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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 19/791

12 TERRY SMITH,

STIPULATION, DECISION AND ORDER

13
14 Respondent.

15 **INTRODUCTION**

16 On June 8, 2009, Respondent, Terry Smith (“Smith”), was appointed to the position of
17 Governing Board Member for the Grenada Irrigation District for the County of Siskiyou. To date, Smith
18 continues to hold this position.

19 The Political Reform Act (the “Act”)¹ requires designated employees to disclose their reportable
20 economic interests on a Statement of Economic Interests (“SEI”) at various times pursuant to their
21 agency’s Conflict of Interest Code. Smith, a designated employee, violated the Act, and the County of
22 Siskiyou’s Conflict of Interest Code, by failing to timely file his 2017 annual SEI by the April 2, 2018
23 due date and his 2018 annual SEI by the April 1, 2019 due date.

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28 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 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 in 2018 and 2019. For this reason, all legal references and discussions of law pertain to the Act’s
4 provisions as they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
8 decreed the Act should be liberally construed to accomplish its purposes.³

9 One central purpose of the Act is to increase transparency and decrease conflicts of interest in the
10 actions of public officials by requiring disclosure of their economic interests.⁴ Another is to provide
11 adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

12 **Conflict of Interest Codes**

13 The Act requires every state and local agency to develop a Conflict of Interest Code.⁶ These
14 codes must designate those officials who participate in making decisions which may foreseeably have a
15 material financial effect on any financial interest belonging to that official and require those designated
16 officials to disclose all reportable interests on SEIs.⁷ The requirements of an agency’s Conflict of
17 Interest Code have the force of law, and any violation of those requirements is deemed a violation of the
18 Act.⁸

19 **Conflict of Interest Code for Siskiyou County**

20 Siskiyou County’s Conflict of Interest Code designated Governing Board Members for the
21 Grenada Irrigation District as a position required to complete all schedules and disclose investments and
22 business positions, interests in real property, and income.⁹

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25 ² Section 81001, subdivision (h).
26 ³ Section 81003.
27 ⁴ Section 81002, subdivision (c).
28 ⁵ Section 81002, subdivision (f).
⁶ Section 87300.
⁷ Section 87302, subdivision. (a).
⁸ Section 87300.
⁹ Siskiyou County Conflict of Interest Code.

1 Siskiyou County incorporated by reference Regulation 18730 into its Conflict of Interest Code.¹⁰
2 Regulation 18730 outlines the timing for disclosing the designated employees' economic interests as
3 follows: all designated employees shall annually file statements no later than April 1.¹¹

4 **Liability for Violations**

5 Any person who violates any provision of the Act is liable for administrative penalties up to
6 \$5,000 per violation.¹²

7 **SUMMARY OF THE FACTS**

8 Smith has been serving as a Governing Board Member for the Grenada Irrigation District for the
9 County of Siskiyou from June 8, 2009 to present. For this position, Smith has filed SEIs in the past.
10 Smith failed to timely file his 2017 annual SEI by the April 2, 2018 due date and his 2018 annual SEI by
11 the April 1, 2019 due date.

12 The Siskiyou County Clerk's office contacted Smith, between November 17, 2017 and July 29,
13 2019, regarding filing his 2017 annual and 2018 annual SEIs. The Siskiyou County Clerk's office sent
14 five notices via mail, two via email, contacted Smith twice via phone, and once contacted the Grenada
15 Irrigation District to gain compliance.

16 On July 31, 2019, 485 days late, Smith filed his 2017 annual SEI. On July 31, 2019, 121 days
17 late, Smith filed his 2018 annual SEI. As of the date of this Stipulation, Decision and Order, Smith has
18 filed all outstanding SEIs.

19 **VIOLATIONS**

20 Count 1: Failure to Timely File 2017 Annual SEI

21 Smith failed to timely file his 2017 annual SEI by the April 2, 2018 due date, in violation of
22 Government Code Section 87300.

23 Count 2: Failure to Timely File 2018 Annual SEI

24 Smith failed to timely file his 2018 annual SEI by the April 1, 2019 due date, in violation of
25 Government Code Section 87300.

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28 ¹⁰ *Id.*

¹¹ Regulation 18730, subdivision (b)(5)(C).

¹² Sections 83116 and 83116.5.

1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed here is \$10,000.¹³

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. Further, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.¹⁴

11 A central purpose of the Act is to increase transparency and decrease conflicts of interest in the
12 actions of public officials by requiring disclosure of their economic interests.¹⁵ The seriousness of the
13 violation here is increased due to Smith’s failure to disclose his multiple economic interests until 485
14 days after the due date for his 2017 annual SEI and 121 days after the due date for his 2018 annual SEI.
15 Although, the seriousness of the violation is mitigated because there is no evidence that Smith
16 participated in any governmental decisions involving his undisclosed interests.

17 In this case, during its review, the Enforcement Division did not discover any evidence
18 displaying any intention by Smith to conceal, deceive, or mislead the public. However, Smith’s
19 violations here are part of a pattern of late-filing. On October 15, 2015, the Commission approved a
20 penalty of \$800 for Smith’s failure to timely file his 2011 annual, 2012 annual, 2013 annual, and 2014
21 annual SEIs for his position with the Grenada Irrigation District (FPPC Case No. 15/1280).

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

24 *In the Matter of Aaron F.B. Medina*; FPPC Case No. 16/19737. Respondent, a prior
25 Commissioner of the California Travel and Tourism Commission, failed to timely file his 2015 and 2016

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28 ¹³ Section 83116, subdivision (c).

¹⁴ Regulation 18361.5, subdivision (d).

¹⁵ Section 81002, subdivision (c).

1 annual SEIs by the specified deadlines. Medina did not file his 2015 and 2016 annual SEIs until after
2 service of a probable cause report and after he had left office. Also, Medina had prior Enforcement
3 history for failing to file his assuming office, 2013 annual and 2014 annual SEIs. On May 17, 2018, the
4 Commission approved a total penalty of \$2,000; \$1,000 for each count.

5 A higher penalty than that approved in the *Medina* case is recommended here. Like *Medina*,
6 Smith also failed to timely file two annual SEIs by the specified deadlines. Also, like *Medina*, Smith had
7 prior Enforcement history for failing to timely file four SEIs by the specified deadlines for calendar
8 years 2011 through 2014. In mitigation, Smith late-filed his recent SEIs prior to Enforcement contact. In
9 aggravation, Smith also failed to timely file his 2015 annual SEI (filed 10 days late) and his 2016 annual
10 SEI (filed 53 days late) by the specified deadlines which are not being charged separately for purposes
11 of settlement. Therefore, a total penalty of \$3,000 is recommended; \$1,500 for each count.

12 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
13 in the amount of \$3,000 is justified.

14 CONCLUSION

15 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
16 Respondent, Terry Smith, hereby agree as follows:

- 17 1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate
18 summary of the facts in this matter.
- 19 2. This stipulation will be submitted for consideration by the Fair Political Practices
20 Commission at its next regularly scheduled meeting – or as soon thereafter as the matter may be
21 heard.
- 22 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
23 of reaching a final disposition without the necessity of holding an administrative hearing to
24 determine the liability of Respondents pursuant to Section 83116.
- 25 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all
26 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
27 18361.9. This includes, but is not limited to the right to appear personally at any administrative
28 hearing held in this matter, to be represented by an attorney at Respondent’s own expense, to

1 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
2 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
3 hearing officer, and to have the matter judicially reviewed.

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

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

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

Galena West, Chief of Enforcement
Fair Political Practices Commission

26 Dated: _____

Terry Smith, Respondent

1 The foregoing stipulation of the parties “In the Matter of Terry Smith,” FPPC Case No. 19/791,
2 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
3 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