributions in the  
11 form of reduced rent for their campaign headquarters in violation of Government Code Section 84211,  
12 subdivisions (a), (c) and (f) (1 count). These counts are described in Exhibit 1, which is attached hereto  
13 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary  
14 of the facts in this matter.

15 Allen, Ben Allen for State Senate 2014, and Gould agree to the issuance of the Decision and  
16 Order, which is attached hereto. Allen, Ben Allen for State Senate 2014, and Gould also agree to the  
17 Commission imposing upon them an administrative penalty in the amount of \$4,000. A cashier's check  
18 from Allen, Ben Allen for State Senate 2014, and Gould in said amount, made payable to the "General  
19 Fund of the State of California," is submitted with this Stipulation as full payment of the administrative  
20 penalty, to be held by the State of California until the Commission issues its decision and order  
21 regarding this matter. The parties agree that in the event the Commission refuses to accept this  
22 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission  
23 meeting at which the Stipulation is rejected, all payments tendered by Allen, Ben Allen for State Senate  
24 2014, and Gould in connection with this Stipulation shall be reimbursed to them. Allen, Ben Allen for  
25 State Senate 2014, and Gould further stipulate and agree that in the event the Commission rejects the  
26 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any  
27 member of the Commission, nor the Executive Director, shall be disqualified because of prior  
28 consideration of this Stipulation.

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

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Galena West, Chief of Enforcement  
Fair Political Practices Commission

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

\_\_\_\_\_  
Ben Allen, individually, and on behalf of,  
Ben Allen for State Senate 2014

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

\_\_\_\_\_  
David Gould, individually, and on behalf of,  
Ben Allen for State Senate 2014

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Ben Allen, Ben Allen for State Senate  
3 2014, and David Gould,” FPPC No. 14/1071, including all attached exhibits, is hereby accepted as the  
4 final decision and order of the Fair Political Practices Commission, effective upon execution below by  
5 the Chair.

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7 **IT IS SO ORDERED.**

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

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10 Joann Remke, Chair  
11 Fair Political Practices Commission  
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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Ben Allen was a successful candidate for Senate District 26 in the June 4, 2014 Primary Election and the November 4, 2014 General Election. Respondent Ben Allen for State Senate 2014 was his candidate controlled committee. Respondent David Gould was the committee treasurer. This case was opened proactively after a newspaper article reported that Allen received the use of office space during his campaign that had not been reported as an in kind contribution.

The Political Reform Act (the “Act”)<sup>1</sup> requires candidates and committees to disclose all contributions received, including in kind contributions, on campaign statements. Allen and Ben Allen for State Senate 2014 violated the Act by failing to timely disclose receipt of in kind contributions in the form of reduced rent on commercial property.

### **SUMMARY OF THE LAW**

An express purpose of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited.<sup>2</sup> The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

#### **Duty to Disclose Campaign Contributions**

Candidates and committees are required to file semi-annual campaign statements by July 31 for the January 1 through June 30 reporting period, and January 31 for the July 1 through December 31 reporting period.<sup>3</sup> Candidates and committees also must file two pre-election campaign statements before the primary and general elections.<sup>4</sup>

Candidates and committees must provide information regarding the amounts and sources of campaign contributions, including in kind contributions, and expenditures on campaign statements. Specifically, the Act requires candidates and committees to disclose the total amount of contributions received during the period covered by the statement.<sup>5</sup> A “contribution” includes any goods or services discounted from fair market value, unless the discount is given in the regular course of business to the public.<sup>6</sup> Such contributions are known as “in kind” contributions. Free or reduced rent on real property is one form of an in kind contribution that a candidate and committee must disclose as a contribution on campaign statements. Candidates

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. The Regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

<sup>2</sup> Section 81002, subdivision (a).

<sup>3</sup> Section 84200.

<sup>4</sup> Section 84200.5

<sup>5</sup> Section 84211, subdivision (a).

<sup>6</sup> Regulation 18215(b)(3).

and committees are required to disclose the total amount of contributions received from persons who have given \$100 or more during the period covered by the statement.<sup>7</sup>

## **SUMMARY OF THE FACTS**

The Enforcement Division of the Fair Political Practices Commission confirmed that Ben Allen for State Senate 2014 received the use of office space for campaign headquarters from Santa Monica Business Park Limited Partnership, from April 2014 through November 2014. This in kind contribution consisted of the use of Suite 202 from April 11, 2014 through August 11, 2014 and Suite 370 from August 11, 2014 through November 11, 2014.

The terms of each four month lease state that the total consideration for the premises was \$6,000; consisting of an in kind contribution in the amount of \$4,100 and a rental payment of \$1,900.

## **VIOLATIONS**

### Count 1: Failure to Timely Disclose In Kind Contributions

Allen, Ben Allen for State Senate 2014, and Gould failed to timely disclose, on the second pre-election campaign statement for the March 18, 2014 through May 17, 2014 reporting period, the receipt of in kind contributions in the form of reduced rent for their campaign headquarters, in violation of Government Code Section 84211, subdivisions (a), (c) and (f).

### Count 2: Failure to Timely Disclose In Kind Contributions

Allen, Ben Allen for State Senate 2014, and Gould failed to timely disclose, on the first pre-election campaign statement for the July 1, 2014 through September 30, 2014 reporting period, the receipt of in kind contributions in the form of reduced rent for their campaign headquarters, in violation of Government Code Section 84211, subdivisions (a), (c) and (f).

## **CONCLUSION**

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the 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 the 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

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<sup>7</sup> Section 84211, subdivision (c).

Commission staff; whether there was a pattern of violations; and whether respondent voluntarily amended.

The Commission also considers penalties in prior cases involving similar violations. A recent similar case involving the failure to disclose an in kind contribution consisting of office space for a campaign is:

- *In the Matter of Joe Yee, Friends of Joe Yee for City Council 2012, and Lynda Otto*; FPPC No. 12/820. Yee, Joe Yee for City Council 2012 and Otto, failed to timely disclose in kind contributions totaling \$2,100, consisting of reduced rent on commercial property for use as a campaign headquarters, over two campaign statement periods. On February 20, 2014 the Commission approved a penalty of \$2,000 per count for each of the two non-disclosure counts.

In total, Allen, Ben Allen for State Senate 2014, and Gould disclosed receiving approximately \$1,306,934 in contributions for the Primary and General Elections. By providing Allen and Ben Allen for State Senate 2014 with rental space below fair market value, Santa Monica Business Park Limited Partnership made the equivalent of two \$4,100 contributions to Allen and Allen for State Senate 2014; one for the Primary Election and one for the General Election, that were not disclosed. These undisclosed contributions equated less than 1% of total contributions received.

The campaign statements filed before the Primary Election did not reflect that Ben Allen for State Senate 2014 received the use of the property as a contribution, nor did they disclose a rental payment or accrued expense. The campaign statement filed prior to the General Election reported rental payments, but not the receipt of the in kind contribution.

After the Primary Election, on August 15, 2014, Allen, Allen for State Senate 2014, and Gould filed an amended Semi-annual Statement that disclosed a non-monetary contribution of “Office Space” valued at \$4,100. However, this should have been reported before the Primary Election. The public harm in this case is that there was no disclosure of any contribution received or payment made for the use of the office space before the Primary Election. Gould contends that the failure to report the in kind contribution before the Primary Election was the result of confusion concerning its value, and that failure to report the in kind contribution on the pre-election statement due before the General Election was an oversight on his part. The public was thus deprived of any information regarding contributions received by, or payments made to, Santa Monica Business Park Limited Partnership. Only after the newspaper article were amendments filed to disclose this information.

As a condition of resolving this case, Respondents filed amended pre-election campaign statements that disclose receipt of the in kind contributions from Santa Monica Business Park Limited Partnership.

## **PROPOSED PENALTY**

After considering the factors listed above, a penalty of \$4,000, \$2,000 per count for Counts 1 and 2, is recommended.