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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 LYN SEMETA,

13 Respondent.

FPPC Case No. 16/756

STIPULATION, DECISION AND ORDER

14
15 **INTRODUCTION**

16 Respondent Lyn Semeta (“Semeta”) is a former member of the Huntington Beach Planning
17 Commission. The Political Reform Act (the “Act”)¹ prohibits certain public officials from accepting a
18 contribution of more than \$250 from any party while a proceeding involving a license, permit, or other
19 entitlement for use pending before the agency and for three months following the date a final decision.
20 Semeta violated the Act by accepting a contribution from a business within the three months following her
21 vote to grant the business a conditional use permit.

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28 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

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

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

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

8 The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public
9 officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused
10 by their own financial interests or the financial interests of persons who have supported them.”⁴

11 **Contributions to Officers**

12 The Act, in part, prohibits an officer of an agency from accepting, soliciting, or directing a
13 contribution of more than two hundred fifty dollars (\$250) from any party while a proceeding involving a
14 license, permit, or other entitlement for use is pending before the agency and for three months following
15 the date a final decision is rendered in the proceeding.⁵

16 An “[o]fficer” is defined as “...any elected or appointed officer of an agency, any alternate to an
17 elected or appointed officer of an agency, and any candidate for elective office in an agency.”⁶

18 A “[p]arty” is defined as “...any person who files an application for, or is the subject of, a
19 proceeding involving a license, permit, or other entitlement for use.”⁷

20 A “[l]icense, permit, or other entitlement for use” is defined as all business, professional, trade and
21 land use licenses and permits and all other entitlements for use, including all entitlements for land use, all
22 contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.”⁸

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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81001, subdivision (b).

28 ⁵ Section 84308, subdivision (b).

⁶ Section 84308, subdivision (a)(4).

⁷ Section 84308, subdivision (a)(1).

⁸ Section 84308, subdivision (a)(5).

1 **SUMMARY OF THE FACTS**

2 Semeta served as a member of the Huntington Beach Planning Commission from May 2014 –
3 December of 2016. On May 10, 2016, the Huntington Beach Planning Commission unanimously voted to
4 approve a conditional use permit for No Ka Oi Live Entertainment that allowed No Ka Oi to have live
5 entertainment "...at an existing eating and drinking establishment..."⁹ The applicant for the permit listed
6 on the agenda was Mike Adams, Adams & Associates and the property owner was listed as CDB Land and
7 Farming, LLC, Dennis Boggeln.

8 On or around June 22, 2016, Semeta stated that she was introduced Dennis Boggeln – owner of the
9 No Ka Oi Live Entertainment. On or around June 28, 2016, Semeta and her candidate controlled
10 committee, Lyn Semeta for City Council 2016, received a contribution from No Ka Oi Live Entertainment
11 in the amount of \$550 – exceeding the \$250 limit on a contribution that an officer can receive within the
12 three months of voting on a matter involving a license, permit, or other entitlement for use.

13 On or around July 28, 2016, Lyn Semeta for City Council 2016 and Semeta reported on a semi-
14 annual campaign statement that Semeta’s committee received a contribution from No Ka Oi Live
15 Entertainment in the amount of \$550. Semeta stated that after filing her statement she received an email
16 from the complainant in this case informing her that she had received a contribution in excess of the \$250
17 limit that is imposed for three months after voting on a matter pertaining to a license, permit, or other
18 entitlement for use. Semeta asserts that on or around August 1, 2016, she returned \$301 of the contribution
19 in the form of a check to No Ka Oi Live Entertainment by personally delivering it to the establishment. On
20 the same day, Lyn Semeta for City Council 2016 and Semeta filed an amended semi-annual campaign
21 statement to disclose returning the over-the-limit contribution.

22 **VIOLATION**

23 Count 1: Contribution to an Officer

24 Semeta accepted a \$550 contribution from No Ka Oi Live Entertainment exceeding the \$250 limit
25 within the three months after making decision in a proceeding involving No Ka Oi’s application for a
26 permit, in violation of Government Code Section 84308, subdivision (b).
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28 ⁹Action Agenda Huntington Beach Planning Commission, Tuesday May 10, 2016,
<https://huntingtonbeachca.gov/government/departments/planning/PJB/pcl/PCAgendas.cfm> (Last visited April 18, 2019).

1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per count.
3 Thus, the maximum penalty that may be imposed is \$5,000.¹⁰

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
6 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
7 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
8 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
9 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹¹ Additionally,
10 the Commission considers penalties in prior cases with comparable violations.

11 The Enforcement Division did not find any evidence Semeta intended to conceal that she received
12 the \$550 contribution from No Ka Oi Live Entertainment and she reported it timely on her campaign
13 statement. Semeta returned the contribution and filed an amendment prior to being contacted by the
14 Enforcement Division. Semeta does not have a prior record of violating the Act.

15 The Commission approved a penalty for knowingly accepting a contribution of more than \$250 in
16 the 12 months prior to participating in a proceeding involving a license, permit, or other entitlement for
17 use in following matter.

18 *In the Matter of Barbara Delgleize*; FPPC Case No. 11/186 (approved Aug. 16, 2012), the
19 Commission approved a penalty of \$2,000 against a member of the Huntington Beach Planning
20 Commission for participating in a proceeding involving a license, permit, or other entitlement for use
21 involving a business that had contributed \$520 (\$269 over the \$250 limit) to her within in the preceding
22 12 months, and for failing to disclose the contribution on the record of the proceeding.

23 The same penalty approved by the Commission in the comparable case is recommended. In the
24 comparable case, the contribution was made prior to the vote – meaning the respondent could accept the
25 contribution, but was prohibited from voting on the matter pertaining to the contribution. In the current
26 matter, the contribution was accepted after the vote – meaning Semeta was prohibited from accepting the
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28 ¹⁰ See Section 83116, subdivision (c).

¹¹ Regulation 18361.5, subdivision (d).

1 contribution because she participated in a proceeding involving a license, permit, or other entitlement for
2 use for a contributor. Although the prohibitions are different depending the timing of the contribution, the
3 situations are similar in that both can lead to undue influence of a public official. Furthermore, the cases
4 are similar in the amount money the respondents received that was over-the-limit. In *Delgleize*, the
5 respondent received a contribution of \$520 (\$269 over the \$250 limit) and in the current matter Semeta
6 received a contribution of \$550 (\$299 over the \$250 limit). Therefore, a penalty of \$2,000 is recommended.

7 **CONCLUSION**

8 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
9 Respondent Lyn Semeta hereby agrees as follows:

10 1. Respondent violated the Act as described in the foregoing pages, which are a true and
11 accurate summary of the facts in this matter.

12 2. This stipulation will be submitted for consideration by the Fair Political Practices
13 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

14 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
15 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
16 liability of Respondent pursuant to Section 83116.

17 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all
18 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
19 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
20 matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all
21 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
22 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
23 reviewed.

24 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
25 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
26 \$2,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
27 California—is/are submitted with this stipulation as full payment of the administrative penalty described
28 above, and same shall be held by the State of California until the Commission issues its decision and order

1 regarding this matter.

2 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
3 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
4 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to
5 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
6 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
7 shall be disqualified because of prior consideration of this Stipulation.

8 7. The parties to this agreement may execute their respective signature pages separately. A
9 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
10 or as a PDF email attachment is as effective and binding as the original.

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13 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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17 Dated: _____

Lyn Semeta

1 The foregoing stipulation of the parties “In the Matter of Lyn Semeta,” FPPC Case No. 16/756 is
2 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission