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7  
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of ) FPPC No. 12/398  
12 )  
13 JAMES GATTIS, ) **STIPULATION, DECISION and ORDER**  
14 )  
15 Respondent. )

16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 Respondent James Gattis (“Respondent”), hereby agree that this Stipulation will be submitted for  
19 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

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

3 It is further stipulated and agreed that on May 27, 2010, Respondent James Gattis violated  
4 Government Code section 87100 (1 count), as described in Exhibit 1, which is attached hereto and  
5 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of  
6 the facts in this matter.

7 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
8 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount  
9 of \$2,500. A cashier's check from Respondent in said amount, made payable to the "General Fund of  
10 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,  
11 to be held by the State of California until the Commission issues its Decision and Order regarding this  
12 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall  
13 become null and void, and within fifteen business days after the Commission meeting at which the  
14 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be  
15 reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission  
16 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither  
17 any member of the Commission, nor the Executive Director, shall be disqualified because of prior  
18 consideration of this Stipulation.

19  
20 Dated: \_\_\_\_\_

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

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

\_\_\_\_\_  
James Gattis, Respondent

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**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of In the Matter of James Gattis, FPPC No. 12/398,” 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 Chair.

IT IS SO ORDERED.

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

\_\_\_\_\_  
Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent James Gattis (“Respondent”) has been a member of the Board of Directors for Salinas Valley Memorial Healthcare System (“SVMHS”) since 2005, and currently serves as its treasurer. At all relevant times, Respondent was a public official as defined in Section 82048 of the Political Reform Act (the “Act”),<sup>1</sup> and therefore he was prohibited from making, participating in making, or attempting to use his official position to influence a governmental decision in which he knew, or had reason to know, that he had a financial interest. (Section 87100.)

In this matter, Respondent violated the conflict of interest provisions of the Act when, as a member of the Board of Directors for SVMHS (“SVMHS Board”), he voted to approve the consent calendar which included the agreement to terminate the lease between SVMHS and Central Coast Audiology, Inc., (“CCA”) which was a source of income to Respondent under the Act.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

**COUNT 1:** On or about May 27, 2010, Respondent James Gattis, as a member of the Board of Directors for Salinas Valley Memorial Healthcare System, made a governmental decision in which he had a financial interest, by voting to approve the termination of the lease agreement between the Salinas Valley Memorial Healthcare System and Central Coast Audiology, Inc., which was a source of income to Respondent Gattis, in violation of Government Code section 87100.

### **SUMMARY OF THE LAW**

The primary purpose for the conflicts of interests 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).)

#### **Conflicts of Interests**

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their

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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.

official positions to influence a governmental decision in which they know, or have reason to know, that they have 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, distinguishable from its effect on the public generally, on a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps 7 and 8 of the standard step by step analysis are exceptions that do not apply in this matter, and thus are not discussed in the analysis below. The remaining six relevant steps of the analysis follow.

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency... .” (Section 82048.) Local government agency means a “county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.)

Second, the official must make, participate in making, or attempt to use his or her 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. (Regulation 18702.1, subdivision (a).)

Third, the official must have an economic interest that may be financially affected by the governmental decision. A public official has an economic interest in any source of income, as defined in Section 82030, aggregating \$500 or more in value provided or promised to, the official within 12 months prior to the time when a decision is made. (Section 87103, subdivision (c).) A public official's income includes income which has been promised to the public official but not yet received by him, if he has a legally enforceable right to the promised income. (Regulation 18703.3, subdivision (a).)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Regulation 18704.1 provides that a person who is a source of income to a public official is directly involved in a decision before an official’s agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made or; (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of the proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.3, subdivision (a), if a source of income is directly involved in a governmental decision, *any* reasonably foreseeable financial effect on the source of income to a public official is deemed material.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)<sup>2</sup>

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent's economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question, and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency. (Regulation 18706, subd. (b).)

### SUMMARY OF THE FACTS

Respondent has been a member of the SVMHS Board since 2005, and currently serves as its treasurer. At all relevant times, Respondent was a public official as defined in Section 82048 of the Act.

In his private capacity, Respondent works in the field of real estate investments involving the renovation and leasing of commercial real estate in downtown Salinas. At all relevant times, Respondent owned a building located at 307 Main Street, in Salinas, CA.

In 2005, CCA leased space in a building owned by SVMHS. In December 2009, CCA notified SVMHS of its intent to vacate the leased space. SVMHS asked their legal counsel to review the lease and discuss the issue with CCA. On February 2 and 10, 2010, SVMHS's legal counsel ("SVMH Counsel") advised SVMHS that they should terminate the lease prior to the end of its term.

On February 18, 2010, during a closed session of the SVMHS Board, SVMHS's Chief Executive Officer ("SVMHS CEO") recommended that SVMHS terminate its lease with CCA. As a member of the SVMHS Board, Respondent was present. The SVMHS Board agreed with SVMHS CEO's recommendation that SVMHS terminate its lease with CCA.

On February 19, 2010, SVMHS Counsel contacted CCA and informed CCA of the decision to terminate the lease. CCA indicated to SVMHS Counsel that it would begin its search for a new office space. CCA hired a commercial real estate broker, and began to look for a new office location.

In February and March 2010, CCA searched for new office space and found a prospect

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<sup>2</sup> The *Thorner* opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

on South Main Street in Salinas. Neither SVMHS nor Respondent owned this location.

In March 2010, CCA contacted SVMHS Counsel requesting a written document of termination. SVMHS Counsel and CCA began to draft a termination document. Neither the SVMHS Board nor Respondent was involved in the preparation of the termination document.

On March 25, 2010, CCA submitted a letter of intent for the South Main Street location, but this effort was ultimately not successful. Subsequently, CCA contacted Respondent regarding his property at 307 Main Street.

In April 2010, SVMHS Counsel drafted a termination document and submitted it to SVMHS staff for review. Neither Respondent nor any other member of the SVMHS Board reviewed the termination document.

On or about April 30, 2010, SVMHS and CCA signed and executed the termination document (entitled "Agreement Terminating Fixed-Term Lease Between Salinas Valley Memorial Healthcare Systems and Central Coast Audiology, Inc."). Neither Respondent nor the SVMHS Board was involved in executing this document.

On May 3, 2010, Respondent and CCA entered into a lease agreement for 5 years. The agreement required CCA to pay \$2,464 to Respondent and his wife for the security deposit at the time the lease was executed, and to pay the same amount as monthly rent for the first year of the lease and 3% added to the monthly rent for each year following.

At the May 27, 2010, SVMHS Board meeting the agreement to terminate the lease and other items appeared on the consent calendar. According to SVMHS Counsel, SVMHS had the authority to terminate the lease without SVMHS's vote, but the termination document was included on the consent calendar to memorialize the SVMHS Board's decision in February to terminate the contract with CCA. The termination matter was not pulled from the consent calendar, and the SVMHS Board, including Respondent, unanimously voted to approve all items on the consent calendar.

The evidence shows that Respondent has a history of consistently and scrupulously recusing himself from decisions before the SVMHS Board in which he has a financial interest, and there is no evidence that Respondent's violation was intentional.

According to Respondent his vote was an unintentional and inadvertent error. Additionally, he did not notice the conflict of interest and voted on the item without pulling it from the consent calendar because it was one of several items on the consent calendar and his attention was focused primarily on another real estate matter on the agenda. Also, at the time he and CCA entered into the agreement, the SVMHS had already decided to terminate its lease with CCA.

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Accordingly, Respondent committed one violation of the Act, as follows:

**Count 1**

(Making Governmental Decisions in Which the Public Official Had a Financial Interest)

Respondent violated the conflict of interest provisions of the Act when he voted, in his capacity as a member of the SVMHS Board, to agree to approve the consent calendar that included the lease termination agreement between SVMHS and CCA, while CCA was a source of income to him.

As a member of the SVMHS Board, Respondent was a public official. Respondent voted to approve the consent calendar in a unanimous vote by the Board. CCA was a source of income to Respondent because within 12 months prior to the vote, Respondent received and was promised income of \$500 or more from CCA due to the lease agreement between Respondent and CCA for Suite 240 of the building at 307 Main Street. CCA was directly involved in the governmental decision because CCA was the subject of the proceeding regarding the termination of CCA's lease with SVMHS. Because the vote concerned the lease termination, the financial effect of the governmental decision upon CCA was material. Additionally, it was reasonably foreseeable that the decision would have a material financial effect on CCA because terminating CCA's lease agreement was substantially likely to have a financial effect on CCA.

Thus, by making a governmental decision in which he had a financial interest, Respondent violated Section 87100.

**CONCLUSION**

This matter consists of one count of violating the Act, carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission's (the "Commission") Enforcement Division (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 the Fair Political Practices' (the "Commission") staff; whether there was a pattern of violations; and whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

In this matter, Respondent made a governmental decision in which he had a financial interest by voting to approve the consent calendar that included termination of CCA's lease with SVMHS. Making a governmental decision in which an official has a financial interest is a



serious violation of the Act as it may create the appearance that a governmental decision was made on the basis of an official's financial interest.

In August 2012, the Commission fined a member of the Vallejo Redevelopment Agency \$3,000 for violating Section 87100 by voting on a design contract for a redevelopment project when he owned real property within 500 feet of the boundaries of the project. The respondent did not have a history of violating the Act and agreed to an early resolution of the matter. (*In the Matter of Thomas Bartee*, FPPC No. 10/581.)

In April 2011, the Commission fined a city official \$2,500 for violating Section 87100 by communicating with another city official regarding an application to amend the entertainment permit conditions of a business entity in which the respondent had a financial interest. The respondent cooperated with the Commission's investigation and agreed to an early resolution of the matter. (*In the Matter of Dan K. Waters*, FPPC No. 10/485.)

There are significant mitigating factors present in this matter. As of February 2010, Respondent and CCA believed that the lease between SVMHS and CCA was terminated and that CCA was free to seek a new lease arrangement, which is why Respondent did not foresee that the matter would later come up for a SVMHS Board vote. Also, the lease was terminated on or about April 30, 2010, before Respondent and CCA entered into their lease agreement, and weeks before the termination document appeared before the SVMHS Board. When the matter appeared on the consent calendar, Respondent's failure to either pull the matter from the consent calendar or recuse himself from the vote was, according to Respondent, an inadvertent oversight, not an intentional effort to further his own interests.

Additionally, Respondent fully cooperated with the Commission's investigation into this matter, and throughout his many years of public service in the Salinas community he has no prior violations of the Act. There is no evidence of a pattern of violations, and the evidence shows that Respondent's usual course of action is to recuse himself from SVMHS matters whenever he was aware of a conflict of interest under the Act.

### **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 \$2,500 penalty is recommended.

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