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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11

12 In the Matter of) FPPC No. 12/292
13)
14 MATTHEW J. DUAIME,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
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18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Matthew J. Duaine agree that this Stipulation will be submitted for consideration by the
20 Fair Political Practices Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
3 stipulated and agreed that Respondent Matthew J. Duaine violated the Political Reform Act by making,
4 participating in the making, or influencing a governmental decision when he hired and paid himself, his
5 dependent son, and his spouse to perform various jobs for the Citizens CPR Fund, in violation of
6 Government Code Section 87100 (1 count). All counts are described in Exhibit 1, which is attached
7 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
8 summary of the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
11 of Four Thousand Five Hundred Dollars (\$4,500). A cashier's check from Respondent in said amount,
12 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
13 payment of the administrative penalty, to be held by the State of California until the Commission issues
14 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
15 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
18 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

Matthew J. Duaine,
Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Matthew J. Duaine,” FPPC No. 12/292, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Vice Chair.

IT IS SO ORDERED.

Dated: _____

Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Matthew J. Duaine was a Fire Marshall and Administrative Fire Captain for the Stockton Fire Department from 2008 through present. Under the Political Reform Act (the “Act”),¹ “public officials” includes every member, officer, or employee of a local agency. Public officials are prohibited from making, participating in making, using or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

During 2008 through 2010, Respondent, his wife, and his dependent son received income from the Citizens CPR Fund (the “CPR Fund”), a program established in 1985 by members of the Stockton Fire Department (“SFD”) to provide CPR training for members of the public for the performance of various jobs. Respondent was, at all times relevant, the administrator of the Fund. Respondent made, participated in making, or influenced governmental decisions when he impermissibly hired himself and his family to work for the Fund for pay.

For purposes of this stipulation, Respondent’s violation is stated as follows:

COUNT 1: On or about July 20, 2009 through October 8, 2010, Respondent made, participated in making or influenced a governmental decision to hire and pay himself as a CPR instructor and administrator for the Citizens CPR Fund, his son as an assistant CPR instructor for the Citizens CPR Fund, and his spouse as an administrative assistant for the Citizens CPR Fund, which he knew or should have known was in violation of Government Code Section 87100.

SUMMARY OF THE LAW

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a

¹ 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.

governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.²

1. Public Official: The individual must be a public official. Section 82048 defines “public official” to include “every member, officer, employee or consultant” of a local government agency. Section 82041 defines “local government agency” to include cities.

2. Decisions: The official must make, participate in making, or attempt to use his official position to influence a governmental decision. A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is made because of his or her financial interest. (Reg. 18702.1, subd. (a).) A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Reg. 18702.2.) A public official “attempts to use his or her official position to influence a governmental decision” of his her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. (Reg. 18702.3.)

3. Economic Interests: The official must have an economic interest, as defined in Section 87103, which may be financially affected by the governmental decision. Regulation 18703.5 states that “...a public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing.”

4. Direct or Indirect Financial Effect on Economic Interests: It must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Reg. 18704.) A public official or his or her immediate family are deemed to be directly involved in a governmental decision which has any financial effect on his or her personal finances or those of his or her immediate family. (Reg. 18704.5.)

² The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

5. Material Financial Effect on Economic Interests: It must be determined if the governmental decision has a material financial effect on the economic interest. Regulation 18705.5 sets out the materiality standard for an economic interest in personal finances. Subdivision (a) states, in relevant part, that “A reasonably foreseeable financial effect on a public official’s or his or her immediate family’s personal finances is material if it is at least \$250 in any 12-month period.” In addition, subdivision (b) states that the financial effects of the decision “which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family is the only person in the job classification or position.”

6. Foreseeability: At the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

During 2008 through 2010, Respondent, his wife, and his dependent son received income from the Citizens CPR Fund (the “Fund”), a program established in 1985 by members of the Stockton Fire Department (“SFD”) to provide CPR training for members of the public for the performance of various jobs. Respondent was, at all times relevant, the administrator of the Fund. Respondent made, participated in making, or influenced governmental decisions when he impermissibly hired himself and his family to work for the Fund for pay. Respondent was an official subject to the conflict-of-interest provisions of the Political Reform Act at all relevant times.

COUNT 1

Making, Participating and Influencing of a Governmental Decision Concerning Respondent’s Personal Finances and the Personal Finances of His Immediate Family

For purposes of disqualification under sections 87100 and 87103, an official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate

family increasing or decreasing. (Regulation 18703.5.) Furthermore, Regulation 18705.5 states a reasonably foreseeable effect on an official's or his or her immediate family's personal finances are material if it is at least \$250 in any 12-month period. In pertinent part, Regulation 18705.5, subdivision (b), states that the financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or any member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material unless the decision is to appoint or hire the official.

Respondent Duaime was a Fire Marshall and Administrative Fire Captain for the Stockton Fire Department from 2008 through present. On or about July 20, 2009, and October 8, 2010, Respondent made, participated in making or influenced a governmental decision to hire and pay himself as a CPR instructor and administrator for the Citizens CPR Fund, which he knew or should have known was in violation of Government Code Section 87100. Additionally, on or about November 17, 2009, and March 5, 2010, Respondent made governmental decisions to hire and pay his dependent son as an assistant CPR instructor for the Citizens CPR Fund and, on or about December 11, 2009, to hire and pay his spouse as an administrative assistant for the Citizens CPR Fund, which he knew or should have known was in violation of Government Code Section 87100.

Respondent Duaime was directly involved in these decisions since he and his immediate family were the "subject of the proceeding" involving his own and his family's hiring and pay. The decision had a reasonably foreseeable material financial effect on Respondent Duaime, (in this case the effect is presumed to be material), in the amounts reflected on the following chart:

	Year	Amount	Total	
Respondent Duaime	2009	\$250 (Instructor)	\$2,050	
		\$1,800 (Administrator)		
	2010	\$350 (Instructor)		\$2,150
		\$1,800 (Administrator)		
Respondent Duaime's Son	2009	\$250 (Assistant Instructor)	\$250	
	2010	\$700 (Assistant Instructor)	\$700	
Respondent Duaime's Wife	2010	\$250 (Administrative Assistant)	\$250	
			\$5,400	

By making, participating, or influencing the governmental decision to hire and pay himself, to hire and pay his son, and to hire and pay his spouse, Respondent Duaime violated Section 87100.

CONCLUSION

This matter consists of one count of violating the Act, which 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. 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; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendments to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 89001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Conflict of Interest: Making a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict of interest. Penalties for conflict of interest violations in the last couple of years range between \$3,000 to \$4,500 but depending on the circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

- *In the Matter of Randy Mark*, FPPC No. 12/101 (Approved February 28, 2013). Randy Mark was the Chief District Operator for the Grizzly Lake Community Services District. Respondent signed or initialed approximately 45 equipment rental contract worth over \$11,000 over several months between Respondent's employer and his wife's business, which was a source of income for him through her. In mitigation, his employer had always used this vendor and using another vendor was not practicable as it was out-of-state. The Commission imposed a fine of \$4,000 for this violation.
- *In re Louie Martinez*, FPPC No. 09/261 (Approved June 9, 2011). Respondent was a Senior Project Manager for the City of Irvine. Respondent accepted over-the-limit gifts (substantially discounted home landscaping services) from a vendor, then Respondent inspected civic center landscaping work performed by this vendor and approved an invoice for payment to them of approximately \$86,000. The Commission imposed a

fine of \$4,000 for this violation in addition to a penalty for the receipt of over-the-limit gifts.

In this case, although Respondent takes full responsibility for his actions, he asserts that since he was unclear as to the rules regarding the CPR Fund, he did not understand that his actions were governmental decisions. Also, the CPR Fund has been in existence for many years with a variety of prominent fire officials running it throughout the past. Respondent contends that his actions were unintentional. He amended his public disclosure forms upon notification of the issue to reflect his desire to remedy the situation. The CPR Fund has since been dissolved. Respondent has no history of violating the Act. However, these decisions to hire and pay occurred over the course of two years and resulted in income to him and his immediate family. Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$4,500 is justified.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Four Thousand Five Hundred Dollars (\$4,500) is recommended.