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7

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

11 In the Matter of) FPPC No. 13/1140
12)
13 GARY A. HUSK, and)
JAMIESON & GUTIERREZ, INC.,) **DEFAULT DECISION AND ORDER**
14) (Gov. Code §§ 11506 and 11520)
15)
16 Respondents.)

17 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
18 Order for consideration at its next regularly scheduled meeting.

19 Respondent Gary A. Husk and Respondent Jamieson & Gutierrez, Inc., have been advised as to
20 their rights to a probable cause hearing and administrative hearing under the Political Reform Act,
21 Administrative Procedure Act, and all other relevant laws, and they have chosen to waive all such rights
22 to a probable cause hearing and administrative hearing and to allow this matter to proceed to a default
23 decision.
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1 Respondent Gary A. Husk and Respondent Jamieson & Gutierrez, Inc., violated the Political
2 Reform Act as described in Exhibit 1, which is incorporated by reference as though fully set forth
3 herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter.

4 This Default Decision and Order is submitted to the Commission to obtain a final disposition of
5 this case.

6
7 Dated: _____

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

1 **ORDER**

2 The Commission issues this Default Decision and Order and imposes an administrative penalty
3 of \$5,000 against Respondent Gary A. Husk and Respondent Jamieson & Gutierrez, Inc. This penalty is
4 payable to the “General Fund of the State of California.”

5 IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices
6 Commission at Sacramento, California.

7
8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Gary A. Husk (“Respondent Husk”) was at all times relevant to this matter a registered lobbyist in the State of Arizona and the president and sole owner of Respondent Jamieson & Gutierrez, Inc. (“Respondent Jamieson”), a public affairs firm located in Phoenix, Arizona. Jerry Sanders was the successful candidate for Mayor of San Diego in the November 8, 2005, election, and Jerry Sanders for Mayor was his candidate-controlled committee.

On or about October 4, 2005, Respondent Husk and Respondent Jamieson (collectively “Respondents”) made a \$300 contribution to Jerry Sanders for Mayor in the name of one of their employees, rather than in their own names, in violation of the Political Reform Act (“Act”).¹

For the purposes of this Default Decision and Order, Respondents’ violation of the Act is stated as follows:

COUNT 1: On or about October 4, 2005, Respondent Gary A. Husk and Respondent Jamieson & Gutierrez, Inc., made a \$300 contribution to Jerry Sanders for Mayor in the name of another, rather than in their own name, in violation of Government Code sections 84301 and 84300, subdivision (c).

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

Respondents have been informed of the charge set forth herein. Respondents have had the opportunity to consult with an attorney of their own choosing about their rights to a probable cause hearing and an administrative hearing under the Act, the Administrative Procedure Act, and all other relevant laws. Respondents have agreed to waive these rights and are aware that by doing so the Commission’s Enforcement Division will proceed with this default recommendation to the Commission, which, if approved by the Commission, will result in Respondents being held liable for the penalty amount of \$5,000.

A copy of Respondents’ written waiver in this regard is attached as Exhibit A and incorporated herein by reference as if in full.

NATURE OF DEFAULT PROCEEDINGS

In this situation, where Respondents have waived their rights to a probable cause hearing and an administrative hearing, the Commission may take action based upon the Respondents’ express admissions or upon other evidence, and affidavits may be used as evidence without any notice to Respondents. (Regulation 11520, subd. (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 Section 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.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violation in question.

The Commission is charged with the duty to administer, implement, and enforce the provisions of the Act. By enacting the Act, California voters specifically found and declared that previous laws regulating political practices had suffered from inadequate enforcement, and that it was their purpose to ensure that the Act be vigorously enforced. (Sections 81001, subd. (h), and 81002, subd. (f)). To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

In order to obtain disclosure of the true source of campaign contributions, Section 84301 prohibits contributions being made, directly or indirectly, by any person in a name other than that by which the contributor is identified for legal purposes.

Additionally, Section 84300, subdivision (c), prohibits the making of contributions of \$100 or more unless the contributions are made by way of a written instrument containing the names of both the actual donor and the real payee.

In 2005, San Diego's Municipal Code prohibited a candidate for mayor from accepting more than \$300 from any single contributor and any single contributor from contributing more than \$300 to a single candidate for mayor. (San Diego Municipal Code section 27.2935, subd. (a).)

SUMMARY OF THE EVIDENCE

In September 2005, Respondent Husk requested that Edward Sanchez, who was at the time an employee of Respondents, make a \$300 contribution to Jerry Sanders for Mayor. Around the same time, Mr. Sanchez received \$300 check from Respondent Jamieson that was signed by Respondents' bookkeeper.

On or about October 3, 2005, Respondents held a fundraising breakfast for Jerry Sanders for Mayor at their office in Phoenix, Arizona. On or about October 4, 2005, Mr. Sanchez issued a personal check in the amount of \$300 to Jerry Sanders for Mayor using the funds he had received from Respondent Jamieson. On the same day, Respondent Husk issued a \$300 check to Jerry

Sanders for Mayor.²

Neither Mr. Sanchez, nor Respondents, disclosed to Jerry Sanders for Mayor that Respondents were the true source of the contribution that Mr. Sanchez made to Jerry Sanders for Mayor on or about October 4, 2005.

Jerry Sanders won the November 8, 2005, election for Mayor of San Diego. Jerry Sanders for Mayor reported on its campaign statement that it received a \$300 contribution from Respondent Husk and a \$300 contribution from Mr. Sanchez on October 4, 2012.

Accordingly, Respondents committed the following violation of the Act:

COUNT 1

On or about October 4, 2005, Respondents made a \$300 contribution to Jerry Sanders for Mayor in the name of another, rather than in their own name, in violation of Sections 84301 and 84300, subdivision (c).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$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(s) 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. The facts are required to be considered by the Commission under Regulation 18361.5.

Making a campaign contribution in the name of another person is one of the most serious violations of the Act as it denies the public of information about the true source of a candidate's financial support. That is particularly true where, as here, the total contribution by Respondents exceeded the local contribution limit. Exceeding the contribution limit provides an unfair advantage to the candidate who receives the contributions and could result in undue influence by the contributor over an elected official who receives the contributions.

The typical administrative penalties for violations similar to those committed by Respondents have been at or near the maximum penalty of \$5,000 per violation. Recent cases approved by the Commission concerning making contributions in excess of a contribution limit by hiding the true source of the contributions, include:

² Respondent Husk's personal contribution of \$300 to Jerry Sanders for Mayor was not a violation of the Act.

In the Matter of Hai Fu “Joey” Lo, FPPC No. 11/460. On June 20, 2013, the Commission approved a \$4,500 per count penalty against a businessman/land developer that made contributions to a candidate for Mayor through four intermediaries without disclosing that he was the true source of the contributions for the purpose of exceeding the \$500 contribution limit. The respondent had no history of enforcement actions and agreed to a stipulation prior to a probable cause conference.

In the Matter of GO Lorrie’s Airport Shuttle, FPPC No. 11/920. On March 15, 2012, the Commission approved a \$4,500 per count penalty against a transportation company that made contributions in excess of the contribution limit to a candidate for Mayor by making contributions in the name of its employees, rather than in its own name. Respondent had no history of enforcement actions, was cooperative with the Enforcement Division’s investigation, and agreed to a stipulation prior to a probable cause conference.

In this matter, Respondents made a contribution in the name of another and in doing so exceeded the local contribution limit. Unlike the two comparable cases cited above, Respondents did not agree to a stipulated agreement. However, Respondents have no history of enforcement actions and voluntarily waived their rights to a probable cause hearing and an administrative hearing.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a \$5,000 penalty is recommended.

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EXHIBIT A



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WAIVER OF RIGHT TO PROBABLE CAUSE
HEARING AND ADMINISTRATIVE HEARING**

1. I, the undersigned, am the respondent in Fair Political Practices Commission (“FPPC”) Case No. 13/1140.
2. I have had the opportunity to consult with an attorney of my choosing, and I understand my rights and Jamieson & Gutierrez, Inc.’s (AKA Husk Partners, Inc.) rights to a probable cause hearing and administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws.
4. I hereby waive my rights and Jamieson & Gutierrez, Inc.’s (AKA Husk Partners, Inc.) rights to a probable cause hearing and administrative hearing, and I understand and agree that this case will proceed to a default recommendation by the Enforcement Division of the FPPC.

Dated: _____

Gary A. Husk, Respondent
Individually and on behalf of
Jamieson & Gutierrez, Inc., (AKA Husk Partners,
Inc.) Respondent

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