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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 12/660
13)
14 JOHN DUKES,) 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 John Dukes agree that this Stipulation will be submitted for consideration by the Fair
20 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 John Dukes violated the Political Reform Act when he failed to
4 disclose sources of income on his 2011 annual Statement of Economic Interests, in violation of Sections
5 87203 and 87207 (1 count) and by making, participating in the making, or influencing a governmental
6 decision in which he had a financial interest, in violation of Section 87100 of the Government Code (1
7 count). All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
8 though fully set forth herein. Exhibit 1 is a true and accurate 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 Dollars (\$4,000). A cashier's check from Respondent in said amount, made payable
12 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
13 administrative penalty, to be held by the State of California until the Commission issues its decision and
14 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
15 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
16 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
17 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
18 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
19 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
20 disqualified because of prior consideration of this Stipulation.

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22 Dated: _____

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

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26 Dated: _____

John Dukes,
Respondent

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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of John Dukes,” FPPC No. 12/660, 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 John Dukes was a Yuba City Councilmember from 2008 through present. As such, Respondent was required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received income from two different entities exceeding the reporting threshold of \$500 in 2011, and failed to report this income on his annual SEI for that year. In addition, Respondent Dukes had a conflict of interest when he voted as part of the city council regarding a decision affecting one of those entities. 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.

For purposes of this stipulation, Respondent’s violations are stated as follows:

COUNT 1: Respondent John Dukes, a member of the city council for the City of Yuba City, failed to report two sources of income, which exceeded the reporting threshold of \$500, on his 2011 annual Statement of Economic Interests, in violation of Sections 87203 and 87207 of the Government Code.

COUNT 2: On February 15, 2011, Respondent John Dukes made, participated in making or influenced a governmental decision to remove a deferred improvement agreement from a property which his source of income represented, which he knew or should have known was in violation of Government Code Section 87100.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

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

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

Under the Act, every person who holds an office specified in Section 87200, which includes mayors and members of city councils, shall, each year at a time specified by Commission regulations, file an annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) Section 87200 includes chief administrative officers of counties, mayors, city managers, chief administrative officers and *members of city councils of cities*, and other public officials who manage public investments, and to candidates for any of these offices at any election. (Emphasis added.)

Disclosure Provisions

“Income” is defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).) When income is required to be reported, the SEI shall contain the name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source. (Section 87207.)

Conflicts of Interest

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 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 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.

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. Under Section 87103, subdivision (c), a public official has a financial interest in any source of income of \$500 or more.

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.) Under Regulation 18704.1, subdivision (a)(2), a person, including sources of income, is directly involved in a decision before an official’s agency when that person, either directly or by an agent 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 a 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. If a public official’s economic interest does not meet the standards of direct involvement, then it is indirectly involved. (Reg. 18704, subd. (a).)

5. Material Financial Effect on Economic Interests: It must be determined if the governmental decision has a material financial effect on the economic interest. In the case of an economic interest that is an indirectly involved source of income which is a business entity, the financial effect necessary is determined by the size of the business entity. (Reg. 18705.1, subd. (c).) Regulation 18705.1, subdivision (c)(4), states that:

“...the financial effect of a governmental decision on the business entity [whose most recent fiscal year had net income of less than \$750,000], is material if it is reasonably foreseeable that:

- (A) The governmental decision will result in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more; or,
- (B) The governmental decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or,
- (C) The governmental decision will result in an increase or decrease in the value of the business entity's assets or liabilities of \$20,000 or more."

6. Forseeability: 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

Respondent John Dukes was an official subject to the disclosure and conflict-of-interest provisions of the Political Reform Act at all relevant times.

COUNT 1

Failure to Disclose Income on a Statement of Economic Interests

Respondent Dukes has been a member of the city council for the City of Yuba City from 2008 until present. As such, Respondent was required to file an annual SEI disclosing all income received exceeding \$500 per year. Respondent filed his 2011 SEI with the Yuba City City Clerk on March 20, 2012 and reported one economic interest, but did not report the income received from Northside Fitness (owned by Jeffrey T. Helm) or Jeffrey T. Helm, Inc. Respondent Dukes added these entities to his amended SEI filed May 22, 2013, at the request of the Enforcement Division, disclosing \$500 - \$1,000 from Northside Fitness and \$1,001 - \$10,000 from Jeffrey T. Helm, Inc.

By failing to report income received in 2011 on his annual SEI, Respondent violated Sections 87203 and 87207 of the Government Code.

COUNT 2

Making, Participating and Influencing of a Governmental Decision Concerning a Source of Income

Respondent Dukes has been a member of the city council for the City of Yuba City from 2008 until present. At the February 15, 2011, Yuba City City Council meeting, Respondent Dukes voted to remove a Deferred Improvement Agreement requirement from a property owned by the American National Red Cross ("Red Cross"), which required the Red

Cross to bury existing overhead utilities at a cost of \$192,000. The Red Cross was represented in this petition by Jeffrey T. Helm of Helm Properties. The City Council voted 3-1 in favor of removing the deferred improvement agreement with Respondent Dukes voting for removing the deferred improvement agreement.

According to invoices and business records provided by Respondent Dukes, Respondent Dukes' handyman business performed miscellaneous work for Helm Properties on January 21, 2011 - roughly a month before the decision regarding American Red Cross. Mr. Helm and Helm Properties were indirectly involved in the governmental decision. Mr. Helm's business, Helm Properties, made a commission of \$23,670 off the sale of the Red Cross property, thereby resulting in an increase or decrease in the business entity's gross revenues for a fiscal year in the amount of \$20,000 or more. The decision had a reasonably foreseeable material financial effect on Jeffrey T. Helm and Helm Properties and the property was then sold six weeks later without the Deferred Improvement Agreement attached.

By making, participating in making or influencing a governmental decision in which he had a financial interest, Respondent Dukes violated Section 87100 of the Government Code.

CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of Ten Thousand Dollars (\$10,000).

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.

SEI Non-Disclosure: Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Regarding the failure to disclose income received over the \$500 reporting threshold on SEIs, the typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties concerning SEI disclosure violations include:

- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.
- *In the Matter of Michael Rubio*, FPPC No. 07/293, had a similar fact pattern; a member of the Kern County Board of Supervisors failed to disclose required information regarding income on an annual SEI. The commission approved settlement of this case, with a \$1,000 penalty for the nondisclosure violation, on January 28, 2011.

In this case, the amounts not disclosed were small but, in the case of Jeffery T. Helm and his businesses, regularly do business within his jurisdiction and caused a conflict of interest for Respondent. Respondent has no prior history of violating the Act, cooperated with the investigation, and amended his SEI when he was asked to do so by the Enforcement Division. Therefore, I recommend a penalty of \$1,000 for this count.

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 from \$3,000 to \$4,500 but depend on the circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

- *In the Matter of Joni Gray*, FPPC No. 12/286: On June 20, 2013, the Commission fined a county supervisor \$3,000 for a single count of violating the Conflict of Interest Provisions of the Act. The supervisor made a decision to give a \$50,000 forgivable loan a client of her law firm. The supervisor had no history of enforcement actions, cooperated with the investigation, and agreed to an early settlement of the matter.
- *In the Matter of Larry Moody*, FPPC No. 14/116: On October 16, 2014, the Commission fined a city councilman \$3,000 for a single count of violating the Conflict of Interest Provisions of the Act. The city councilman voted to award a \$77,000 grant to his wife's employer. His economic interest resulted from his wife receiving income of \$4,000 within 12 months of the decision. The supervisor had no history of enforcement actions, cooperated with the investigation, and agreed to an early settlement of the matter.

In this case, although Respondent takes full responsibility for his actions, he asserts that he did not realize he could not vote or participate since his source of income was the representative appearing for the Red Cross and not the applicant and it was an oversight on his part. In addition, the investigation did not reveal evidence that Respondent's actions were intentional, but rather were negligent. Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,000 is justified. A higher penalty is not being sought because Respondent cooperated fully with the Enforcement Division by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Additionally, there is no history of prior violations of the Act by Respondent.

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 Dollars (\$4,000) is recommended.