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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: GREGORY COX, Respondent.	FPPC Case No. 16/292 STIPULATION, DECISION AND ORDER

STIPULATION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Gregory Cox hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Government Code sections 83115.5, 11503, 11523, and in California Code of Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

It is further stipulated and agreed that Respondent violated the Political Reform Act as set forth in Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated by reference as though fully set forth herein.

Respondent agrees to the issuance of the Decision and Order, which is attached hereto. Also, Respondent agrees to the Commission imposing against him an administrative penalty in the amount of $3,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this Stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be reimbursed to Respondent.

Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

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Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: ________________________

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Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: ________________________

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Gregory Cox, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Gregory Cox," FPPC Case No. 16/292, 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 Chair.

IT IS SO ORDERED.

Dated: ____________________

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Joann Remke, Chair
Fair Political Practices Commission

<u>**EXHIBIT 1**</u>

INTRODUCTION

This case arose from information received from Coastal Commissioner Gregory Cox—who reported himself to the Enforcement Division after discovering that his vote in October 2015 on a matter involving SeaWorld was a conflict of interest in violation of the Political Reform Act (the "Act").[1]

SUMMARY OF THE LAW

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.[2] For this reason, the Act is to be construed liberally to accomplish its purposes.[3]

One purpose of the Act is to ensure that public officials are disqualified from certain matters in order that conflicts of interest may be avoided.[4] Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."[5]

Conflicts of Interest

The primary purpose of the conflict of interest provisions of the Act is to ensure that public officials perform their duties in an impartial manner, free from bias caused by their own financial interests.[6]

In furtherance of this goal, the Act 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 he knows, or has reason to know, that he has a financial interest.[7] This prohibition applies to public officials who are members of state and local government agencies—including members of the Coastal Commission.[8]

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[1] The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

[2] Section 81001, subdivision (h).

[3] Section 81003.

[4] Section 81002, subdivision (c).

[5] Section 81002, subdivision (f).

[6] Section 81001, subdivision (b).

[7] Section 87100.

[8] Section 82048, subdivision (a).

Financial interests that may give rise to a conflict of interest include any business entity in which the public official has a direct or indirect investment worth $2,000 or more, including stock owned by the official's spouse.[9]

Generally, if it is reasonably foreseeable that the governmental decision will have a financial effect on the financial interest, and if the effect would be material, then the official has a prohibited conflict of interest.[10]

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is the subject of the governmental decision.[11] For a financial interest that is a business entity, the financial effect is material if the entity initiates the proceeding in which the governmental decision will be made by filing an application.[12]

SUMMARY OF THE FACTS

Gregory Cox has been a member of the San Diego County Board of Supervisors since 1995 and a member of the California Coastal Commission since 2013. His wife is Cheryl Cox, who served as Mayor of Chula Vista from 2006 to 2014. (For ease of reference, Commissioner Cox simply is referred to as Cox, and his wife is referred to as Mrs. Cox.)

In January 2015, Mrs. Cox purchased 500 shares of SeaWorld stock for approximately $8,679 for her individual retirement account.

In April 2015, SeaWorld San Diego filed an application with the California Coastal Commission to replace and expand its existing orca facility.

In October 2015, at a public meeting of the California Coastal Commission, one of the agenda items was the SeaWorld application. Cox moved to approve the application with a condition limiting the number of orcas in the facility. Another member of the Coastal Commission amended the motion to ban captive breeding of orcas at SeaWorld and to restrict orca transfers. The amended motion passed 11 to 1. Cox was the lone dissenting vote. Then, the Coastal Commission unanimously voted to approve the permit with the amendment relating to orcas.

As described by Cox, he was unaware when he voted that his wife had purchased SeaWorld stock earlier that year, and he did not discover the issue until January 2016—when he began to prepare his annual statement of economic interests for calendar year 2015. Upon discovering the SeaWorld stock, he immediately asked his wife to sell the stock. Mrs. Cox initiated the trade to sell the stock in January 2016 before the meeting of the Coastal Commission that month (at which one of the closed session agenda items involved litigation with SeaWorld).

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[9] Section 87103.

[10] Regulation 18700, subdivision (d).

[11] Regulation 18701, subdivision (a).

[12] Regulation 18702.1, subdivisions (a)(1) and (5).

She sold the stock for approximately $9,593. Cox then self-reported this violation to the Enforcement Division on or about January 22, 2016.

VIOLATION

Count 1: Conflict of Interest

In October 2015, when Cox voted as described above, he should have known that he had a disqualifying conflict of interest by virtue of his wife's purchase of the SeaWorld stock earlier that year. Since SeaWorld San Diego was the applicant and the subject of the proceeding, the financial effect of any vote on the application was both material and reasonably foreseeable.[13] In this way, Cox violated Section 87100.

PROPOSED PENALTY

This matter consists of one count. The maximum penalty that may be imposed is $5,000.[14]

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.[15] Additionally, the Commission considers penalties in prior cases with similar violations.

Making a governmental decision in which an official has a financial interest is a serious violation of the Act. It undermines public trust in government by creating the appearance that the decision was the product of a conflict of interest. Also, such conduct contradicts the Act's decree that government should serve the needs of all citizens equally, in an impartial manner—without regard to wealth or financial interests.

A recent stipulation involving this type of violation imposed a penalty in the midrange. See *In the Matter of Collin Wong-Martinusen*; FPPC Case No. 15/151 (approved Aug. 2015), where a penalty in the amount of $2,500 was imposed against the chief of staff for California's Treasurer, John Chiang, for a conflict of interest that involved ownership of business entity stock. As in the current case, the respondent's ownership interest in the stock was acquired due to the actions of a third party, apparently without respondent's knowledge, and the respondent reported himself to the Enforcement Division after he discovered his conflict of interest.

[13] Regulations 18701, subdivision (a), and 18702.1, subdivisions (a)(1) and (5).

[14] See Section 83116, subdivision (c).

[15] Regulation 18361.5, subdivision (d).

However, in the current case, there are reasons to impose a higher penalty. In addition to being a member of the California Coastal Commission, Cox has been a San Diego County Supervisor for over 20 years, and his wife was the Mayor of Chula Vista from 2006 to 2014. As both Cox and Mrs. Cox acknowledge, they had a high level of awareness regarding the Act's conflict of interest provisions due to these years of public service. As Cox also acknowledges, he was under an obligation to be aware of his financial interests and to communicate with his spouse about such matters—so as to avoid conflicts of interest and the appearance of possible impropriety.[16] As a San Diego County Supervisor and California Coastal Commissioner, the types of governmental decisions Cox is called upon to make involve matters of substantial interest to the public and to the regulated community.

Under these circumstances, a penalty in the amount of $3,000 is recommended.

Conflict of interest violations typically result in fines in the medium to high range. Although Cox's actions resulted in a conflict of interest violation, Cox contends that the violation was inadvertent, that he did not vote with the intent to benefit his own financial interests, and that he made no attempt to conceal his actions or financial interests. It appears that he also self-reported the violation when he became aware of his conflict, and he fully cooperated with the Enforcement Division in resolving this matter. Additionally, Cox has no history of prior violations of the Act. For these reasons, a higher penalty is not being sought.

CONCLUSION

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty against Gregory Cox in the amount of $3,000 is justified.

[16] The last paragraph of Section 87103 makes it clear that a public official may have a conflict of interest based on an investment owned by his spouse. Also, *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, 1058, correctly notes that the Act seeks to forestall not just *actual* improprieties, "but also the *appearance* of *possible* improprieties." (Emphasis added.)