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Enforcement Division of the Fair Political Practices Commission

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 17/965 and 19/629

SAMUEL A. ESCOBAR,

STIPULATION, DECISION AND ORDER

Respondent.

INTRODUCTION

On September 8, 2011, Respondent, Samuel A. Escobar (“Escobar”), was appointed to City Manager for the City of Orange Cove until he resigned on June 20, 2017. The Political Reform Act (the “Act”)¹ requires City Managers to disclose their reportable economic interests on a Statement of Economic Interests (“SEI”) at various times. Escobar had timely filed all required SEIs for this position but violated the Act by failing to timely disclose all reportable income received, during the reporting period of January 1, 2015 through December 31, 2015, on his 2015 annual SEI.

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. The violations in this case occurred in 2015 and 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they existed at that time.

¹ The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

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

2 When enacting the Act, the people of California found and declared that previous laws regulating
3 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
4 decreed the Act should be liberally construed to accomplish its purposes.³ One central purpose of the
5 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁴

6 **Statement of Economic Interests**

7 An express purpose of the Act is to ensure the assets and income of public officials which may
8 be materially affected by their official actions be disclosed, so that conflicts of interest may be avoided.⁵
9 In furtherance of this purpose, city managers are required to file an SEI disclosing reportable
10 investments, business positions, interests in real property and sources of income/gifts received in the
11 previous calendar year.⁶

12 For purposes of disclosing gifts on an SEI, the Act specifically outlines the disclosure
13 requirements for gifts received by a public official. The SEI must contain the name and address of each
14 source of gift aggregating fifty dollars (\$50) or more in value and a general description of the business
15 activity of each source.⁷ Further, an SEI filer must disclose the amount and date on which the gift was
16 received.⁸

17 **Liability for Violations**

18 Any person who violates any provision of the Act is liable for administrative penalties up to
19 \$5,000 per violation.⁹

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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (f).

28 ⁵ Section 81002, subdivision (c).

⁶ Section 87203.

⁷ Section 87207, subdivision (a)(1).

⁸ Section 87207, subdivision (a)(4).

⁹ Sections 83116 and 83116.5.

1 **SUMMARY OF THE FACTS**

2 On September 15, 2015, Escobar received pro-football tickets from Townsend Public Affairs
3 (“Townsend”). The tickets were valued at \$420.¹⁰ On February 24, 2016, Townsend had business before
4 the City of Orange Cove regarding extending Townsend’s contract with the City. Escobar participated in
5 the decision regarding Townsend’s contract.

6 On April 1, 2016, Escobar timely filed his 2015 annual SEI with the City of Orange Cove. On
7 this SEI, Escobar failed to report and attach Schedule D, which discloses all reportable sources of gifts
8 received in the previous calendar year. The gifts from Townsend were received in the calendar year
9 preceding the date in which Townsend had business before the City and were required to be disclosed on
10 Escobar’s 2015 annual SEI.

11 On October 24, 2017, the Enforcement Division sent a written notice to Escobar regarding
12 Escobar’s failure to disclose gifts he had received on his 2015 annual SEI, as the Act requires. On March
13 28, 2018, Escobar filed his 2015 annual SEI amendment by submitting a completed Schedule D
14 disclosing all reportable gifts received throughout 2015. The amendment properly disclosed the pro-
15 football tickets received from Townsend on September 15, 2015.

16 **VIOLATIONS**

17 **Count 1: Failure to Timely Disclose Reportable Economic Interests on 2015 Annual SEI**

18 Escobar failed to timely disclose reportable gifts received, during the reporting period of January
19 1, 2015 through December 31, 2015, on his 2015 Annual SEI by April 1, 2016, in violation of
20 Government Code Sections 87203 and 87207(a)(1).

21 **PROPOSED PENALTY**

22 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
23 count. Thus, the maximum penalty that may be imposed here is \$5,000.¹¹

24 In determining the appropriate penalty for a particular violation of the Act, the Commission
25 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the
26 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of

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28 ¹⁰The adjusted annual gift limit amount in effect for January 1, 2015, to December 31, 2016, was \$460. 2015 2 CCR
18940.2.

¹¹Section 83116, subdivision (c).

1 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
2 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
3 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
4 record of violations.¹²

5 The public harm involved here is significant as Escobar participated in a governmental decision
6 before his agency regarding the source of the undisclosed gifts he received within the previous calendar
7 year. However, the gifts received by Escobar did not exceed the gift limit amount for 2015, thereby
8 avoiding a conflict of interest.¹³ In this case, the evidence supports that there was no intent to conceal,
9 deceive or mislead the public as to the gifts received by Escobar as Escobar had previously reported
10 receiving similar gifts from the same source on later SEIs filed prior to Enforcement contact. The
11 violation here does not appear to be intentional, as Escobar marked Schedule D for Income-Gifts-
12 schedule attached but failed to attach the associated schedule. Escobar has no prior history of violating
13 the Act and amended his 2015 annual SEI after he received contact from the Enforcement Division
14 advising him of his failure to disclose his reportable economic interests.

15 The Commission considers penalties in prior cases with the same or similar violations and
16 comparable facts.

17 *In the Matter of Eric Mar*; FPPC No. 15/2201. Respondent, a member of the City and County of
18 San Francisco Board of Supervisors, failed to properly report gifts received between 2011 and 2015 on
19 each of his annual Statement of Economic Interests (SEIs). The under reported or not reported gifts were
20 music festival tickets. In 2011, Mar under reported a gift by \$222 (Count 1). In 2012, Mar under
21 reported a gift by \$150 and failed to report a gift of \$518 (Count 2). In aggravation, in 2012, Mar
22 participated in a governmental decision regarding the source of one of the gifts who had business before
23 his agency. The amount of the gift he had received exceeded the gift limit in 2012 thereby creating a
24 conflict of interest. In 2013, Mar failed to report a gift valued at \$998 and a gift valued at \$600 (Count
25 3). In 2014, Mar over reported a gift by \$375 and failed to report a gift valued at \$800 (Count 4). In
26 2015, Mar under reported a gift by \$925 and failed to report a gift valued at \$847.50 (Count 5). On

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28 ¹² Regulation 18361.5, subdivision (d).

¹³ The adjusted annual gift limit amount in effect for January 1, 2015, to December 31, 2016, is \$460. 2015 2 CCR
18940.2.

1 November 16, 2017, the Commission approved a penalty of \$6,000 for these 6 counts; \$1,000 each for
2 Counts 1, 3, 4, and 5; \$2,000 for Count 2.

3 Respondent here is deserving of a similar penalty than that approved in the *Mar* case. Like *Mar*,
4 Escobar held a governmental position, received gifts, and failed to report gifts on his SEI. Also, like
5 *Mar*, Escobar participated in a governmental decision regarding the source of one of the gifts who had
6 business before his agency. In mitigation, unlike *Mar*, Escobar's gifts did not create a conflict of interest
7 because Escobar's gifts had a value of \$420 which did not exceed the gift limit amount in 2015. In
8 aggravation, Escobar failed to timely file a Leaving Office SEI for his position on the Board of Directors
9 with the Central San Joaquin Valley Risk Management Authority, which he has filed in conjunction with
10 this settlement. Therefore, a penalty of \$1,000 is recommended.

11 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
12 in the amount of \$1,000 is justified.

13 CONCLUSION

14 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
15 Respondent, Samuel A. Escobar, hereby agrees as follows:

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

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

21 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
22 of reaching a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondents pursuant to Section 83116.

24 4. Respondent understands, and hereby knowingly and voluntarily waive, any and all
25 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
26 18361.9. This includes, but is not limited to the right to appear personally at any administrative
27 hearing held in this matter, to be represented by an attorney at Respondents' own expense, to
28 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to

1 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
2 hearing officer, and to have the matter judicially reviewed.

3 5. Respondent agrees to the issuance of the decision and orders set forth below. Also,
4 Respondent agrees to the Commission imposing against them an administrative penalty in the
5 amount of \$1,000. One or more cashier's checks or money orders totaling said amount – to be
6 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
7 payment of the administrative penalty described above, and same shall be held by the State of
8 California until the Commission issues its decision and order regarding this matter.

9 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
10 null and void, and within fifteen business days after the Commission meeting at which the
11 stipulation is rejected, all payments tendered by Respondent in connection with this stipulation
12 shall be reimbursed to Respondent. If this stipulation is not approved by the Commission, and if
13 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
14 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
15 this stipulation.

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

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21 Dated: _____
22 Galena West, Chief of Enforcement
23 Fair Political Practices Commission

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25 Dated: _____
26 Samuel A. Escobar, Respondent

1 The foregoing stipulation of the parties “In the Matter of Samuel A. Escobar,” FPPC Case No.
2 17/965 and 19/629, is hereby accepted as the final decision and order of the Fair Political Practices
3 Commission, effective upon execution 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