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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. 13/0070  
13 )  
14 ARTHUR PALKOWITZ, ) 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 Arthur Palkowitz 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 Arthur Palkowitz violated the Political Reform Act by failing to  
4 disclose a reportable source of income on his annual statement of economic interests, in violation of  
5 Sections 87300 and 87302 of the Government Code (1 count); and by making decisions in which he had  
6 a financial interest, in violation of Government Code Section 87100 (1 count). All counts are described  
7 in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.  
8 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 Five Thousand Dollars (\$5,000). 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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Dated: \_\_\_\_\_

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

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

\_\_\_\_\_  
Arthur Palkowitz,  
Respondent

**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter of Arthur Palkowitz,” FPPC No. 13/0070, 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

1 **EXHIBIT 1**

2 **INTRODUCTION**

3 Respondent Arthur Palkowitz (“Respondent”) was elected to the Solana Beach School District  
4 (the “District”) Board of Education (the “Board”) in 2004 and served until December 13, 2012. In 2006  
5 the District retained the law firm of Stutz, Artiano, Shinoff, and Holtz (“Stutz”) as its outside counsel.  
6 On March 15, 2010, Stutz hired Respondent to serve as “Counsel.”

7  
8 As a member of the Board, Respondent was required to disclose all reportable economic interests  
9 on his annual Form 700 statements of economic interests (“SEI”). However, Respondent failed to  
10 disclose his annual salary of more than one hundred thousand (\$100,000) dollars from Stutz on his 2010  
11 and 2011 SEIs. In addition, Respondent, in his capacity as a member of the Board, voted to approve  
12 purchase orders to Stutz, his source of income, in violation of Section 87100 of the Political Reform Act  
13 (the “Act”)<sup>1</sup>.

14 For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

15 COUNT 1: Respondent Arthur Palkowitz, in his capacity as a member of the Solana Beach School  
16 District Board of Education, filed a Statement of Economic Interests for the 2010 and  
17 2011 calendar years, but failed to list the law firm of Stutz Artiano Shinoff & Holtz as a  
18 source of income on either, in violation of Sections 87300 and 87302.

19 COUNT 2: Respondent Arthur Palkowitz, in his capacity as a member of the Solana Beach School  
20 District Board of Education, made governmental decisions in which he had a financial  
21 interest, by voting to approve payment orders to his source of income, the law firm of  
22 Stutz Artiano Shinoff & Holtz, in violation of Government Code Section 87100.

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26 \_\_\_\_\_  
27 <sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to  
28 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 to Title 2, Division 6 of the California Code of Regulations as in effect at the time of  
the violations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 **Duty to File Statements of Economic Interests**

3 An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the  
4 assets and income of public officials, that may be materially affected by their official actions, be  
5 disclosed, so that conflicts of interest may be avoided. In furtherance of this purpose, Section 87300  
6 requires every agency to adopt and promulgate a conflict of interest code.

7 Section 87302, subdivision (a), provides that an agency’s conflict of interest code must  
8 specifically designate the positions within the agency that are required to file an SEI, disclosing  
9 reportable investments, business positions, interests in real property, and sources of income. Under  
10 Section 82019, subdivision (a), and Section 87302, the persons who are to be designated in an agency’s  
11 conflict of interest code are the officers, employees, members, and consultants of the agency whose  
12 position with the agency entails making, or participating in making, governmental decisions that may  
13 foreseeably have a material effect on one or more of the person’s economic interests.

14 Section 87302, subdivision (b), provides that an agency’s conflict of interest code must require  
15 every designated employee of the agency to file an annual SEI, at a time specified in the agency’s  
16 conflict of interest code, for each year that the employee remains in office, disclosing his or her  
17 reportable economic interests during the preceding calendar year. Section 87300 declares that the  
18 requirements of an agency’s conflict of interest code shall have the force of law, and any violation of  
19 those requirements shall be deemed a violation of the Act.

20 The applicable Solana Beach School District conflict of interest code lists the position of “Board  
21 Members” as a designated position under disclosure Category 1. Individuals subject to Category 1 are  
22 required to disclose all “income from sources which are... contractors or subcontractors which are or  
23 have been, within the past two years, engaged in work or services of the type used by the District...”

24 **Conflicts of Interest**

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

1 In furtherance of this goal, Section 87100 prohibits a public official from making, participating  
2 in making, or in any way attempting to use this official position to influence a governmental decision in  
3 which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a  
4 public official has a financial interest in a decision if it is reasonably foreseeable that the decision will  
5 have a material financial effect on an economic interest of the official. For purposes of Section 87100  
6 and 87103, there are six analytical steps to consider when determining whether an individual has a  
7 conflict of interest in a governmental decision.<sup>2</sup>

8 **1. Public Official**

9 The individual must be a public official. Section 82048 defines “public official” to include  
10 “every member, officer, employee or consultant” of a local government agency. According to  
11 Regulation 18701, subdivision (a), "Member" includes all salaried or unsalaried members of boards with  
12 decision making authority.

13 **2. Decisions:**

14 The official must make, participate in making, or attempt to use his official position to influence  
15 a governmental decision. A public official “makes a governmental decision” when the official, acting  
16 within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3)  
17 Obligates or commits his or her agency to any course of action; (4) Enters into any contractual  
18 agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is  
19 made because of his or her financial interest. (Reg. 18702.1, subd. (a).)

20 **3. Economic Interests:**

21 The official must have an economic interest, as defined in Section 87103, which may be  
22 financially affected by the governmental decision. A public official has an economic interest in any  
23 source of income aggregating five hundred dollars (\$500) or more in value provided or promised to,  
24 received by, the public official within 12 months prior to the time when the decision is made. (Section  
25 87103, subd. (c).)

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28 <sup>2</sup> 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.

1 **4. Direct or Indirect Financial Effect on Economic Interests:**

2 It must be determined if the economic interest of the official is directly or indirectly involved in  
3 the decision. (Reg. 18704.) Regulation 18704.1 provides, in pertinent part, that a person is directly  
4 involved in a decision before an official’s agency when that person, either directly or by an agent: (1)  
5 initiates the proceeding in which the decision will be made or; (2) is a named party in, or is the subject  
6 of, the proceeding concerning the decision before the official or the official’s agency. Regulation  
7 18704.1 further provides that a person is the “subject of a proceeding” if a decision involves the  
8 issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or  
9 contract with, the subject person.

10 **5. Material Financial Effect on Economic Interests:**

11 It must be determined if the governmental decision has a material financial effect on the  
12 economic interest. The financial effect of a governmental decision on a source of income which is  
13 directly involved in the governmental decision is presumed to be material. (Reg. 18705.1, subd. (b).)

14 **6. Foreseeability:**

15 At the time of the governmental decision, it must have been reasonably foreseeable that the  
16 decision would have a material financial effect. (Regulation 18700, subd. (b)(6).) A material financial  
17 effect on an economic interest is “reasonably foreseeable” if it is substantially likely that one or more of  
18 the materiality standards applicable to the economic interest will be met as a result of the governmental  
19 decision. (Reg. 18706, subd. (a).) An effect need not be certain to be considered "reasonably  
20 foreseeable," but it must be more than a mere possibility. (In re Thorner (1975) 1 FPPC Ops. 198.)

21 **SUMMARY OF THE FACTS**

22 Respondent Arthur Palkowitz (“Respondent”) was elected to the Solana Beach School District  
23 (the “District”) Board of Education (the “Board”) in 2004 and served until December 13, 2012. In 2006  
24 the District retained the law firm of Stutz, Artiano, Shinoff, and Holtz (“Stutz”) as outside counsel. On  
25 March 15, 2010, Stutz hired Respondent to serve as “Counsel.”

26 As a designated official, Respondent was required to disclose all reportable economic interests  
27 on his annual Form 700 statements of economic interests (“SEI”) pursuant to Category 1 of the District’s  
28 conflict of interest code (the “Code”). According to the Code, all individuals subject to disclosure



1 Category 1 must disclose all “income from sources which are... contractors or subcontractors which are  
2 or have been, within the past two years, engaged in work or services of the type used by the District...”  
3 As the District’s outside counsel, Stutz falls under this disclosure category as a reportable source of  
4 income. However, Respondent failed to disclose his annual salary of more than one hundred thousand  
5 (\$100,000) dollars from Stutz on his 2010 and 2011 SEIs.

6 On or about July 31, 2012, prior to being contacted by the Fair Political Practices Commission’s  
7 Enforcement Division (the “Enforcement Division”), Respondent provided the District with  
8 amendments to his 2010 and 2011 SEIs disclosing his income from Stutz. However, Respondent’s  
9 filing officer, the Clerk of the Board of Supervisors, did not receive the amendments because District  
10 staff incorrectly emailed and mailed them to the San Diego County Registrar of Voters. When this was  
11 brought to the attention of the Respondent, he filed the amendments with the Clerk of the Board of  
12 Supervisors on January 20, 2015.

13 Prior to assuming his position with Stutz in 2010, Respondent instructed the District to inform  
14 him of any purchase orders involving Stutz listed on the Board’s consent agendas. In the event there  
15 was an item involving Stutz, Respondent contends the procedure was to remove the item from the  
16 consent agenda, for Respondent to inform the public of his employment with Stutz, then recuse, and for  
17 the Board to vote on the purchase order without Respondent’s participation. Following this procedure,  
18 eleven of thirteen purchase orders involving Stutz were identified and removed from eleven separate  
19 Board meeting consent agendas and were approved by the Board without Respondent’s participation.  
20 The two purchase orders involving Stutz that were not identified by the District and Respondent were  
21 voted upon by Respondent at District Board Meetings on October 14, 2010 and June 28, 2011.

22 The consent calendar for the October 14, 2010 District Board meeting included two separate  
23 purchase orders involving Stutz: Purchase Order 300315 for \$2,034.04 and Purchase Order 300387 for  
24 \$8,725.45. The District did identify Purchase Order 300315 as involving Stutz, and Respondent recused  
25 himself accordingly. However, neither the District nor Respondent noticed Purchase Order 300387.  
26 That item was not removed from the consent agenda, and was later voted upon by Respondent.

27 The consent calendar for the June 28, 2011 District Board meeting also included two separate  
28 purchase orders involving Stutz: Purchase Order 300998 for \$42,424.74 and Purchase Order 301026 for

1 \$210.45. The District did identify Purchase Order 300998 as involving Stutz, and Respondent recused  
2 himself accordingly. However, neither the District nor Respondent noticed Purchase Order 301026.  
3 That item was not removed from the consent agenda, and was later voted upon by Respondent.

4 **Count 1**

5 Respondent was elected to the Board on November 2, 2004 and served on the Board until  
6 December 13, 2012. On March 15, 2010, Stutz hired Respondent to serve as “Counsel.” As a member  
7 of the Board, Respondent was required to disclose all reportable economic interests pursuant to the  
8 District’s conflict of interest code. By failing to report income received from Stutz in excess of  
9 \$100,000 on his 2010 and 2011 statements of economic interests, Respondent violated Sections 87300  
10 and 87302 of the Government Code.

11 **Count 2**

12 At all times relevant to this matter, Respondent served as a member of the Board, and thus was  
13 considered a public official for purposes of the Act. Respondent made two governmental decisions  
14 when he voted to approve payment orders to Stutz in 2010 and 2011. Respondent’s economic interest in  
15 Stutz is based on the salary income he received from the firm for serving as its “Counsel.” Stutz was  
16 directly involved in the two aforementioned decisions made by Respondent because the decisions  
17 concerned the approval of payment orders to Stutz. The decisions were presumed to have had a  
18 reasonably foreseeable material financial effect on Stutz because Stutz was directly involved.

19 In acting as described above, Respondent committed one violation of Section 87100.

20 **CONCLUSION**

21 This matter consists of two counts, which carry a maximum possible administrative penalty of  
22 Ten Thousand Dollars (\$10,000).

23 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
24 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an  
25 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
26 considers the facts and circumstances of the violation in context of the factors set forth in Regulation  
27 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to  
28 deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether

1 the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a  
2 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily  
3 filed amendments to provide full disclosure.

4 In regards to **Count 1**, failure to disclose all reportable economic interests on a SEI is a serious  
5 violation of the Act because it deprives the public of important information about a public official's  
6 economic interests and it has the potential to conceal conflicts of interest. Recent penalties for failure to  
7 disclose reportable sources of income on a SEI have been in the middle to low ranges for fines  
8 depending upon the circumstances of each case:

- 9 • *In the Matter of Percy McGee*, FPPC No. 09/637. On December 13, 2012, the Commission  
10 fined Percy McGee, a former member of the Pittsburg Unified School District Board of Trustees,  
11 \$2,000 for one count of violating the SEI disclosure provisions of the Act. In that matter, Mr.  
12 McGee failed to list Merrill Lynch as a source of income on his 2008 and 2009 annual SEIs, in  
13 violation of Government Code Sections 87200, 87203, and 87207. Mr. McGee had no history of  
14 enforcement actions, cooperated with the investigation, and it appeared that the violation was not  
15 intentional.
- 16 • *In the Matter of Clayton Chau*, FPPC No. 13/543. On November 11, 2014, the Commission  
17 fined Dr. Clayton Chau, a former healthcare administrator with CalOptima, \$2,000 for one count  
18 of violating the SEI disclosure provisions of the Act. In that matter, Mr. Chau failed to disclose  
19 receiving \$12,033 in reportable income from the pharmaceutical company AstraZenca on his  
20 assuming office SEI, in violation of Government Code Sections 87300 and 87302. Mr. Chau had  
21 no history of enforcement actions and fully cooperated with the investigation.

22 Here, Respondent failed to disclose over \$100,000 in salary income from Stutz on his 2010 and  
23 2011 SEIs. District staff confirmed that they were aware of Respondent's relationship with Stutz and  
24 maintained that there was a procedure in place to identify potential conflicts involving Stutz. However,  
25 as discussed above, Respondent did vote on two items involving Stutz.

26 In mitigation, Respondent has no prior history of violating the Act and contends that his failure  
27 to disclose was inadvertent. In further mitigation, Respondent did attempt to provide amendments  
28

1 disclosing his financial interest in Stutz to his filing officer before being contacted by the Enforcement  
2 Division.

3 In aggravation, the District had a business relationship with Respondent's unreported source of  
4 income creating a high potential for conflicts of interest, and as noted above, two conflicts did occur.  
5 Based on the above prior cases and the circumstances present in this case, imposition of a two thousand  
6 dollar (\$2,000) penalty for the one count is recommended.

7 In regards to **Count 2**, making a governmental decision in which an official has a financial  
8 interest is one of the more serious violations under the Act because it may create the appearance that the  
9 governmental decision was a product of that conflict of interest. Penalties for conflict of interest  
10 violations in recent years have ranged from \$2,500 to \$5,000, depending on the circumstances of each  
11 case. Recent prior penalties concerning conflict of interest violations include:

- 12 • ***In the Matter of John Dukes***; FPPC No. 12/660. On November 11, 2014, the Commission fined  
13 John Dukes, a Yuba City Councilmember, \$3,000 for one count of violating the conflict of  
14 interest provisions of the Act. In that matter, Mr. Dukes failed to report two sources of income  
15 on his 2011 annual SEI and then subsequently made a governmental decision involving one of  
16 those sources of income, in violation of Government Code Section 87100 (1 count). Mr. Dukes  
17 had no history of enforcement actions, cooperated with the investigation, and it appeared that the  
18 violation was not intentional.
- 19 • ***In the Matter of Joni Gray***, FPPC No. 12/286. On June 20, 2013, the Commission fined Joni  
20 Gray, a Santa Barbara County Supervisor, \$3,000 for a single count of violating the conflict of  
21 interest provisions of the Act. In that matter, Ms. Gray voted to authorize a \$50,000 forgivable  
22 loan a client of her law firm. Ms. Gray had no history of enforcement actions, cooperated with  
23 the investigation, and was no longer in office.

24 Here, Respondent voted twice to approve payment orders to one of his sources of income  
25 totaling \$8,725.45 and \$210, respectively. Each decision was made via the consent calendar. In  
26 aggravation, conflicts of interest are one of the more serious types of violations under the Act and at the  
27 time the conflict occurred Respondent had yet to report his interest in Stutz on his Form 700. However,  
28 District staff indicated that they were aware of Respondent's financial interest in Stutz and made a

1 conscious effort to avoid conflicts of interest. Additionally, Respondent contends that he verbally  
2 disclosed his financial interest in Stutz prior to abstaining on each of the eleven other items involving  
3 Stutz before the Board.

4 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty  
5 in the amount of \$3,000 is justified. A higher penalty is not being sought because, while Respondent  
6 takes full responsibility for his actions, he asserts that his violation of the Act was not intentional and  
7 merely an inadvertent oversight. In addition, Respondent has no history of violating the Act and fully  
8 cooperated with our investigation.

9 **PROPOSED PENALTY**

10 After consideration of the factors of Regulation 18361.5, including whether the behavior in  
11 question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as  
12 consideration of penalties in prior enforcement actions, the imposition of a penalty of Five Thousand  
13 Dollars (\$5,000) is recommended.