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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA  
10

11 In the Matter of )

FPPC No: 11/336

12 )  
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18 )

BRIAN DEFORGE,

STIPULATION, DECISION and  
ORDER

Respondent.

19 Complainant, Fair Political Practices Commission, and Respondent Brian DeForge agree that  
20 this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its  
21 next regularly scheduled meeting.

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

25 Respondent understands and hereby knowingly and voluntarily waives any and all procedural  
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections  
27 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not  
28 limited to, the right to personally appear at any administrative hearing held in this matter, to be

1 represented by an attorney at Respondents own expense, to confront and cross-examine all witnesses  
2 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
3 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
4 reviewed.

5 Respondent further stipulates and agrees that, as described in Exhibit 1, he violated the Political  
6 Reform Act by failing to disclose the Beaumont-Cherry Valley Water District and the Dixieline  
7 Builder Fund Control, clients of his business, Brian E. DeForge Construction, as sources of income on  
8 his 2007 Annual Statement of Economic Interests, in violation of Government Code sections 87203  
9 and 87207 (1 count), as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by  
10 reference, as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this  
11 matter.

12 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
13 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount  
14 of One Thousand Dollars (\$1,000). A cashier's check from Respondent totaling said amount, made  
15 payable to the "General Fund of the State of California," is submitted with this Stipulation as full  
16 payment of the administrative penalty, and shall be held by the State of California until the  
17 Commission issues its decision and order regarding this matter. The parties agree that in the event the  
18 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)  
19 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered  
20 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent  
21 further stipulates and agrees that in the event the Commission rejects the Stipulation, and a full  
22 evidentiary hearing before the Commission becomes necessary, neither any member of the  
23 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
24 Stipulation.

25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary S. Winuk, Chief of Enforcement  
Fair Political Practices Commission

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

\_\_\_\_\_  
Brian DeForge, Respondent

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Brian DeForge, FPPC No. 11/336,”  
3 including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair Political  
4 Practices Commission, effective upon execution below by the Chair.  
5

6 IT IS SO ORDERED.  
7

8  
9 Dated: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Brian DeForge (“DeForge”) has been a member of the Beaumont City Council since 1999. Respondent DeForge is the sole owner of Brian E. DeForge Construction. As a City Council Member, Respondent DeForge is required to file Statements of Economic Interests (“SEI”). In this matter, Respondent DeForge failed to disclose income to his business, Brian E. DeForge Construction, where the gross receipts from a single person was equal or greater than \$10,000 on his 2007 SEI. Specifically, Respondent DeForge failed to disclose the Beaumont-Cherry Valley Water District and Dixieline Builder Fund Control on his 2007 SEI.

This matter arose from a complaint, which alleged that Respondent DeForge failed to disclose the Beaumont-Cherry Valley Water District on his SEI, which was a reportable source of income to his business. The Beaumont-Cherry Valley Water District was a reportable source of income to Respondent DeForge’s business in 2007. In aggravation, the Beaumont-Cherry Valley Water District had business in front of the Beaumont City Council.

For the purposes of this Stipulation, Respondent’s proposed violations of the Political Reform Act (“the Act”)<sup>1</sup> consist of the following:

**COUNT 1:**                    On February 5, 2008, Respondent DeForge failed to disclose the Beaumont-Cherry Valley Water District and the Dixieline Builder Fund Control, clients of his business, Brian E. DeForge Construction, as sources of income on his 2007 Annual Statement of Economic Interests, in violation of Government Code sections 87203 and 87207.

### **STATEMENT OF LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that assets and income of public officials, which may be materially affected by their official actions, should be disclosed in order that conflicts of interest may be avoided.

Section 87200 specifies that “members of city councils of cities” are among those public officials required to file an SEI each year. Each year at a time specified by Commission regulations, every public official holding an office specified in Section 87200 must file an SEI disclosing his investments, his interests in real property and his income during the period since the previous SEI was filed. (Section 87203.) Section 82030 defines “income” to include the pro-rata share of any income of any business entity in which the individual owns, directly,

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<sup>1</sup>The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the 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.

indirectly or beneficially, a 10 % or greater interest.

Pursuant to Section 87207, subdivision (b)(1), when a filer's pro rata share of income to a business entity is required to be reported, the statement shall contain the name, address, and a general description of the business activity of the business entity. Pursuant to Section 87207, subdivision (b)(2), the statement shall contain the name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from that person was equal to or greater than \$10,000 during a calendar year. A filer must disclose each source of income to the business entity if the filer's pro-rata share of the gross income from a single source was \$10,000 or more during the reporting period.

### **SUMMARY OF THE FACTS**

Respondent DeForge has been a member of the Beaumont City Council since 1999. Also, Respondent DeForge is the sole owner of Brian E. DeForge Construction. As a City Council Member, Respondent DeForge is required to file an SEI annually. In this matter, Respondent DeForge failed to disclose income to his business where the gross receipts from a single person was equal or greater than \$10,000 on his 2007 SEI. Specifically, Respondent DeForge failed to disclose the Beaumont-Cherry Valley Water District and Dixieline Builder Fund Control on his 2007 SEI. In aggravation, the Beaumont-Cherry Valley Water District had business in front of the Beaumont City Council.

### **COUNT 1**

As a member of the City Council, Respondent DeForge was required to and failed to disclose income to his business where the gross receipts from a single person was equal or greater than \$10,000 on his 2007 SEI. Receipts and Invoices establish that the Beaumont-Cherry Valley Water District paid Brian E. DeForge Construction approximately \$174,000 in 2007. Respondent DeForge failed to disclose this source of income on his 2007 SEI. Review of the Beaumont City Council Meeting Minutes disclosed that the Beaumont-Cherry Valley Water District had business in front of the Beaumont City Council. Respondent DeForge promptly amended his 2007 SEI to disclose the Beaumont-Cherry Valley Water District and the Dixieline Builder Fund Control once he was contacted by the Enforcement Division. The Enforcement Division found no evidence that the Dixieline Builder Fund Control had business in front of the Beaumont City Council.

By failing to disclose the Beaumont-Cherry Valley Water District and the Dixieline Builder Fund Control as sources of income to Respondent's business on his 2007 SEI, Respondent DeForge violated Sections 87203 and 87207.

### **CONCLUSION**

This matter consists of one count of violating the Act, and carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

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

Enforcement Division 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 Enforcement Division considers the facts and circumstances of the violation in 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 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Disclosure of economic interests is important to provide transparency and prevent conflicts of interests. This matter involves the failure to disclose sources of income on an SEI of \$10,000 or more, made to Respondent's business, where one of the sources of income had business in front of the Beaumont City Council.

The typical administrative penalty for this type of violation has varied based on the circumstances of each case. The most recent similar cases approved by the Commission include:

*In the Matter of Lawrence Franzella*, FPPC No. 04/004. This case involved two counts of failing to disclose income sources of \$10,000 or more to his business, one count of conflict of interest, and one count of failing to disclose the sale of property which was the source of the conflict. A \$1,000 penalty for the each SEI where he failed to provide client information to his business (2 Counts), was approved by the Commission on December 11, 2008.

*In the Matter of Martha Escutia*, FPPC No. 04/407. This case involved two counts of failing to disclose multiple income sources of \$10,000 or more to her husband's business. A \$1,000 penalty for each violation was approved by the Commission on August 14, 2008.

In this matter, Respondent DeForge failed to disclose a source of income to his business on his 2007 SEI, which had business in front of the Beaumont City Council. In mitigation, Respondent DeForge has no prior enforcement history and has cooperated with the Enforcement Division. Respondent promptly amended his 2007 SEI when he was contacted by the Enforcement Division. Further, Respondent maintains that this violation was unintentional and that he believed that he complied with his reporting obligation when he reported the total income to his business. However, the failure to disclose the sources of income to his business, which is aggravated by the fact that one of the sources had business in front of the Beaumont City Council, justifies a penalty in this matter. Therefore, the imposition of \$1,000 for this violation is recommended.

### **PENALTY**

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand Dollars (\$1,000) is recommended.