



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
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MEMORANDUM

To: Chair Remke, and Commissioners Audero, Casher, Wasserman and Wynne

From: Erin V. Peth, Executive Director
Galena West, Chief of Enforcement
Angela J. Brereton, Senior Commission Counsel

Date: July 5, 2016

RE: Assignment of Hearing to Administrative Law Judge (“ALJ”)

Case Name: In the Matter of George Alai (FPPC Case No. 13/1135)

I. INTRODUCTION

Respondent George Alai was the Chief Technology Officer for the California Department of General Services (DGS) from August 1, 2012 through March 11, 2014. The Political Reform Act (the “Act”)¹ prohibits public officials from making, participating in making, or attempting to use his official position to influence a governmental decision in which the official knows or has reason to know he has a financial interest. Alai violated the Act by signing three DGS Desktop & Mobile Computing Justification Forms (Form-DMCs) for three purchase orders for Hewlett-Packard Company products when Alai owned stock in Hewlett-Packard Company.

Alai has requested an administrative hearing on the Accusation attached hereto as Exhibit A. The Accusation alleges three violations of the Act.

II. COMMISSION ACTION IS ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING

The Executive Director and the Chief of Enforcement are recommending that the hearing should be conducted before an Administrative Law Judge (“ALJ”) pursuant to Section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then have the opportunity to make the final determination on the case.

This memorandum is submitted to each member of the Commission pursuant to Regulation 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission Action is required if the Commission approves of the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission if so desired.

III. PROCEDURAL HISTORY

A probable cause hearing was held on April 6, 2016. On April 13, 2016, the Hearing Officer issued an Order Re: Probable Cause ("Order"). The Order included a finding that there is probable cause to believe that Alai violated the Act, as set forth in the attached Accusation.

On May 9, 2016, the Enforcement Division provided the Accusation and accompanying documents to a process server for personal service, and at the request of Alai's counsel, emailed a courtesy copy of the Accusation to Alai's counsel on that same date. On May 17, 2016, the Accusation was personally served on Alai, through counsel. On or about May 16, 2016, Alai served a Notice of Defense, requesting a hearing.

IV. PROCEDURAL ISSUES

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ.²

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A ruling of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ's proposed decision in the proceeding.³

V. SUMMARY OF THE ACCUSATION

Hewlett-Packard Company (HP), headquartered in Palo Alto, CA, is an international technology company, which manufactures products including desktop workstations and laptop computers. During 2012 and 2013, Alai owned shares of HP stock worth more than \$25,000.

In 2009, in order to provide HP products to California state agencies, HP partnered with Western Blue Corporation and Insight Public Sector as Joint Prime Contract Holders under a Leveraged Procurement Agreement (LPA). Western Blue Corporation was the sales and service

² See § 11512, subd. (a).

³ See § 11512, subd. (b).

entity, Insight Public Sector was the distributor, and HP provided the products. The LPA mandated that all state agency requests for personal computer products, services and support, be directed to Western Blue Corporation/Insight Public Sector/HP. After receiving an accurate purchase order under the LPA, Western Blue Corporation purchased the HP products from HP via its distributor, Insight Public Sector, and the HP products were then resold to the agency who submitted the purchase order.

DGS serves as business manager for the state of California. DGS provides a variety of services to state agencies including procurement and acquisition solutions, real estate management and design, environmentally friendly transportation, professional printing, design and Web services, administrative hearings, legal services, building standards, oversight of structural safety, fire/life safety and accessibility for the design and construction of K-12 public schools and community colleges, and funding for school construction. Each of these divisions is supported by a general Administration Division located in West Sacramento, CA, which includes an information technology services division (IT).

In 2012 and 2013, Alai was the DGS Chief Technology Officer in IT. When a DGS division needed IT products, the division seeking the products submitted a purchase order form accompanied by a Desktop & Mobile Computing Justification Form (Form-DMC). No purchase order for IT products could be processed without a completed Form-DMC. The Form-DMC required the signature of the Chief Information Officer of IT. Alai was authorized as part of his job duties as CTO to sign Form-DMCs as the CIO's designee when the CIO was absent or otherwise unavailable. The section designated for the CIO's signature stated:

By signing this form, I declare that I have no direct or indirect investments, real property or interest in any company, business, entity or organization that may involve the project or contract.

I certify that I am the agency director or designee, that the matters described herein are consistent with this agency's current information management strategy and information technology infrastructure; that these matters comply with this agency's approved Desktop and Mobile Computing Policy; that the matters described herein are subject to the provisions of SAM Section 4819.3 et seq. and are in conformity with the criteria and procedures for information technology and security prescribed in SAM; and that the foregoing statements are true to the best of my knowledge and belief.⁴ (Emphasis in original.)

Alai admitted in an interview with Enforcement Division staff that he signed the Form-DMCs at the CIO's direction in the CIO's absence. The evidence showed that Alai signed three Form-DMCs approving purchase orders for HP products, two on November 20, 2012 and one on June 9, 2013. The purchase amount for the three purchase orders totaled \$53,334.45.

The Accusation consists of three counts:

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⁴ The State Administrative Manual (SAM) is a reference resource for statewide policies, procedures, requirements and information developed and issued by authoring agencies such as the Governor's Office, Department of General Services (DGS), Department of Finance (DOF), and Department of Human Resources (CalHR).

Counts 1 – 3: Conflict of Interest

In 2012 and 2013, as the DGS CTO, Alai reviewed and signed three Form-DMCs accompanying purchase orders for HP products at a time when he owned HP stock worth more than \$25,000.

As the DGS CTO, Alai was a public official. By signing the Form-DMCs, Alai obligated or committed his agency to complete the purchase orders to which the Form-DMCs were attached. On the date of each of the above decisions, Alai had a direct investment interest in HP worth more than \$25,000. HP was directly involved in these governmental decisions because HP was one of the contract holders and was the manufacturer of the products for each of the above referenced purchase orders. Since HP was directly involved in the governmental decisions, the financial effect of the governmental decisions was presumed to be material. And it was reasonably foreseeable that the governmental decisions would have a material financial effect on HP because HP would only be paid if the purchase orders were complete, including Alai's signature on the Form-DMCs.

Therefore, Alai made three governmental decisions in 2012 and 2013 in which he had a financial interest, in violation of Section 87100.

VI. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available. (Regulation 18361.5, subd. (b).) Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

Exhibit A

1 GALENA WEST
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2 ANGELA J. BRERETON
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3 FAIR POLITICAL PRACTICES COMMISSION
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6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission
7

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

11 In the Matter of) FPPC Nos. 13/1135
12)
13 GEORGE ALAI,) ACCUSATION
14)
15 Respondent.) (Gov. Code §11503)
16)

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, after a finding
18 of probable cause pursuant to Government Code Section 83115.5, alleges the following:

19 **JURISDICTION**

20 1. Complainant is the Enforcement Division of the Fair Political Practices Commission and
21 makes this Accusation pursuant to the Political Reform Act (the "Act"),¹ in its official capacity and in the
22 public interest.²
23

24 ///

25
26
27 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are
28 to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of
Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² §§ 83111, 83116, and 91000.5; Reg. 18361 and 18361.4, subd. (e).

1 2. In 1974, California voters found and declared that previous laws regulating political
2 practices had suffered from inadequate enforcement, and they intended that the Act be vigorously
3 enforced.³ To that end, the Act must be liberally construed to achieve its purposes.⁴

4 3. The Act is intended to ensure that public officials are disqualified from certain matters in
5 order that conflicts of interest may be avoided.⁵

6 **RESPONDENT**

7 4. Respondent George Alai was the Chief Technology Officer for the California Department
8 of General Services (DGS) from August 1, 2012 through March 11, 2014.

9 5. The actions of Alai – making three governmental decisions in 2012 and 2013 in which he
10 had a financial interest – are in violation of the law and public policies of the State of California.

11 **APPLICABLE LAW**

12 6. All applicable law in this Accusation is the law as it existed during 2012 and 2013, the
13 relevant time for the alleged violations.

14 **Conflicts of Interest**

15 7. A public official may not make, participate in making or attempt to use his official position
16 to influence a governmental decision in which he knows, or has reason to know, he has a financial interest.⁶
17 A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will
18 have a material financial effect on any business entity in which the official has a direct or indirect
19 investment worth \$2,000 or more.⁷

20 8. In 2012 and 2013, there were six steps to determine whether an individual had a conflict
21 of interest in a governmental decision.⁸

22 9. First, the individual must have been a public official.⁹ An employee of a state government
23 agency was a public official.¹⁰

24
25 ³ §§ 81001, subd. (h), and 81002, subd. (f).

26 ⁴ § 81003.

27 ⁵ § 81002, subd. (c).

28 ⁶ § 87100.

⁷ § 87103, subd. (a).

⁸ Reg. 18700, subd. (b).

⁹ Reg. 18700, subd. (b)(1).

¹⁰ § 82048, subd. (a).

1 10. Second, the official must have made, participated in making, or attempted to use his or her
2 official position to influence a governmental decision.¹¹ A public official made a governmental decision
3 when the official, acting within the authority of his office or position, obligated or committed his agency
4 to any course of action.¹²

5 11. Third, the official must have had an economic interest.¹³ Such interests included any
6 business entity in which the official had a direct or indirect investment worth \$2,000 or more.¹⁴

7 12. Fourth, it must be determined whether the economic interest of the official was directly or
8 indirectly involved in the governmental decision.¹⁵ A business entity was directly involved in a
9 governmental decision when the business entity was a named party in the decision.¹⁶

10 13. Fifth, the applicable materiality standard must be determined.¹⁷ When the business entity
11 was directly involved in the governmental decision, the financial effect was presumed to be material.¹⁸

12 14. Sixth, at the time of the governmental decision, it must have been reasonably foreseeable
13 that the decision would have a material financial effect.¹⁹ A material financial effect on an economic
14 interest was reasonably foreseeable if it was substantially likely that one or more of the materiality
15 standards applicable to the economic interest would have been met as a result of the governmental
16 decision.²⁰ Whether the financial consequences of a decision are "reasonably foreseeable" at the time of
17 a governmental decision depends upon the facts of each particular case.²¹

18
GENERAL FACTS

19 15. Complainant incorporates paragraphs 4 – 5 of this Accusation, as though completely set
20 forth herein.

21 16. Hewlett-Packard Company (HP), headquartered in Palo Alto, CA, is an international
22 technology company, which manufactures products including desktop workstations and laptop computers.

23 ¹¹ Reg. 18700, subd. (b)(2).

24 ¹² Reg. 18702.1, subd. (a).

25 ¹³ Reg. 18700, subd. (b)(3).

26 ¹⁴ § 87103, subd. (a), and Reg. 18703.1, subd. (a).

27 ¹⁵ Reg. 18700, subd. (b)(4).

28 ¹⁶ Reg. 18704.1, subd. (a)(2).

¹⁷ Reg. 18700, subd. (b)(5).

¹⁸ Reg. 18705.1, subd. (b)(1).

¹⁹ Reg. 18700, subd. (b)(6).

²⁰ Reg. 18706, subd. (a).

²¹ Reg. 18706, subd. (b).

1 Alai admitted in his statements of economic interests and during an interview with Enforcement Division
2 staff that during 2012 and 2013 he owned shares of HP stock worth more than \$25,000.

3 17. The evidence shows that in 2009, in order to provide HP products to California state
4 agencies, HP partnered with Western Blue Corporation and Insight Public Sector as Joint Prime Contract
5 Holders under a Leveraged Procurement Agreement (LPA). Western Blue Corporation was the sales and
6 service entity, Insight Public Sector was the distributor, and HP provided the products. The LPA mandated
7 that all state agency requests for personal computer products, services and support, be directed to Western
8 Blue Corporation/Insight Public Sector/HP. Each purchase order clearly identified Western Blue
9 Corporation/Insight Public Sector/HP as the supplier. After receiving an accurate purchase order under
10 the LPA, Western Blue Corporation purchased the HP products from HP via its distributor, Insight Public
11 Sector, and the HP products were then resold to the agency who submitted the purchase order.

12 18. According to its website, DGS serves as business manager for the state of California. DGS
13 provides a variety of services to state agencies including procurement and acquisition solutions, real estate
14 management and design, environmentally friendly transportation, professional printing, design and Web
15 services, administrative hearings, legal services, building standards, oversight of structural safety, fire/life
16 safety and accessibility for the design and construction of K-12 public schools and community colleges,
17 and funding for school construction. Each of these divisions is supported by a general Administration
18 Division located in West Sacramento, CA, which includes an information technology services division
19 (IT).

20 19. The evidence shows that in 2012 and 2013, Alai was the DGS Chief Technology Officer
21 in IT. When a DGS division needed IT products, the division seeking the products submitted a purchase
22 order form accompanied by a Desktop & Mobile Computing Justification Form (Form-DMC). No
23 purchase order for IT products could be processed without a completed Form-DMC. The Form-DMC
24 required the signature of the Chief Information Officer of IT. Alai admitted during an interview with
25 Enforcement Division staff that he was authorized as part of his job duties as CTO to sign
26 Form-DMCs as the CIO's designee when the CIO was absent or otherwise unavailable. The section
27 designated for the CIO's signature stated:

28 ///

1 By signing this form, I declare that I have no direct or indirect investments, real
2 property or interest in any company, business, entity or organization that may involve
3 the project or contract.

4 I certify that I am the agency director or designee, that the matters described herein are
5 consistent with this agency's current information management strategy and information
6 technology infrastructure; that these matters comply with this agency's approved Desktop
7 and Mobile Computing Policy; that the matters described herein are subject to the
8 provisions of SAM Section 4819.3 et seq. and are in conformity with the criteria and
9 procedures for information technology and security prescribed in SAM; and that the
10 foregoing statements are true to the best of my knowledge and belief.²² (Emphasis in
11 original.)

12 20. Alai admitted in an interview with Enforcement Division staff that he signed the Form-
13 DMCs at the CIO's direction in the CIO's absence. The evidence showed that Alai signed the following
14 Form-DMCs approving purchase orders for HP products:

Count	Date of Alai's Approval	DGS Order No.	Supplier	Products	Purchase Amount
1	11/20/2012	3166552	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$17,479.26
2	11/20/2012	3168126	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 HP Z280 Workstations	\$17,158.50
3	06/09/2013	3170052	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$18,696.69
TOTAL					\$53,334.45

18 PROCEDURAL HISTORY

19 21. The Enforcement Division initiated the administrative action against Alai in this matter by
20 serving him, through counsel, with a packet containing a cover letter, a Report in Support of a Finding of
21 Probable Cause (Report), a fact sheet regarding probable cause proceedings, selected sections of the
22 California Government Code regarding probable cause proceedings for the Fair Political Practices
23 Commission, and selected regulations of the Fair Political Practices Commission regarding probable cause
24 proceedings.²³

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27 ²² The State Administrative Manual (SAM) is a reference resource for statewide policies, procedures, requirements
28 and information developed and issued by authoring agencies such as the Governor's Office, Department of General Services (DGS), Department of Finance (DOF), and Department of Human Resources (CalHR).

²³ §§ 83115.5 and 91000.5. See attached Exhibit A and Exhibit B.

1 22. Alai was served, through counsel, on November 6, 2015 by email,²⁴ and on
2 November 24, 2015 by certified mail, return receipt requested.²⁵ So the administrative action commenced
3 on at the latest on November 24, 2015, the date the certified mail receipt was signed, and the five year
4 statute of limitations was effectively tolled on that date.

5 23. The information contained in the packet advised Alai that he had 21 days in which to
6 request a probable cause conference and/or to file a written response to the Report.

7 24. Alai requested a probable cause conference, which was held on April 6, 2016.

8 25. The Hearing Officer issued an Order re: Probable Cause, which was served on
9 April 13, 2016, finding that probable cause exists to believe Alai violated the Act as stated in the Report.²⁶

10 VIOLATIONS

11 26. Complainant incorporates paragraphs 1 – 25 of this Accusation, as though completely set
12 forth herein.

13 27. Alai committed three violations of the Act, as follows:

14 Count 1: Conflict of Interest

15 28. On or about November 20, 2012, as the DGS CTO, Alai reviewed and signed a Form-DMC
16 accompanying DGS purchase order No. 3166552 for HP products at a time when he owned HP stock
17 worth more than \$25,000.

18 29. As the DGS CTO, Alai was a public official. By signing the Form-DMC, Alai obligated or
19 committed his agency to complete the purchase order to which the Form-DMC was attached. On the date
20 of the above decision, Alai had a direct investment interest in HP worth more than \$25,000. HP was
21 directly involved in the governmental decision because HP was one of the contract holders and was the
22 manufacturer of the products for the above referenced purchase order. Since HP was directly involved in
23 the governmental decision, the financial effect of the governmental decision was presumed to be material.
24 And it was reasonably foreseeable that the governmental decision would have a material financial effect
25 on HP because HP would only be paid if the purchase order was complete, including Alai's signature on
26 the Form-DMC.

27 ²⁴ See attached Exhibit C.

28 ²⁵ §§ 8311(Mailing by Certified Mail) and 83115.5. See attached Exhibit D.

²⁶ See attached Exhibit E.

1 30. Therefore, Alai made a governmental decision in which he had a financial interest, in
2 violation of Section 87100.

3 Count 2: Conflict of Interest

4 31. On or about November 20, 2012, as the DGS CTO, Alai reviewed and signed a Form-DMC
5 accompanying DGS purchase order No. 3168126 for HP products at a time when he owned HP stock
6 worth more than \$25,000.

7 32. As the DGS CTO, Alai was a public official. By signing the Form-DMC, Alai obligated or
8 committed his agency to complete the purchase order to which the Form-DMC was attached. On the date
9 of the above decision, Alai had a direct investment interest in HP worth more than \$25,000. HP was
10 directly involved in the governmental decision because HP was one of the contract holders and was the
11 manufacturer of the products for the above referenced purchase order. Since HP was directly involved in
12 the governmental decision, the financial effect of the governmental decision was presumed to be material.
13 And it was reasonably foreseeable that the governmental decision would have a material financial effect
14 on HP because HP would only be paid if the purchase order was complete, including Alai's signature on
15 the Form-DMC.

16 33. Therefore, Alai made a governmental decision in which he had a financial interest, in
17 violation of Section 87100.

18 Count 3: Conflict of Interest

19 34. On or about June 9, 2013, as the DGS CTO, Alai reviewed and signed a Form-DMC
20 accompanying DGS purchase order No. 3170052 for HP products at a time when he owned HP stock
21 worth more than \$25,000.

22 35. As the DGS CTO, Alai was a public official. By signing the Form-DMC, Alai obligated or
23 committed his agency to complete the purchase order to which the Form-DMC was attached. On the date
24 of the above decision, Alai had a direct investment interest in HP worth more than \$25,000. HP was
25 directly involved in the governmental decision because HP was one of the contract holders and was the
26 manufacturer of the products for the above referenced purchase order. Since HP was directly involved in
27 the governmental decision, the financial effect of the governmental decision was presumed to be material.
28 And it was reasonably foreseeable that the governmental decision would have a material financial effect

1 on HP because HP would only be paid if the purchase order was complete, including Alai's signature on
2 the Form-DMC.

3 36. Therefore, Alai made a governmental decision in which he had a financial interest, in
4 violation of Section 87100.

5 **EXCULPATORY AND MITIGATING INFORMATION**

6 37. Complainant incorporates paragraphs 1 – 36 of this Accusation, as though completely set
7 forth herein.

8 38. Alai did not conceal his financial interest, disclosing his HP investment interest in his
9 applicable statements of economic interests. Alai has no prior violations of the Act, and he cooperated
10 with Enforcement Division staff during the investigation of this matter.

11 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

12 39. Complainant incorporates paragraphs 1 – 38 of this Accusation, as though completely set
13 forth herein.

14 40. In this case, Alai signed three Form-DMCs approving purchase orders to acquire HP
15 products at a time when he owned more than \$25,000 in HP stock. And when he approved the Form-
16 DMCs, he signed declarations that he had no investment in any company involved in the purchase orders.

17 **PRAYER**

18 WHEREFORE, Complainant prays as follows:

19 41. That the Fair Political Practices Commission hold a hearing pursuant to Government Code
20 Section 83116 and Title 2, California Code of Regulations, Section 18361.5, and at such hearing find that
21 Alai violated the Act as alleged herein;

22 42. That the Commission, pursuant to Government Code Section 83116, subdivision (c), order
23 Alai to pay a monetary penalty of at least Three Thousand Dollars (\$3,000) and at most Five Thousand
24 Dollars (\$5,000) per count for the violations of the Political Reform Act alleged herein in **Counts 1 – 3**;

25 43. That the Commission, pursuant to Title 2, California Code of Regulations,
26 Section 18361.5, subdivision (d), consider the following factors in framing a proposed order following a
27 finding of a violation pursuant to Government Code Section 83116: (1) the seriousness of the violation;
28 (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation was

1 deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting the
2 Commission staff or any other government agency in a manner not constituting a complete defense under
3 Government Code Section 83114(b); (5) whether the violation was isolated or part of a pattern and whether
4 the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) whether
5 the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full
6 disclosure.

7 44. That the Commission grant such other and further relief as it deems just and proper.

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9 Dated: 27 April 16

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11 Galena West
12 Chief of Enforcement
13 Fair Political Practices Commission
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EXHIBIT A

ACCUSATION
FPPC Case No. 13/1135

1 GALENA WEST
Chief of Enforcement
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6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission
7

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

11 In the Matter of

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GEORGE ALAI,

Respondent.

) FPPC No. 13/1135
)
)
)
) **REPORT IN SUPPORT OF A FINDING OF
PROBABLE CAUSE**
)
) Conference Date: TBA
) Conference Time: TBA
) Conference Location: Commission Offices
428 J Street, Suite 620
Sacramento, CA 95814

INTRODUCTION

Respondent George Alai was the Chief Technology Officer for the California Department of General Services (DGS) from August 1, 2012 through March 11, 2014. The Political Reform Act (the "Act")¹ prohibits a public official from making, participating in making, or attempting to use his official position to influence a governmental decision in which the official knows or has reason to know he has a financial interest. Alai violated the Act by signing three DGS purchase orders for Hewlett-Packard Company products when Alai owned stock in Hewlett-Packard Company.

///

¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

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SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed at the time of the applicable violations.

Jurisdiction

The Fair Political Practices Commission (the "Commission") has administrative jurisdiction to enforce the provisions of the Act.²

Probable Cause Proceedings

Prior to the Enforcement Division commencing an administrative action, the General Counsel of the Commission or her designee (the "hearing officer"), must make a finding that there is probable cause to believe the respondent has violated the Act.³ After a finding of probable cause, the Commission may hold a noticed hearing in accordance with the Administrative Procedure Act⁴ to determine whether violations occurred, and levy an administrative penalty of up to \$5,000 for each violation.⁵

Standard for Finding Probable Cause

To make a finding of probable cause, the hearing officer must be presented with sufficient evidence to lead a person of ordinary caution and prudence to believe, or entertain a strong suspicion, that a respondent committed or caused a violation.⁶

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

When enacting the Political Reform Act, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.⁷ To that end, the Act must be liberally construed to achieve its purposes.⁸

///

² § 83116.

³ § 83115.5, and Reg. 18361 and 18361.4.

⁴ § 11500, et seq.

⁵ § 83116, and Reg. 18361.4, subd. (e).

⁶ Reg. 18361.4, subd. (e).

⁷ § 81001, subd. (h).

⁸ § 81003.

1 There are many purposes of the Act. One purpose is to ensure that public officials are
2 disqualified from certain matters in order that conflicts of interest may be avoided.⁹ Another is to
3 provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."¹⁰

4 Conflicts of Interest

5 A public official may not make, participate in making or attempt to use his official position to
6 influence a governmental decision in which he knows, or has reason to know, he has a financial
7 interest.¹¹ A public official has a financial interest in a decision if it is reasonably foreseeable that the
8 decision will have a material financial effect on any business entity in which the official has a direct or
9 indirect investment worth \$2,000 or more.¹²

10 In 2012 and 2013, there were six steps to determine whether an individual had a conflict of
11 interest in a governmental decision.¹³

12 First, the individual must have been a public official.¹⁴ An employee of a state government
13 agency was a public official.¹⁵

14 Second, the official must have made, participated in making, or attempted to use his or her
15 official position to influence a governmental decision.¹⁶ A public official made a governmental
16 decision when the official, acting within the authority of his office or position, obligated or committed
17 his agency to any course of action.¹⁷

18 Third, the official must have had an economic interest.¹⁸ Such interests included any business
19 entity in which the official had a direct or indirect investment worth \$2,000 or more.¹⁹

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23 ⁹ § 81002, subd. (c).

¹⁰ § 81002, subd. (f).

¹¹ § 87100.

¹² § 87103, subd. (a).

¹³ Reg. 18700, subd. (b).

¹⁴ Reg. 18700, subd. (b)(1).

¹⁵ § 82048, subd. (a).

¹⁶ Reg. 18700, subd. (b)(2).

¹⁷ Reg. 18702.1, subd. (a).

¹⁸ Reg. 18700, subd. (b)(3).

¹⁹ § 87103, subd. (a), and Reg. 18703.1, subd. (a).

1 Fourth, it must be determined whether the economic interest of the official was directly or
2 indirectly involved in the governmental decision.²⁰ A business entity was directly involved in a
3 governmental decision when the business entity was a named party in the decision.²¹

4 Fifth, the applicable materiality standard must be determined.²² When the business entity was
5 directly involved in the governmental decision, the financial effect was presumed to be material.²³

6 Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that
7 the decision would have a material financial effect.²⁴ A material financial effect on an economic
8 interest was reasonably foreseeable if it was substantially likely that one or more of the materiality
9 standards applicable to the economic interest would have been met as a result of the governmental
10 decision.²⁵ Whether the financial consequences of a decision are "reasonably foreseeable" at the time
11 of a governmental decision depends upon the facts of each particular case.²⁶

12 SUMMARY OF THE EVIDENCE

13 Hewlett-Packard Company (HP), headquartered in Palo Alto, CA, is an international
14 technology company, which manufactures products including desktop workstations and laptop
15 computers. Alai admitted in his statements of economic interests and during an interview with
16 Enforcement Division staff that during 2012 and 2013 he owned shares of HP stock worth more than
17 \$25,000.

18 The evidence shows that in 2009, in order to provide HP products to California state agencies,
19 HP partnered with Western Blue Corporation and Insight Public Sector as Joint Prime Contract
20 Holders under a Leveraged Procurement Agreement (LPA). Western Blue Corporation was the sales
21 and service entity, Insight Public Sector was the distributor, and HP provided the products. The LPA
22 mandated that all state agency requests for personal computer products, services and support, be
23 directed to Western Blue Corporation/Insight Public Sector/HP. Each purchase order clearly identified

24 ²⁰ Reg. 18700, subd. (b)(4).

25 ²¹ Reg. 18704.1, subd. (a)(2).

26 ²² Reg. 18700, subd. (b)(5).

27 ²³ Reg. 18705.1, subd. (b)(1).

28 ²⁴ Reg. 18700, subd. (b)(6).

²⁵ Reg. 18706, subd. (a).

²⁶ Reg. 18706, subd. (b).

1 Western Blue Corporation/Insight Public Sector/HP as the supplier. After receiving an accurate
2 purchase order under the LPA, Western Blue Corporation purchased the HP products from HP via its
3 distributor, Insight Public Sector, and the HP products were then resold to the agency who submitted
4 the purchase order.

5 According to its website, DGS serves as business manager for the state of California. DGS
6 provides a variety of services to state agencies including procurement and acquisition solutions, real
7 estate management and design, environmentally friendly transportation, professional printing, design
8 and Web services, administrative hearings, legal services, building standards, oversight of structural
9 safety, fire/life safety and accessibility for the design and construction of K-12 public schools and
10 community colleges, and funding for school construction. Each of these divisions is supported by a
11 general Administration Division located in West Sacramento, CA, which includes an information
12 technology services division (IT).

13 The evidence shows that in 2012 and 2013, Alai was the DGS Chief Technology Officer in IT.
14 When a DGS division needed IT products, the division seeking the products submitted a purchase
15 order form accompanied by a Desktop & Mobile Computing Justification Form (Form-DMC). No
16 purchase order for IT products could be processed without a completed Form-DMC. The Form-DMC
17 required the signature of the Chief Information Officer of IT. Alai admitted during an interview with
18 Enforcement Division staff that he was authorized as part of his job duties as CTO to sign
19 Form-DMCs as the CIO's designee when the CIO was absent or otherwise unavailable. The section
20 designated for the CIO's signature stated:

21
22
23
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25
26
27 ///

1 By signing this form, I declare that I have no direct or indirect investments, real
2 property or interest in any company, business, entity or organization that may
involve the project or contract.

3 I certify that I am the agency director or designee, that the matters described herein are
4 consistent with this agency's current information management strategy and information
5 technology infrastructure; that these matters comply with this agency's approved
6 Desktop and Mobile Computing Policy; that the matters described herein are subject to
7 the provisions of SAM Section 4819.3 et seq. and are in conformity with the criteria and
procedures for information technology and security prescribed in SAM; and that the
8 foregoing statements are true to the best of my knowledge and belief.²⁷ (Emphasis in
9 original.)

10 Alai admitted in an interview with Enforcement Division staff that he signed the Form-DMCs at the
11 CIO's direction in the CIO's absence. The evidence showed that Alai signed the following
12 Form-DMCs approving purchase orders for HP products:

Count	Date of Alai's Approval	DGS Order No.	Supplier	Products	Purchase Amount
1	11/20/2012	3166552	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$17,479.26
2	11/20/2012	3168126	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 HP Z280 Workstations	\$17,158.50
3	06/09/2013	3170052	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$18,696.69
TOTAL					\$53,334.45

VIOLATIONS

Counts 1 – 3: Conflict of Interest

19 In 2012 and 2013, as the DGS CTO, Alai reviewed and signed three Form-DMCs
20 accompanying purchase orders for HP products at a time when he owned HP stock worth more than
21 \$25,000.
22

23 As the DGS CTO, Alai was a public official. By signing the Form-DMCs, Alai obligated or
24 committed his agency to complete the purchase orders to which the Form-DMCs were attached. On
25 the date of each of the above decisions, Alai had a direct investment interest in HP worth more than
26

27 ²⁷ The State Administrative Manual (SAM) is a reference resource for statewide policies, procedures, requirements
and information developed and issued by authoring agencies such as the Governor's Office, Department of General Services
(DGS), Department of Finance (DOF), and Department of Human Resources (CalHR).
28

1 \$25,000. HP was directly involved in these governmental decisions because HP was one of the
2 contract holders and was the manufacturer of the products for each of the above referenced purchase
3 orders. Since HP was directly involved in the governmental decisions, the financial effect of the
4 governmental decisions was presumed to be material. And it was reasonably foreseeable that the
5 governmental decisions would have a material financial effect on HP because HP would only be paid
6 if the purchase orders were complete, including Alai's signature on the Form-DMCs.

7 Therefore, Alai made three governmental decisions in 2012 and 2013 in which he had a
8 financial interest, in violation of Section 87100.

9 **OTHER RELEVANT MATERIAL AND ARGUMENTS**

10 In this case, Alai signed three Form-DMCs approving purchase orders to acquire HP products
11 at a time when he owned more than \$25,000 in HP stock. And when he approved the Form-DMCS, he
12 signed declarations that he had no investment in any company involved in the purchase orders.

13 **EXCULPATORY AND MITIGATING INFORMATION**

14 Alai did not conceal his financial interest, disclosing his HP investment interest in his
15 applicable statements of economic interests. Alai has no prior violations of the Act, and he cooperated
16 with Enforcement Division staff during the investigation of this matter.

17 **CONCLUSION**

18 Probable cause exists to believe that Respondent George Alai committed three violations of the
19 Act, as set forth above. The Enforcement Division respectfully requests an order finding probable
20 cause pursuant to Section 83115.5 and Regulation 18361.4.

21 Dated: October 21, 2015

22 Respectfully Submitted,

23 **FAIR POLITICAL PRACTICES COMMISSION**

24 By: Galena West



25
26 Angela V. Brereton
27 Senior Commission Counsel
28 Enforcement Division



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

October 21, 2015

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Lawrence J. King
The Law Office of Lawrence J. King
o/b/o George Alai
11 Western Avenue
Petaluma, CA 94952

In the Matter of George Alai; FPCC No. 13/1135

Dear Mr. King:

The Enforcement Division of the Fair Political Practices Commission (the "Commission") is proceeding with an administrative action against your client for violations of the conflict of interest provisions of the Political Reform Act (the "Act"), as described in our previous correspondence dated September 23, 2015. The enclosed Report in Support of a Finding of Probable Cause (the "Report") contains a summary of the alleged violations and the relevant law and evidence.

Your client has the right to file a written response to the Report. That response may contain any information your client thinks is relevant and that he wishes to bring to the attention of the Commission's General Counsel (the "Hearing Officer"). In his response, please indicate whether your client would like the Hearing Officer to make a determination of probable cause based on the written materials alone (the Report and your response) or request a conference, during which your client may orally present his case to the Hearing Officer. Probable cause conferences are held in our office which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. Your client may appear at the conference in person or by telephone and he is entitled to be represented by counsel. *If your client wishes to submit a written response or request a probable cause conference, it must be filed with the Commission Assistant, John Kim, at the address listed above within 21 days from the date of service of this letter.* You can reach Mr. Kim at (916) 327-8269.

Please note that probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether there is probable cause to believe that the

Act was violated. However, settlement discussions are encouraged by the Commission and may take place at any time except during a probable cause conference. *If your client is interested in reaching a settlement in this matter, please contact me at (916) 322-5771 or abrereton@fppc.ca.gov.*

Finally, your client has the right to request discovery of the evidence in possession of, and relied upon by, the Enforcement Division. *This request must also be filed with Mr. Kim within 21 days from the date of service of this letter.* Should you request discovery, the Enforcement Division will provide the evidence by service of process or certified mail. From the date you are served with the evidence, you would have an additional 21 days to file a written response to the Report, just as described above.

Should you take no action within 21 days from the date of service of this letter, your client's rights to respond and to request a conference are automatically waived and the Enforcement Division will independently pursue the issuance of an accusation.

For your convenience, I have enclosed a fact sheet on probable cause proceedings and copies of the most relevant statutes and regulations.

Sincerely,


Angela J. Brereton
Senior Commission Counsel
Enforcement Division

Enclosures

PROBABLE CAUSE FACT SHEET

INTRODUCTION

The Fair Political Practices Commission is required by law to determine whether probable cause exists to believe that the Political Reform Act (the "Act") was violated before a public administrative accusation may be issued.

The probable cause proceedings before the Fair Political Practices Commission are unique, and most respondents and their attorneys are unfamiliar with them. Therefore, we have prepared this summary to acquaint you with the process.

THE LAW

Government Code sections 83115.5 and 83116 set forth the basic requirement that a finding of probable cause be made in a "private" proceeding before a public accusation is issued and a public hearing conducted in accordance with the Administrative Procedure Act.

The Commission has promulgated regulations further defining the probable cause procedure and delegating to the General Counsel (the "Hearing Officer" for purposes of these proceedings) the authority to preside over such proceedings and decide probable cause. A copy of these statutes and regulations are attached for your convenience.

In summary, the statutes and regulations entitle you to the following:

- a) A written probable cause report containing a summary of the law alleged to have been violated, and a summary of the evidence, including any exculpatory and mitigating information and any other relevant material and arguments;
- b) The opportunity to request discovery, respond in writing, and to request a probable cause conference within 21 days of service of the probable cause report;
- c) If the Commission met to consider whether a civil lawsuit should be filed in this matter, a copy of any staff memoranda submitted to the Commission and a transcript of staff discussions with the Commission at any such meeting; and
- d) If a timely request was made, a non-public conference with the General Counsel and the Enforcement Division staff to consider whether or not probable cause exists to believe the Act was violated.

THE PROCEDURE

Probable Cause Report

Administrative enforcement proceedings are commenced with the service, by registered or certified mail or in person, of a probable cause report. The report will contain a summary of the law and the evidence, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. It is filed with the Hearing Officer.

Discovery

Within 21 calendar days following the service of the probable cause report, you may request discovery of the evidence in the possession of the Enforcement Division. This is not a right to full discovery of the Enforcement Division file, but to the evidence relied upon by the Division along with any exculpatory or mitigating evidence¹.

This request must be sent by registered or certified mail to the Commission Assistant.

Response to Probable Cause Report

Within 21 calendar days following the service of the probable cause report (or, if you timely requested discovery, within 21 calendar days from the service of the evidence) you may submit a response to the Report. By regulation, the written response may contain, "... a summary of evidence, legal arguments, and any mitigating or exculpatory information." (Cal. Code Regs., tit. 2, § 18361.4, subd. (c).)

You must file your response with the Commission Assistant and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report.

Staff Reply

Within 10 calendar days following the date the response was filed with the Commission Assistant, Commission staff may submit any evidence or argument in rebuttal. You will be served with a copy of any such reply.

Probable Cause Conference

Probable cause conferences are held at the offices of the Fair Political Practices Commission, which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone. The proceedings are not public unless all proposed respondents agree to open the conference to the public. Otherwise, the probable cause report, any written responses, and the probable cause conference itself are confidential.

Unless the probable cause conference is public, the only persons who may attend are the staff of the Commission, any proposed respondent and his or her attorney or representative, and, at the discretion of the Hearing Officer, witnesses.

The Hearing Officer may, but need not, permit testimony from witnesses. Probable cause conferences are less formal than court proceedings. The rules of evidence do not apply. The conferences will be recorded and a copy of the recording will be provided upon request.

Since it has the burden of proof, the Enforcement Division is permitted to open and close the conference presentations. The Hearing Officer may also hold the record open to receive additional evidence or arguments.

Probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether or not there is probable cause to believe that the

¹ But see Title 2, California Code of Regulations, Section 18362, which states that the Commission provides access to complaints, responses to complaints, and investigative files and information in accordance with the requirements of the Public Records Act. (Govt. Code § 6250, et seq.)

Political Reform Act was violated. Anyone who wishes to discuss settlement with the Enforcement Division may do so before or after the probable cause conference but not during the conference.

Pursuant to Title 2, California Code of Regulations, Section 18361.4, subdivision (c), the Hearing Officer will find probable cause "if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation."

Ordinarily, probable cause determinations are made based upon the written probable cause report, any written response by the respondent, any written reply by the Enforcement Division, and the oral arguments presented at the conference. Timely written presentations are strongly recommended.

Probable Cause Order and Accusation

Once the matter is submitted to the Hearing Officer, the probable cause decision will normally be made within ten days. If the Hearing Officer finds probable cause, he will issue a Finding of Probable Cause, which will be publicly announced at the next Commission Meeting. An accusation will be issued soon after the Finding of Probable Cause is publicly announced.

Continuances

Every reasonable effort is made to accommodate the schedules of parties and counsel. However, once a date has been set it is assumed to be firm and will not be continued except upon the order of the Hearing Officer after a showing of good cause. Settlement negotiations will be considered good cause only if the Hearing Officer is presented with a fully executed settlement, or is convinced that settlement is imminent.

Settlements

Settlement discussions may take place at any time except during the probable cause conference. In order to open settlement discussions, a proposed respondent or his or her counsel or representative should present a written offer to settle stating, where appropriate, the violations to be admitted, and the monetary penalty or other remedy to be tendered.

The Enforcement Division attorney assigned to the case will negotiate any potential settlement on behalf of the Fair Political Practices Commission, and will draft the language of the settlement agreement. The Hearing Officer will not directly participate in the negotiations, but will be represented by Enforcement Division attorneys. Staff attorneys will present settlement offers to the Hearing Officer for his/her approval.

CONCLUSION

This fact sheet was intended to give you a brief summary of the probable cause process at the Fair Political Practices Commission. Such a summary cannot answer every question that might arise in such proceedings. Therefore, if you have any questions that are not addressed by this fact sheet or the copies of the law and regulations we have attached, feel free to contact the attorney whose name appears on the probable cause report.

Attachments: Relevant Sections of (1) California Government Code , and (2) Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.

CALIFORNIA GOVERNMENT CODE

Probable Cause Statutes

§ 83115.5. Probable cause; violation of title; notice of violation; summary of evidence; notice of rights; private proceedings

No finding of probable cause to believe this title has been violated shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.

§ 83116. Violation of title; probable cause; hearing; order

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Commission shall have all the powers granted by that chapter. When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION
TITLE 2, DIVISION 6 OF THE CALIFORNIA CODE OF REGULATIONS

Probable Cause Regulations

§ 18361 (b). Delegation by the Executive Director Pertaining to Enforcement Proceedings and Authority to Hear Probable Cause Proceedings.

Probable cause proceedings under Regulation 18361.4 shall be heard by the General Counsel or an attorney from the Legal Division. The General Counsel may delegate the authority to hear probable cause proceedings, in writing, to an administrative law judge.

§ 18361.4. Probable Cause Proceedings

(a) Probable Cause Report. If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.

(b) No probable cause hearing will take place until at least 21 calendar days after the Enforcement Division staff provides the following, by service of process or registered or certified mail with return receipt requested, to all proposed respondents:

- (1) A copy of the probable cause report;
- (2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;
- (3) If the Commission met in executive session on this matter pursuant to Regulation 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of Regulation 18361.2.

(c) Response to Probable Cause Report.

- (1) Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information. A proposed respondent who submits a response must file it with the Commission Assistant who will forward the response to the General Counsel or an attorney in the Legal Division (the "hearing officer") and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.
- (2) Within 21 calendar days following the service of the probable cause report, a proposed

respondent may request discovery of evidence in the possession of the Enforcement Division. This request must be sent by registered or certified mail to the Commission Assistant. Upon receipt of the request, the Enforcement Division shall provide discovery of evidence relied upon by the Enforcement Division sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation, along with any exculpatory or mitigating evidence. This is not a right to full discovery of the Enforcement Division file. The Enforcement Division shall provide access to documents for copying by the Respondent, or upon agreement among the parties, the Enforcement Division will provide copies of the requested documents upon payment of a fee for direct costs of duplication. The Enforcement Division shall provide such evidence by service of process or registered or certified mail with return receipt requested to all respondents, with a copy to the Commission Assistant. A respondent may submit a written response to the probable cause report described in subsection (1) no later than 21 calendar days after service of discovery.

- (3) The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 calendar days following the date the response was filed with the Commission Assistant. The hearing officer may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the hearing officer may allow additional material to be submitted as part of the initial response or rebuttal.

(d) Probable Cause Conference. Any proposed respondent may request a probable cause conference. The request shall be served upon the Commission Assistant and all other proposed respondents not later than 21 days after service of the probable cause report unless the hearing officer extends the time for good cause. The Commission Assistant shall fix a time for the probable cause conference and the hearing officer shall conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right to be present and participate. The hearing officer may allow witnesses to attend and participate in part or all of the probable cause conference. In making this determination, the hearing officer shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the hearing officer if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone. The probable cause conference shall be recorded. The hearing officer may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the hearing officer requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) Finding of Probable Cause. The hearing officer may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the hearing officer does not constitute a finding that a violation has actually occurred. The hearing officer shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice. If the hearing officer makes a finding of probable cause, the Enforcement Division shall prepare an Accusation pursuant to Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The hearing officer shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Section 83116.

§ 18362. Access to Complaint Files

- (a) Access to complaints, responses thereto, and investigative files and information shall be granted in accordance with the requirements of the Public Records Act (Government Code Section 6250, et seq.).
- (b) When release of material is requested pursuant to subdivision (a), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.
- (c) Any person requesting copies of material pursuant to subdivision (a) shall reimburse the Commission \$0.10 per page for each page copied or supply copying equipment and make copies in the offices of the Commission. Documents may not be removed from the offices of the Commission. If the request is for copies totaling ten pages or less, the copies shall be provided without charge for copying since the administrative costs do not warrant collection of \$1.00 or less. If the request is for copies totaling more than ten pages, reimbursements of copying costs shall include the cost for the first ten pages. Charges imposed pursuant to this subdivision are for the purpose of recovering the cost of copying.
- (d) Requests for access and copies pursuant to subdivision (a) shall be made in writing and shall specifically identify the documents sought.

§ 18361.2. Memorandum Respecting Civil Litigation.

- (a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.

- (b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:
- (1) Initiate civil litigation.
 - (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.
 - (3) Return the matter to the staff for further investigation.
 - (4) Take no further action on the matter or take any other action it deems appropriate.
- (c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.
- (d) If the Executive Director deems it necessary, he or she may call a special meeting of the Commission to review a staff memorandum recommending the initiation of civil litigation.
- (e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

EXHIBIT B

ACCUSATION
FPPC Case No. 13/1135

1 GALENA WEST
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5771
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant
7 Enforcement Division of the Fair Political Practices Commission

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

11 In the Matter of

12)
13)
14) **GEORGE ALAI,**

15 Respondent.
16)

) FPPC No. 13/1135
)
)
) **REPORT IN SUPPORT OF A FINDING OF**
) **PROBABLE CAUSE**
)
) Conference Date: TBA
) Conference Time: TBA
) Conference Location: Commission Offices
) 428 J Street, Suite 620
) Sacramento, CA 95814

17
18 **INTRODUCTION**

19 Respondent George Alai was the Chief Technology Officer for the California Department of
20 General Services (DGS) from August 1, 2012 through March 11, 2014. The Political Reform Act (the
21 "Act")¹ prohibits a public official from making, participating in making, or attempting to use his
22 official position to influence a governmental decision in which the official knows or has reason to
23 know he has a financial interest. Alai violated the Act by signing three DGS purchase orders for
24 Hewlett-Packard Company products when Alai owned stock in Hewlett-Packard Company.
25 ///

26 _____
27 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
28 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of
Title 2 of the California Code of Regulations, and all regulatory references are to this source.

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SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act's provisions as they existed at the time of the applicable violations.

Jurisdiction

The Fair Political Practices Commission (the "Commission") has administrative jurisdiction to enforce the provisions of the Act.²

Probable Cause Proceedings

Prior to the Enforcement Division commencing an administrative action, the General Counsel of the Commission or her designee (the "hearing officer"), must make a finding that there is probable cause to believe the respondent has violated the Act.³ After a finding of probable cause, the Commission may hold a noticed hearing in accordance with the Administrative Procedure Act⁴ to determine whether violations occurred, and levy an administrative penalty of up to \$5,000 for each violation.⁵

Standard for Finding Probable Cause

To make a finding of probable cause, the hearing officer must be presented with sufficient evidence to lead a person of ordinary caution and prudence to believe, or entertain a strong suspicion, that a respondent committed or caused a violation.⁶

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

When enacting the Political Reform Act, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.⁷ To that end, the Act must be liberally construed to achieve its purposes.⁸

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² § 83116.

³ § 83115.5, and Reg. 18361 and 18361.4.

⁴ § 11500, et seq.

⁵ § 83116, and Reg. 18361.4, subd. (e).

⁶ Reg. 18361.4, subd. (e).

⁷ § 81001, subd. (h).

⁸ § 81003.

1 There are many purposes of the Act. One purpose is to ensure that public officials are
2 disqualified from certain matters in order that conflicts of interest may be avoided.⁹ Another is to
3 provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."¹⁰

4 Conflicts of Interest

5 A public official may not make, participate in making or attempt to use his official position to
6 influence a governmental decision in which he knows, or has reason to know, he has a financial
7 interest.¹¹ A public official has a financial interest in a decision if it is reasonably foreseeable that the
8 decision will have a material financial effect on any business entity in which the official has a direct or
9 indirect investment worth \$2,000 or more.¹²

10 In 2012 and 2013, there were six steps to determine whether an individual had a conflict of
11 interest in a governmental decision.¹³

12 First, the individual must have been a public official.¹⁴ An employee of a state government
13 agency was a public official.¹⁵

14 Second, the official must have made, participated in making, or attempted to use his or her
15 official position to influence a governmental decision.¹⁶ A public official made a governmental
16 decision when the official, acting within the authority of his office or position, obligated or committed
17 his agency to any course of action.¹⁷

18 Third, the official must have had an economic interest.¹⁸ Such interests included any business
19 entity in which the official had a direct or indirect investment worth \$2,000 or more.¹⁹

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22 ⁹ § 81002, subd. (c).

23 ¹⁰ § 81002, subd. (f).

24 ¹¹ § 87100.

25 ¹² § 87103, subd. (a).

26 ¹³ Reg. 18700, subd. (b).

27 ¹⁴ Reg. 18700, subd. (b)(1).

28 ¹⁵ § 82048, subd. (a).

¹⁶ Reg. 18700, subd. (b)(2).

¹⁷ Reg. 18702.1, subd. (a).

¹⁸ Reg. 18700, subd. (b)(3).

¹⁹ § 87103, subd. (a), and Reg. 18703.1, subd. (a).

1 Fourth, it must be determined whether the economic interest of the official was directly or
2 indirectly involved in the governmental decision.²⁰ A business entity was directly involved in a
3 governmental decision when the business entity was a named party in the decision.²¹

4 Fifth, the applicable materiality standard must be determined.²² When the business entity was
5 directly involved in the governmental decision, the financial effect was presumed to be material.²³

6 Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that
7 the decision would have a material financial effect.²⁴ A material financial effect on an economic
8 interest was reasonably foreseeable if it was substantially likely that one or more of the materiality
9 standards applicable to the economic interest would have been met as a result of the governmental
10 decision.²⁵ Whether the financial consequences of a decision are "reasonably foreseeable" at the time
11 of a governmental decision depends upon the facts of each particular case.²⁶

12 SUMMARY OF THE EVIDENCE

13 Hewlett-Packard Company (HP), headquartered in Palo Alto, CA, is an international
14 technology company, which manufactures products including desktop workstations and laptop
15 computers. Alai admitted in his statements of economic interests and during an interview with
16 Enforcement Division staff that during 2012 and 2013 he owned shares of HP stock worth more than
17 \$25,000.

18 The evidence shows that in 2009, in order to provide HP products to California state agencies,
19 HP partnered with Western Blue Corporation and Insight Public Sector as Joint Prime Contract
20 Holders under a Leveraged Procurement Agreement (LPA). Western Blue Corporation was the sales
21 and service entity, Insight Public Sector was the distributor, and HP provided the products. The LPA
22 mandated that all state agency requests for personal computer products, services and support, be
23 directed to Western Blue Corporation/Insight Public Sector/HP. Each purchase order clearly identified

24 ²⁰ Reg. 18700, subd. (b)(4).

25 ²¹ Reg. 18704.1, subd. (a)(2).

26 ²² Reg. 18700, subd. (b)(5).

27 ²³ Reg. 18705.1, subd. (b)(1).

28 ²⁴ Reg. 18700, subd. (b)(6).

²⁵ Reg. 18706, subd. (a).

²⁶ Reg. 18706, subd. (b).

1 Western Blue Corporation/Insight Public Sector/HP as the supplier. After receiving an accurate
2 purchase order under the LPA, Western Blue Corporation purchased the HP products from HP via its
3 distributor, Insight Public Sector, and the HP products were then resold to the agency who submitted
4 the purchase order.

5 According to its website, DGS serves as business manager for the state of California. DGS
6 provides a variety of services to state agencies including procurement and acquisition solutions, real
7 estate management and design, environmentally friendly transportation, professional printing, design
8 and Web services, administrative hearings, legal services, building standards, oversight of structural
9 safety, fire/life safety and accessibility for the design and construction of K-12 public schools and
10 community colleges, and funding for school construction. Each of these divisions is supported by a
11 general Administration Division located in West Sacramento, CA, which includes an information
12 technology services division (IT).

13 The evidence shows that in 2012 and 2013, Alai was the DGS Chief Technology Officer in IT.
14 When a DGS division needed IT products, the division seeking the products submitted a purchase
15 order form accompanied by a Desktop & Mobile Computing Justification Form (Form-DMC). No
16 purchase order for IT products could be processed without a completed Form-DMC. The Form-DMC
17 required the signature of the Chief Information Officer of IT. Alai admitted during an interview with
18 Enforcement Division staff that he was authorized as part of his job duties as CTO to sign
19 Form-DMCs as the CIO's designee when the CIO was absent or otherwise unavailable. The section
20 designated for the CIO's signature stated:

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1 By signing this form, I declare that I have no direct or indirect investments, real
2 property or interest in any company, business, entity or organization that may
3 involve the project or contract.

4 I certify that I am the agency director or designee, that the matters described herein are
5 consistent with this agency's current information management strategy and information
6 technology infrastructure; that these matters comply with this agency's approved
7 Desktop and Mobile Computing Policy; that the matters described herein are subject to
8 the provisions of SAM Section 4819.3 et seq. and are in conformity with the criteria and
9 procedures for information technology and security prescribed in SAM; and that the
10 foregoing statements are true to the best of my knowledge and belief.²⁷ (Emphasis in
11 original.)

12 Alai admitted in an interview with Enforcement Division staff that he signed the Form-DMCs at the
13 CIO's direction in the CIO's absence. The evidence showed that Alai signed the following
14 Form-DMCs approving purchase orders for HP products:

Count	Date of Alai's Approval	DGS Order No.	Supplier	Products	Purchase Amount
1	11/20/2012	3166552	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$17,479.26
2	11/20/2012	3168126	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 HP Z280 Workstations	\$17,158.50
3	06/09/2013	3170052	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$18,696.69
TOTAL					\$53,334.45

VIOLATIONS

Counts 1 – 3: Conflict of Interest

19 In 2012 and 2013, as the DGS CTO, Alai reviewed and signed three Form-DMCs
20 accompanying purchase orders for HP products at a time when he owned HP stock worth more than
21 \$25,000.

22 As the DGS CTO, Alai was a public official. By signing the Form-DMCs, Alai obligated or
23 committed his agency to complete the purchase orders to which the Form-DMCs were attached. On
24 the date of each of the above decisions, Alai had a direct investment interest in HP worth more than
25

26 ²⁷ The State Administrative Manual (SAM) is a reference resource for statewide policies, procedures, requirements
27 and information developed and issued by authoring agencies such as the Governor's Office, Department of General Services
28 (DGS), Department of Finance (DOF), and Department of Human Resources (CalHR).

1 \$25,000. HP was directly involved in these governmental decisions because HP was one of the
2 contract holders and was the manufacturer of the products for each of the above referenced purchase
3 orders. Since HP was directly involved in the governmental decisions, the financial effect of the
4 governmental decisions was presumed to be material. And it was reasonably foreseeable that the
5 governmental decisions would have a material financial effect on HP because HP would only be paid
6 if the purchase orders were complete, including Alai's signature on the Form-DMCs.

7 Therefore, Alai made three governmental decisions in 2012 and 2013 in which he had a
8 financial interest, in violation of Section 87100.

9 OTHER RELEVANT MATERIAL AND ARGUMENTS

10 In this case, Alai signed three Form-DMCs approving purchase orders to acquire HP products
11 at a time when he owned more than \$25,000 in HP stock. And when he approved the Form-DMCS, he
12 signed declarations that he had no investment in any company involved in the purchase orders.

13 EXCULPATORY AND MITIGATING INFORMATION

14 Alai did not conceal his financial interest, disclosing his HP investment interest in his
15 applicable statements of economic interests. Alai has no prior violations of the Act, and he cooperated
16 with Enforcement Division staff during the investigation of this matter.

17 CONCLUSION

18 Probable cause exists to believe that Respondent George Alai committed three violations of the
19 Act, as set forth above. The Enforcement Division respectfully requests an order finding probable
20 cause pursuant to Section 83115.5 and Regulation 18361.4.

21 Dated: October 21, 2015

22 Respectfully Submitted,

23 **FAIR POLITICAL PRACTICES COMMISSION**

24 By: Galena West
25 Chief of Enforcement

26 
27 Angela V Brereton
28 Senior Commission Counsel
Enforcement Division



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

November 6, 2015

Sent Via Email

Lawrence J. King
The Law Office of Lawrence J. King
o/b/o George Alai
[REDACTED]

In the Matter of George Alai; FPPC No. 13/1135

Dear Mr. King:

The Enforcement Division of the Fair Political Practices Commission (the "Commission") is proceeding with an administrative action against your client for violations of the conflict of interest provisions of the Political Reform Act (the "Act"), as described in my previous correspondence dated September 23, 2015. Pursuant to our telephone conversation on November 5, 2015, you have agreed to accept service of the attached Report in Support of a Finding of Probable Cause (the "Report") on behalf of your client via email. The Report contains a summary of the alleged violations and the relevant law and evidence.

Your client has the right to file a written response to the Report. That response may contain any information your client thinks is relevant and that he wishes to bring to the attention of the Commission's General Counsel (the "Hearing Officer"). In his response, please indicate whether your client would like the Hearing Officer to make a determination of probable cause based on the written materials alone (the Report and your response) or request a conference, during which your client may orally present his case to the Hearing Officer. Probable cause conferences are held in our office which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. Your client may appear at the conference in person or by telephone and he is entitled to be represented by counsel. *If your client wishes to submit a written response or request a probable cause conference, it must be filed with the Commission Assistant, John Kim, at the address listed above within 21 days from the date of service of this letter.* You can reach Mr. Kim at (916) 327-8269.

Please note that probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether there is probable cause to believe that the

Act was violated. However, settlement discussions are encouraged by the Commission and may take place at any time except during a probable cause conference. *If your client is interested in reaching a settlement in this matter, please contact me at (916) 322-5771 or abrereon@fppc.ca.gov.*

Finally, your client has the right to request discovery of the evidence in possession of, and relied upon by, the Enforcement Division. *This request must also be filed with Mr. Kim within 21 days from the date of service of this letter.* Should you request discovery, the Enforcement Division will provide the evidence by service of process or certified mail. From the date you are served with the evidence, you would have an additional 21 days to file a written response to the Report, just as described above.

Should you take no action within 21 days from the date of service of this letter, your client's rights to respond and to request a conference are automatically waived and the Enforcement Division will independently pursue the issuance of an accusation.

For your convenience, I have enclosed a fact sheet on probable cause proceedings and copies of the most relevant statutes and regulations.

Sincerely,


Angela J. Brereton
Senior Commission Counsel
Enforcement Division

Attachments

PROBABLE CAUSE FACT SHEET

INTRODUCTION

The Fair Political Practices Commission is required by law to determine whether probable cause exists to believe that the Political Reform Act (the "Act") was violated before a public administrative accusation may be issued.

The probable cause proceedings before the Fair Political Practices Commission are unique, and most respondents and their attorneys are unfamiliar with them. Therefore, we have prepared this summary to acquaint you with the process.

THE LAW

Government Code sections 83115.5 and 83116 set forth the basic requirement that a finding of probable cause be made in a "private" proceeding before a public accusation is issued and a public hearing conducted in accordance with the Administrative Procedure Act.

The Commission has promulgated regulations further defining the probable cause procedure and delegating to the General Counsel (the "Hearing Officer" for purposes of these proceedings) the authority to preside over such proceedings and decide probable cause. A copy of these statutes and regulations are attached for your convenience.

In summary, the statutes and regulations entitle you to the following:

- a) A written probable cause report containing a summary of the law alleged to have been violated, and a summary of the evidence, including any exculpatory and mitigating information and any other relevant material and arguments;
- b) The opportunity to request discovery, respond in writing, and to request a probable cause conference within 21 days of service of the probable cause report;
- c) If the Commission met to consider whether a civil lawsuit should be filed in this matter, a copy of any staff memoranda submitted to the Commission and a transcript of staff discussions with the Commission at any such meeting; and
- d) If a timely request was made, a non-public conference with the General Counsel and the Enforcement Division staff to consider whether or not probable cause exists to believe the Act was violated.

THE PROCEDURE

Probable Cause Report

Administrative enforcement proceedings are commenced with the service, by registered or certified mail or in person, of a probable cause report. The report will contain a summary of the law and the evidence, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. It is filed with the Hearing Officer.

Discovery

Within 21 calendar days following the service of the probable cause report, you may request discovery of the evidence in the possession of the Enforcement Division. This is not a right to full discovery of the Enforcement Division file, but to the evidence relied upon by the Division along with any exculpatory or mitigating evidence¹.

This request must be sent by registered or certified mail to the Commission Assistant.

Response to Probable Cause Report

Within 21 calendar days following the service of the probable cause report (or, if you timely requested discovery, within 21 calendar days from the service of the evidence) you may submit a response to the Report. By regulation, the written response may contain, "... a summary of evidence, legal arguments, and any mitigating or exculpatory information." (Cal. Code Regs., tit. 2, § 18361.4, subd. (c).)

You must file your response with the Commission Assistant and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report.

Staff Reply

Within 10 calendar days following the date the response was filed with the Commission Assistant, Commission staff may submit any evidence or argument in rebuttal. You will be served with a copy of any such reply.

Probable Cause Conference

Probable cause conferences are held at the offices of the Fair Political Practices Commission, which is located at 428 J Street, Ste. 620, Sacramento, CA 95814. You may appear at the conference in person or by telephone. The proceedings are not public unless all proposed respondents agree to open the conference to the public. Otherwise, the probable cause report, any written responses, and the probable cause conference itself are confidential.

Unless the probable cause conference is public, the only persons who may attend are the staff of the Commission, any proposed respondent and his or her attorney or representative, and, at the discretion of the Hearing Officer, witnesses.

The Hearing Officer may, but need not, permit testimony from witnesses. Probable cause conferences are less formal than court proceedings. The rules of evidence do not apply. The conferences will be recorded and a copy of the recording will be provided upon request.

Since it has the burden of proof, the Enforcement Division is permitted to open and close the conference presentations. The Hearing Officer may also hold the record open to receive additional evidence or arguments.

Probable cause conferences are not settlement conferences. The sole purpose of a probable cause conference is to determine whether or not there is probable cause to believe that the

¹ But see Title 2, California Code of Regulations, Section 18362, which states that the Commission provides access to complaints, responses to complaints, and investigative files and information in accordance with the requirements of the Public Records Act. (Govt. Code § 6250, et seq.)

Political Reform Act was violated. Anyone who wishes to discuss settlement with the Enforcement Division may do so before or after the probable cause conference but not during the conference.

Pursuant to Title 2, California Code of Regulations, Section 18361.4, subdivision (e), the Hearing Officer will find probable cause "if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation."

Ordinarily, probable cause determinations are made based upon the written probable cause report, any written response by the respondent, any written reply by the Enforcement Division, and the oral arguments presented at the conference. Timely written presentations are strongly recommended.

Probable Cause Order and Accusation

Once the matter is submitted to the Hearing Officer, the probable cause decision will normally be made within ten days. If the Hearing Officer finds probable cause, he will issue a Finding of Probable Cause, which will be publicly announced at the next Commission Meeting. An accusation will be issued soon after the Finding of Probable Cause is publicly announced.

Continuances

Every reasonable effort is made to accommodate the schedules of parties and counsel. However, once a date has been set it is assumed to be firm and will not be continued except upon the order of the Hearing Officer after a showing of good cause. Settlement negotiations will be considered good cause only if the Hearing Officer is presented with a fully executed settlement, or is convinced that settlement is imminent.

Settlements

Settlement discussions may take place at any time except during the probable cause conference. In order to open settlement discussions, a proposed respondent or his or her counsel or representative should present a written offer to settle stating, where appropriate, the violations to be admitted, and the monetary penalty or other remedy to be tendered.

The Enforcement Division attorney assigned to the case will negotiate any potential settlement on behalf of the Fair Political Practices Commission, and will draft the language of the settlement agreement. The Hearing Officer will not directly participate in the negotiations, but will be represented by Enforcement Division attorneys. Staff attorneys will present settlement offers to the Hearing Officer for his/her approval.

CONCLUSION

This fact sheet was intended to give you a brief summary of the probable cause process at the Fair Political Practices Commission. Such a summary cannot answer every question that might arise in such proceedings. Therefore, if you have any questions that are not addressed by this fact sheet or the copies of the law and regulations we have attached, feel free to contact the attorney whose name appears on the probable cause report.

Attachments: Relevant Sections of (1) California Government Code , and (2) Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations.

CALIFORNIA GOVERNMENT CODE

Probable Cause Statutes

§ 83115.5. Probable cause; violation of title; notice of violation; summary of evidence; notice of rights; private proceedings

No finding of probable cause to believe this title has been violated shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.

§ 83116. Violation of title; probable cause; hearing; order

When the Commission determines there is probable cause for believing this title has been violated, it may hold a hearing to determine if a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The Commission shall have all the powers granted by that chapter. When the Commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

REGULATIONS OF THE FAIR POLITICAL PRACTICES COMMISSION
TITLE 2, DIVISION 6 OF THE CALIFORNIA CODE OF REGULATIONS

Probable Cause Regulations

§ 18361 (b). Delegation by the Executive Director Pertaining to Enforcement Proceedings and Authority to Hear Probable Cause Proceedings.

Probable cause proceedings under Regulation 18361.4 shall be heard by the General Counsel or an attorney from the Legal Division. The General Counsel may delegate the authority to hear probable cause proceedings, in writing, to an administrative law judge.

§ 18361.4. Probable Cause Proceedings

(a) Probable Cause Report. If the Chief of the Enforcement Division decides to commence probable cause proceedings pursuant to Sections 83115.5 and 83116, he or she shall direct the Enforcement Division staff to prepare a written report, hereafter referred to as "the probable cause report." The probable cause report shall contain a summary of the law and evidence gathered in connection with the investigation, including any exculpatory and mitigating information of which the staff has knowledge and any other relevant material and arguments. The evidence recited in the probable cause report may include hearsay, including declarations of investigators or others relating the statements of witnesses or concerning the examination of physical evidence.

(b) No probable cause hearing will take place until at least 21 calendar days after the Enforcement Division staff provides the following, by service of process or registered or certified mail with return receipt requested, to all proposed respondents:

- (1) A copy of the probable cause report;
- (2) Notification that the proposed respondents have the right to respond in writing to the probable cause report and to request a probable cause conference at which the proposed respondent may be present in person and represented by counsel, and;
- (3) If the Commission met in executive session on this matter pursuant to Regulation 18361.2, a copy of any staff memoranda submitted to the Commission at that time along with the recording of any discussion between the Commission and the staff at the executive session as required in subdivision (b) of Regulation 18361.2.

(c) Response to Probable Cause Report.

(1) Each proposed respondent may submit a written response to the probable cause report. The response may contain a summary of evidence, legal arguments, and any mitigating or exculpatory information. A proposed respondent who submits a response must file it with the Commission Assistant who will forward the response to the General Counsel or an attorney in the Legal Division (the "hearing officer") and provide a copy, by service of process or registered or certified mail with return receipt requested, to all other proposed respondents listed in the probable cause report not later than 21 days following service of the probable cause report.

(2) Within 21 calendar days following the service of the probable cause report, a proposed

respondent may request discovery of evidence in the possession of the Enforcement Division. This request must be sent by registered or certified mail to the Commission Assistant. Upon receipt of the request, the Enforcement Division shall provide discovery of evidence relied upon by the Enforcement Division sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation, along with any exculpatory or mitigating evidence. This is not a right to full discovery of the Enforcement Division file. The Enforcement Division shall provide access to documents for copying by the Respondent, or upon agreement among the parties, the Enforcement Division will provide copies of the requested documents upon payment of a fee for direct costs of duplication. The Enforcement Division shall provide such evidence by service of process or registered or certified mail with return receipt requested to all respondents, with a copy to the Commission Assistant. A respondent may submit a written response to the probable cause report described in subsection (1) no later than 21 calendar days after service of discovery.

- (3) The Commission staff may submit any evidence or argument in rebuttal to the response. When the Commission staff submits evidence or argument in rebuttal to the response, it shall provide a copy, by service of process or registered or certified mail with return receipt requested, to all proposed respondents listed in the probable cause report not later than 10 calendar days following the date the response was filed with the Commission Assistant. The hearing officer may extend the time limitations in this section for good cause. At any time prior to a determination of probable cause, the hearing officer may allow additional material to be submitted as part of the initial response or rebuttal.

(d) Probable Cause Conference. Any proposed respondent may request a probable cause conference. The request shall be served upon the Commission Assistant and all other proposed respondents not later than 21 days after service of the probable cause report unless the hearing officer extends the time for good cause. The Commission Assistant shall fix a time for the probable cause conference and the hearing officer shall conduct the conference informally. The conference shall be closed to the public unless a proposed respondent requests and all other proposed respondents agree to a public conference. If the conference is not public, only members of the Commission staff, any proposed respondent and his or her legal counsel or representative shall have the right to be present and participate. The hearing officer may allow witnesses to attend and participate in part or all of the probable cause conference. In making this determination, the hearing officer shall consider the relevancy of the witness' proposed testimony, whether the witness has a substantial interest in the proceedings, and whether fairness requires that the witness be allowed to participate. Representatives of any civil or criminal prosecutor with jurisdiction may attend the conference at the discretion of the hearing officer if they agree to respect the confidential nature of the proceedings. If the conference is not open to the public and none of the parties and the presiding officer object, the conference may be conducted in whole or in part by telephone. The probable cause conference shall be recorded. The hearing officer may determine whether there is probable cause based solely on the probable cause report, any responses or rebuttals filed and any arguments presented at the probable cause conference by the interested parties. If the hearing officer requires additional information before determining whether there is probable cause, he or she may permit any party to submit additional evidence at the probable cause conference.

(e) Finding of Probable Cause. The hearing officer may find there is probable cause to believe a violation has occurred if the evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a proposed respondent committed or caused a violation. A finding of probable cause by the hearing officer does not constitute a finding that a violation has actually occurred. The hearing officer shall not make a finding of probable cause if he or she is presented with clear and convincing evidence that, at a time prior to the alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice of the staff or because of the staff's failure to provide advice. If the hearing officer makes a finding of probable cause, the Enforcement Division shall prepare an Accusation pursuant to Section 11503 and have it served upon the person or persons who are subjects of the probable cause finding. The hearing officer shall publicly announce the finding of probable cause. The announcement shall contain a summary of the allegations and a cautionary statement that the respondent is presumed to be innocent of any violation of the Act unless a violation is proved in a subsequent proceeding. The Chief of the Enforcement Division shall be responsible for the presentation of the case in support of the Accusation at an administrative hearing held pursuant to Section 83116.

§ 18362. Access to Complaint Files

- (a) Access to complaints, responses thereto, and investigative files and information shall be granted in accordance with the requirements of the Public Records Act (Government Code Section 6250, et seq.).
- (b) When release of material is requested pursuant to subdivision (a), the Executive Director, or his or her designee, shall review the material prior to its release or prior to a claim of exemption to determine that the requirements of the Public Records Act have been satisfied.
- (c) Any person requesting copies of material pursuant to subdivision (a) shall reimburse the Commission \$0.10 per page for each page copied or supply copying equipment and make copies in the offices of the Commission. Documents may not be removed from the offices of the Commission. If the request is for copies totaling ten pages or less, the copies shall be provided without charge for copying since the administrative costs do not warrant collection of \$1.00 or less. If the request is for copies totaling more than ten pages, reimbursements of copying costs shall include the cost for the first ten pages. Charges imposed pursuant to this subdivision are for the purpose of recovering the cost of copying.
- (d) Requests for access and copies pursuant to subdivision (a) shall be made in writing and shall specifically identify the documents sought.

§ 18361.2. Memorandum Respecting Civil Litigation.

- (a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.

(b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:

- (1) Initiate civil litigation.
 - (2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.
 - (3) Return the matter to the staff for further investigation.
 - (4) Take no further action on the matter or take any other action it deems appropriate.
- (c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.
- (d) If the Executive Director deems it necessary, he or she may call a special meeting of the Commission to review a staff memorandum recommending the initiation of civil litigation.
- (e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

EXHIBIT C

ACCUSATION
FPPC Case No. 13/1135

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On November 6, 2015, I served the following document(s):

1. Letter dated November 6, 2015 from Angela J. Brereton;
2. FPPC Case No. 13/1135: Report in Support of a Finding of Probable Cause;
3. Fact Sheet regarding Probable Cause Proceedings with selected Sections of the California Government Code and selected Regulations of the Fair Political Practices Commission regarding Probable Cause Proceedings for the Fair Political Practices Commission.

By email or electronic transmission. I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Sacramento County, California.

SERVICE LIST

Email Transmission

Lawrence J. King
The Law Office of Lawrence J. King
o/b/o George Alai
kingsq@pacbell.net

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 6, 2015.


Kathryn Trumbly 

EXHIBIT D

ACCUSATION
FPPC Case No. 13/1135

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On October 21, 2015, I served the following document(s):

1. Letter dated October 21, 2015 from Angela J. Brereton;
2. FPPC Case No. 13/1135: Report in Support of a Finding of Probable Cause;
3. Fact Sheet regarding Probable Cause Proceedings with selected Sections of the California Government Code and selected Regulations of the Fair Political Practices Commission regarding Probable Cause Proceedings for the Fair Political Practices Commission.

By United States Postal Service. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the addresses listed below and placed the envelope or package for collection and mailing by certified mail, return receipt requested, following my company's ordinary business practices. I am readily familiar with this business' practice for collection and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Sacramento County, California.

SERVICE LIST

Certified Mail, Return Receipt Requested

Lawrence J. King
The Law Office of Lawrence J. King
o/b/o George Alai
11 Western Avenue
Petaluma, CA 94952

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 21, 2015.


Kathryn Trumbly 

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$

Lawrence J. King
The Law Office of Lawrence J. King
O/b/o George Alai
11 Western Avenue
Petaluma, CA 94952

(Enc

Re:
(End

To:

Sent

Street, Apt. No.,
or PO Box No.

City, State, ZIP+4

PS Form 3800, June 2002

See Reverse for Instructions

7006 0810 0000 5120 9294



USPS Tracking®

Alai PC Report



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.

Tracking Number: 70060810000051209294



In-Transit

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
October 23, 2015 , 6:11 pm	Departed USPS Facility	SAN FRANCISCO, CA 94188
Your item departed our USPS facility in SAN FRANCISCO, CA 94188 on October 23, 2015 at 6:11 pm. The item is currently in transit to the destination.		
October 22, 2015 , 11:12 am	Arrived at USPS Facility	SAN FRANCISCO, CA 94188
October 21, 2015 , 8:06 pm	Arrived at USPS Facility	WEST SACRAMENTO, CA 95799

Available Actions

Text Updates

Email Updates

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary

Sign up for My USPS ›



HELPFUL LINKS

- Contact Us
- Site Index
- FAQs

ON ABOUT USPS.COM

- About USPS Home
- Newsroom
- USPS Service Updates
- Forms & Publications
- Government Services
- Careers

OTHER USPS SITES

- Business Customer Gateway
- Postal Inspectors
- Inspector General
- Postal Explorer
- National Postal Museum
- Resources for Developers

LEGAL INFORMATION

- Privacy Policy
- Terms of Use
- FOIA
- No FEAR Act EEO Data

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lawrence J. King
 The Law Office of Lawrence J. King
 O/b/o George Alai
 11 Western Avenue
 Petaluma, CA 94952

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X [Redacted Signature] 5/02 Agent
 Addressee

B. Received by (Printed Name) L. KING C. Date of Delivery 5/02

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
 (Transfer from service label)

7006 0810 0000 5120 9294

PS Form 3811, July 2013

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•

Fair Political Practices Commission
 Attn: Angela Brereton
 428 J Street, Suite 620
 Sacramento, CA 95814

5/02 PM 2:43
 FAIR POLITICAL PRACTICES COMMISSION

EXHIBIT E

ACCUSATION
FPPC Case No. 13/1135

FPPC No. 13/1135, In the matter of George Alai

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814. On the date below, I served the following document:

ORDER RE: PROBABLE CAUSE

MANNER OF SERVICE

(U.S. Mail) By causing a true copy thereof to be served on the parties in this action through the U.S. Mail and addressed as listed below. I am familiar with the procedure of the Fair Political Practices Commission for collection and processing of correspondence for mailing with the United States Postal Service, and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

SERVICE LIST

Mr. Lawrence J. King
Law Office of Lawrence J. King
o/b/o George Alai
11 Western Avenue
Petaluma, CA 94952

(By Personal Service) On Wednesday, April 13, 2016, at approximately 4:15 p.m., I personally served:

Galena West, Chief of Enforcement, at 428 J Street, Suite 700, Sacramento, CA 95814.
Angela Brereton, Senior Commission Counsel, at 428 J Street, Suite 700, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this document is executed at Sacramento, California, on April 13, 2016.


Steve Tabatabaiejad

1 FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
2 Sacramento, CA 95814
3 Telephone: (916) 322-5660
4

5 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
6 STATE OF CALIFORNIA
7

8 In the Matter of:

FPPC No. 13/1135

9
10 George Alai,

ORDER RE: PROBABLE CAUSE

11 Respondent.
12
13
14

15
16 This matter came on for a probable cause conference pursuant to Regulation 18361.4 on April 6,
17 2016. Authority to conduct this proceeding and to determine the issue of probable cause was delegated
18 to Commission Counsel Jack Woodside under Regulation 18361. Appearing for the Enforcement
19 Division were Commission Counsel Angela Brereton and Investigator George Aradi. Respondent
20 George Alai appeared as well as attorney Lawrence J. King on his behalf. Witness for Mr. Alai, Jeffery
21 Funk, attended as well.

22 The purpose of a probable cause conference is for the Executive Director, or a duly authorized
23 designee, to determine whether probable cause exists to believe that a respondent violated the Political
24 Reform Act (the "Act")¹ as alleged by the Enforcement Division in its Report in Support of a Finding of
25 Probable Cause.
26
27

28 ¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated.

1 Probable cause to believe a violation has occurred will be found to exist when “the evidence is
 2 sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion
 3 that a proposed respondent committed or caused a violation.” (Regulation 18361.4(e).) A finding of
 4 probable cause does not constitute a finding that a violation has actually occurred. (*Id.*)

5 The Report in Support of a Finding of Probable Cause alleges three separate violations of the
 6 Act’s conflict of interest provisions, which prohibit a public official from making, participating in
 7 making, or attempting to use his or her official position to influence a governmental decision in which
 8 the official knows or has reason to know he or she has a financial interest. The Report specifically
 9 alleges the violations occurred when Respondent reviewed and signed three DGS Desktop & Mobile
 10 Computing Justification Forms (“Form DMC”) that committed DGS to complete purchases of Hewlett-
 11 Packard products under a Leveraged Procurement Agreement to which Hewlett-Packard was a party.
 12 The Report further alleges that Respondent owned stock shares worth more than \$25,000 in Hewlett
 13 Packard at the time he signed each of the Form DMCs. With respect to each Count, the Report alleges:
 14

Count	Date of Alai’s Approval	DGS Order No.	Supplier	Products	Purchase Amount
1	11/20/2012	3166552	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$17,479.26
2	11/20/2012	3168126	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 HP Z280 Workstations	\$17,158.50
3	06/09/2013	3170052	Western Blue Corporation, Insight Public Sector & Hewlett-Packard	5 Upgraded HP Z280 Workstations	\$18,696.69
TOTAL					\$53,334.45

22 Based on the facts presented to me in documents submitted by the Enforcement Division and by
 23 Respondent, and on evidence and argument presented by the parties during the probable cause
 24 conference, I find that notice was given as provided by Section 83115.5 and Regulation 18361.4. I
 25 further find that there is probable cause to believe Respondent Alai violated the Political Reform Act as
 26 alleged in the Report in Support of a Finding of Probable Cause. Notwithstanding this finding of
 27
 28

1 probable cause, Respondent is presumed to be innocent of any violation of the Act unless and until a
2 violation is proved in a subsequent proceeding.

3 I therefore direct that the Enforcement Division issue an Accusation against Respondent in
4 accordance with this Finding.

5 IT IS SO ORDERED.

6 Dated: 4-13-16

By: 

Jack Woodside, Commission Counsel
Fair Political Practices Commission