Fair Political Practices Commission ("Commission")

MEMORANDUM

To: Chair Ravel, Commissioners Garrett, Eskovitz, Montgomery, and Rotunda

From: Gary S. Winuk, Chief of Enforcement

Date: September 22, 2011

RE: CalPERS Gift Non-Reporting Cases. FPPC Nos. 11/367 Jesse Arguelles; 11/370 Lyndall Baker; 11/377 Sarah Corr; 11/385 Richard Duffy; 11/386 Michael Dutton; 11/388 Rob Feckner; 11/389 Alfonso Fernandez; 11/390 Shaun "John" Greenwood; 11/396 Sue Kane; 11/399 Dennis Knueven; 11/403 Joncarlo Mark; 11/405 Dave Merwin; 11/406 Louis Moret; 11/437 Mary Morris; 11/410 Omid Rezania

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I. EX PARTE COMMUNICATIONS

In any administrative case handled under California State law, neither party may communicate directly with the decision maker without giving the other party an opportunity to be present and participate in the communication. (California Administrative Procedures Act, Government Code § 11430.10.) For the listed cases related to CalPERS respondents, the respondents have been provided notice and an opportunity to participate in the communication.

II. INTRODUCTION

This memo is being prepared to provide the Commission with additional information to that usually provided in a proposed streamlined settlement exhibit due to the special circumstances and volume of the cases related to CalPERS employees.

On August 19, 2010, the *Los Angeles Times* published a story entitled, "CalPERS Investment staff receive luxury travel, gifts from financial firms." The article related information obtained from the deposition of a former CalPERS investment manager concerning "gifts" he had received from CalPERS investment partners. The Enforcement Division also separately received a complaint regarding the deposition information.

As a result of the complaint and article, the Enforcement Division began a pro-active investigation to determine if any other CalPERS investment managers had received gifts from CalPERS investment partners over the $50 disclosure limit provided for in the Political Reform Act (the Act).

In response to the article, CalPERS Chief Executive Officer, Anne Stausboll, issued a statement committing CalPERS "to take all necessary steps to correct any improprieties." After developing guidance for staff members regarding the disclosure requirements, CalPERS requested that its investment staff review their Form 700s for the previous four years and file amendments, if necessary, to report any gifts that had been omitted from their annual Statements of Economic Interests (SEIs). Staff members reviewed the internal gift logs maintained by CalPERS and sought other information to ensure they had complied.

Ultimately, 33 CalPERS officials voluntarily filed amendments to their SEIs in an effort to comply with the Act's gift disclosure requirements. Notwithstanding these efforts, some CalPERS staff members failed to disclose all of the gifts they had received over the last four years.

Subsequent to the voluntary amendments by CalPERS members, the Enforcement Division obtained a detailed listing of all gifts provided by CalPERS investment partners to CalPERS employees. This listing was then combined with the voluntary disclosure information to provide the basis for the opening of individual cases and notification of CalPERS individually of the alleged non-reported gifts. The Enforcement Division, CalPERS management and CalPERS respondents then addressed the additional information provided by CalPERS respondents to eliminate individual counts and entire cases where the additional information provided demonstrated that no violation of the Act had occurred. Numerous individual counts and cases were eliminated based on this information.

Proposed settlements were reached with many CalPERS employees after each had an opportunity to respond to the allegations. Additionally, warning letters were sent to fifteen CalPERS employees whose violations did not rise to the level of proposed fines.

II. PROPOSED SETTLEMENTS

The Enforcement Division proposed settlements and warning letters to CalPERS employees based on the following evaluation criteria:

- What was the total number of unreported gifts? (Factored into this was that the Enforcement Division chose to aggregate gifts from a single source from each calendar year into a single gift.)
- What was the dollar amount of the gifts? (Gifts more than double the disclosure threshold, i.e. $100, were charged. Gifts closer to the $50 threshold, if few in number and all in that category, were considered for a warning letter)
- What was the public harm? CalPERS employees make decisions regarding millions of public investment dollars. The public has a substantial interest in knowing that gifts from investment partners were

being provided to CalPERS staff, but this information was not disclosed on the respondents' SEIs.

- Was the conduct intentional, negligent or inadvertent? There is no evidence of intentional non-disclosure. The conduct was at worst negligent and at best inadvertent.
- Were there prior violations of the Act? None of the CalPERS respondents had prior violations of the Act.
- Were the gifts made to current or former employees? (Former employees did not have an opportunity to voluntarily amend and there is no issue of compliance in the future)
- Other Mitigating Circumstances:

    - CalPERS had a practice of asking employees to complete monthly internal gift logs and some staff members believed that their completion of the log had satisfied the disclosure requirement. However, none of the respondents who were in this specific circumstance checked the box on their SEI declaring that they had gifts to report.
    - Many respondents stated their level of training and the resources available to them for compliance from CalPERS was inadequate.[1]
    - Only one respondent accepted gifts in excess of the gift limit, and none of the gifts resulted in any conflicts of interest.
    - CalPERS respondents fully cooperated with the investigation.

Based on these criteria, the Enforcement Division has reached the proposed streamlined stipulations on the September agenda with the respondents. The Enforcement Division also issued fifteen warning letters to other CalPERS respondents whose violations were more minor in nature, either because the dollar amount and number of their violations was low, or there were other mitigating factors present to warrant no fine (e.g. reasonable miscalculation of the value of a single gift received whose actual value was over $100)

The Enforcement Division believes a streamlined settlement is appropriate for these cases given the mitigating factors identified above for those who did not receive a warning letter.

III. CONCLUSION

The Enforcement Division recommends adoption of the proposed settlements.

[11] CalPERS has adopted a strict no-gifts rule for staff and has implemented processes and ethics training programs that go beyond the requirements of state law, which should help with future reporting.