BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of ) OAH No. 2014060674
) FPPC No. 12/516

FRANK J. BURGESS, ) OPENING BRIEF OF THE ENFORCEMENT
) DIVISION OF THE FAIR POLITICAL
) PRACTICES COMMISSION RE:
) PROPOSED DECISION OF
) ADMINISTRATIVE LAW JUDGE H.
) STUART WAXMAN

Date: March 19, 2015
Time: 10:00 a.m.
Place: 428 J Street, 8th Floor Hearing Room
Sacramento, CA 95814

The Enforcement Division of the Fair Political Practices Commission ("Commission") submits the following opening brief:

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OPENING BRIEF OF THE ENFORCEMENT DIVISION RE: PROPOSED DECISION OF ALJ
In the Matter of Frank J. Burgess
OAH NO. 2014060674; FPPC NO. 12/516
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I. INTRODUCTION

This is a very simple case, and the Proposed Decision reaches the correct result. The evidence presented at the Administrative Hearing proves that Respondent Burgess violated conflict of interests laws on April 6, 2010, when he attempted to use his official position to influence a governmental decision which directly impacted the corporation for which is was president, and the evidence supports an order that he pay the maximum penalty.

The Enforcement Division submits this opening brief pursuant to Regulation 18361.9 and respectfully recommends that the Commission adopt the Proposed Decision of ALJ Waxman with limited, minor, technical changes of a clarifying nature—as discussed more fully below.

A. Procedural Posture

This case was heard before Administrative Law Judge (“ALJ”) H. Stuart Waxman of the Los Angeles Office of Administrative Hearings on December 8 and 9, 2014.

The Fair Political Practices Commission (“Commission”) was represented by Angela J. Brereton, Senior Commission Counsel, Enforcement Division, and Adam Silver, Commission Counsel, Enforcement Division.

Respondent Frank J. Burgess appeared without counsel and represented himself.

On December 18, 2014, ALJ Waxman issued a Proposed Decision imposing an administrative penalty in the amount of $5,000 against Respondent Frank J. Burgess for one violation of Government Code section 87100 of the Political Reform Act (the “Act”).¹

On January 2, 2015, the Executive Director of the Commission, caused a copy of the Proposed Decision to be served on the Enforcement Division and Respondent Burgess. The Proposed Decision is attached hereto as Exhibit A.

B. The Respondent

Respondent Frank J. Burgess was a member of the Board of Directors for San Gorgonio Memorial Healthcare District (“District”) from June 2009 through December 2010. In such capacity,

¹ The Political Reform 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.
Respondent Burgess was also a member of the Board of Directors for San Gorgonio Memorial Hospital ("Hospital"), located in the city of Banning in Riverside County, CA. Before sitting on the Board of Directors for the District and the Hospital, Respondent Burgess was a member of the Banning City Council for 12 years.

C. Summary of the Case

In this matter, Respondent Burgess violated the conflicts of interests provisions of the Act by attempting to use his official position to influence a governmental decision when he gave a packet of informative materials to the Hospital Board members before they voted on whether to approve an agreement with a competing company and discontinue storing documents with Burgess northAmerican, a business entity in which Respondent Burgess held an economic interest under the Act.

At the Hearing, Respondent was charged with one violation of the Political Reform Act:

COUNT 1: On or about April 6, 2010, Respondent Frank J. Burgess, as a member of the Board of Directors for San Gorgonio Memorial Healthcare District, and consequently as a member of the Board of Directors for San Gorgonio Memorial Hospital, attempted to use his official position to influence a governmental decision in which he had a financial interest, when he gave a packet of informative materials to Hospital Board members before they voted on whether to approve an agreement with a competing company and discontinue storing documents with Burgess northAmerican, a business entity in which Respondent Burgess was an officer, director and held a position of management, in violation of Government Code Section 87100.

The foregoing violation was set forth in a charging document called the Accusation. Pursuant to Section 83116, subdivision (c), the Accusation requested imposition of a monetary penalty of up to $5,000 for the violation. At the hearing, undersigned counsel for the Commission requested imposition of the maximum penalty of $5,000 for the violation.

Following the two-day hearing, ALJ Waxman found that Respondent did in fact commit one violation of Section 87100, as set forth in Count 1 of the Accusation, and recommended imposition of the maximum penalty of $5,000.

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2 The Accusation is attached hereto as Exhibit B.
II. DISCUSSION OF PROPOSED DECISION

A. Enforcement Division’s Position

The Proposed Decision in this matter reaches the correct legal conclusion. The evidence presented at the Administrative Hearing proves that Respondent Burgess violated conflict of interests laws on April 6, 2010, when he attempted to use his official position to influence a governmental decision which directly impacted the corporation for which is was president, and the evidence supports an order that he pay the maximum penalty.

Regulation 18361.9 requires the Enforcement Division to submit this opening brief but does not mandate its contents. Rather, subdivision (b)(1) of that regulation provides that the Enforcement Division may address the following matters in its opening brief:

1. Whether the facts stated in the Proposed Decision are consistent with the evidence presented

The Proposed Decision of ALJ Waxman, dated December 18, 2014, states findings of fact that are supported by and consistent with the evidence presented at the hearing in this matter. Over the two-day hearing, ALJ Waxman admitted documentary evidence by both the Enforcement Division and the Respondent, as detailed in the Exhibit/Witness List attached to the Proposed Decision. The evidence presented by the Enforcement Division included:

- The agenda and minutes of the April 6, 2010 Meeting of the San Gorgonio Memorial Hospital Board;
- The San Gorgonio Memorial Hospital staff report recommending changing document services companies;
- The packet of materials presented by Respondent Burgess to the San Gorgonio Memorial Hospital Board;
- Conflict of Interests Codes for the San Gorgonio Memorial Healthcare District;
- By-laws for the San Gorgonio Memorial Healthcare District and the San Gorgonio Memorial Hospital;

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• Burgess northAmerican’s contract with San Gorgonio Memorial Hospital to provide
document storage services;
• History of payments from San Gorgonio Memorial Hospital to Burgess northAmerican for
providing document storage services;
• Respondent Burgess’ Statements of Economic Interests; and
• Records from the Secretary of State and the County of Riverside regarding Banning Van &
Storage, Inc., dba Burgess northAmerican.

Additionally, though not specifically listed in the Exhibit/Witness List, oral evidence was
presented at the hearing by way of four witnesses. The witnesses were as follows:

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<td>1. FRANK J. BURGESS, Respondent</td>
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<td>2. JERILYNN KAIBEL, DC, Chair, San Gorgonio Memorial Hospital Board of Directors</td>
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<td>Dec. 9, 2014</td>
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Mrs. Duffy, Dr. Kaibel, and Respondent Burgess were all present at the meeting of the San Gorgonio
Memorial Hospital Board on April 6, 2010. Mrs. Duffy was, and is currently, the filing officer,
recording secretary, and custodian of records for the San Gorgonio Memorial Healthcare District, the
San Gorgonio Memorial Hospital and both of their governing Boards. Dr. Kaibel was, and is currently,
the Chair of the San Gorgonio Memorial Hospital Board. Mr. Myers was the Enforcement Division
Special Investigator assigned to investigate this matter, interviewing witnesses and obtaining documents
as was necessary.

ALJ Waxman heard all of the witnesses’ testimony during the two-day hearing, and received and
reviewed all of the documentary evidence in this case. Highlights of Factual Findings\(^3\) include:

\(^3\) Ex. A: Proposed Decision, pp. 1-3, ¶1-12.

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• From June 2009 through December 2010, Respondent Burgess was a member of the District Board. As a member of the District Board, he was also a member of the Hospital Board. Both the District Board and the Hospital Board were public agencies in April 2010. Members of both Boards are required to file Statements of Economic Interests disclosing economic interests that could actually or potentially trigger conflicts of interests with the members’ official duties.

• On April 6, 2010, Respondent Burgess was President and CEO of Banning Van & Storage, Inc., dba Burgess northAmerican (“Burgess northAmerican”), and he had held this position for over 40 years. Respondent Burgess oversaw the Banning office, and reported his interests in Burgess northAmerican in his annual Statements of Economic Interests.

• In April 2005, the Hospital entered into a contract with Burgess northAmerican to store and manage the Hospital’s records. This contract was in full force and effect on April 6, 2010. Burgess northAmerican’s annual income from the contract exceeded $30,000.

• In or around April 2010, the Hospital Board considered reducing its medical record storage and management costs either by negotiating a new rate with Burgess northAmerican or by terminating the contract with Burgess northAmerican and entering into a contract with another company. A comparison was made between Burgess northAmerican and a company named Docu-Trust. The results of that comparison showed that the hospital could realize a 24.54 percent annual savings, totaling $7,767.95, by contracting with Docu-Trust instead of Burgess northAmerican.

• An item was placed on the agenda for the April 6, 2010 Hospital Board Meeting to decide whether to terminate Burgess northAmerican’s contract with the Hospital in favor of one with Docu-Trust.

• Prior to the April 6, 2010 Hospital Board Meeting, Respondent Burgess and/or his son prepared a 10-page packet of materials relating to the hospital board’s choice between Burgess northAmerican and Docu-Trust. The packet contained eight sections, including but not limited to “Questions to be addressed Before voting [sic]:” “Fees due prior to removal Of
Containers [sic]; “Corrected annual cost comparison” [sic]; and a schedule of charges for the hospital’s account.

- On April 6, 2010, during the dinner break between the District Board meeting and the Hospital Board meeting, Respondent Burgess placed the packet of materials at the place of each of the 13 members of the Hospital Board. Roberta (Bobbi) Duffy, the executive assistant to the Hospital’s CEO, saw Respondent Burgess distributing the packet for the Hospital Board members and told him she had to make a copy of it. Respondent Burgess gave her one of the packets for that purpose.

- Prior to the April 6, 2010 meeting, Dr. Kaibel, the Chair of the Hospital Board, spoke with Respondent Burgess concerning the agenda item relating to his company and told him he should refrain from the discussion and abstain from the vote due to his conflict of interest. She recommended to Respondent that he be absent from the room during the discussion and vote. Dr. Kaibel observed Respondent Burgess distributing his packet, and she chastised him for lobbying the board members on his company’s behalf. When the agenda item was called, Respondent Burgess did not exit the room. Instead, he remained in his board member’s seat, and he attempted to speak to the Hospital Board members about the packet while holding the packet up in his hand. Dr. Kaibel repeatedly called him out of order because of his conflict of interest. Respondent Burgess abstained from the vote, and the contract with Docu-Trust was unanimously approved with abstentions by Respondent Burgess and one other board member.

- Respondent admits he prepared and distributed the packet for the Hospital Board members, claiming he did so because the chart used to compare Burgess northAmerican and Docu-Trust was incomplete, inaccurate, and untrue.

ALJ Waxman did an excellent job stating the facts as presented in the evidence during the two-day hearing, and the Factual Findings in the Proposed Decision are consistent with the evidence presented.

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2. Whether the Proposed Decision contains an accurate statement and/or application of the law

In the Proposed Decision, ALJ Waxman accurately states the following California Government Code sections which were in effect on April 6, 2010, and applicable to the Factual Findings:

✓ Section 87100 – the core conflict of interests law for state and local public officials in California (Ex. A, Proposed Decision, p.4, ¶3.)

✓ Section 87103, subdivisions (a) and (d) – the law applicable to when a public official has an economic interest in a business entity for conflicts of interest violations pursuant to Section 87100 (Ex. A, Proposed Decision, p.5, ¶6.)

✓ Section 83116 – authority granted to the Commission to determine when violations of the Act have occurred, and to impose administrative penalties for those violations (Ex. A, Proposed Decision, p.4, ¶4.)

✓ Section 82048 – definition of public official. (Ex. A, Proposed Decision, p.6, ¶9.)

Additionally, in the Proposed Decision, ALJ Waxman accurately states the following California Code Regulations, title 2, which were in effect on April 6, 2010, and applicable to the Factual Findings:

✓ Regulation 18702.3, subdivision (a) – specifies when a public official is attempting to use his official position to influence a governmental decision. (Ex. A, Proposed Decision, p.7, ¶10a.).

✓ Regulation 18702.4, subdivision (b) – the exceptions applicable to when a public official “attempting to use his or her official position to influence a governmental decision” for conflicts of interest violations pursuant to Section 87100. (Ex. A, Proposed Decision, p.7, ¶10b.)

✓ Regulation 18704.1, subdivision (a) – specifies when an economic interest, including a business entity, is directly involved in a governmental decision. (Ex. A, Proposed Decision, p.9, ¶12a.)

✓ Regulation 18705.1 – specifies when the financial effects of a governmental decision on a business entity is material. (Ex. A, Proposed Decision, p.10, ¶13a.)
✓ Regulation 18361.5, subdivision (d) – specifies the factors to be considered by the Commission when imposing a penalty for a violation of the Act. (Ex. A, Proposed Decision, p.12, ¶16.)

The Proposed Decision also includes law which is accurately stated, but need not have been included because the law is irrelevant to the Factual Findings.

- Section 87103, subdivision (c) – the law applicable to when a public official has an economic interest in a source of income for conflicts of interest violations pursuant to Section 87100. (Ex. A, Proposed Decision, p.5, ¶6.) The Accusation did not charge, nor do the Factual Findings show, that Burgess northAmerican was a source of income to Respondent Burgess.

- Regulation 18702.2 – the law applicable to when a public official “participates in making a governmental decision” for conflicts of interest violations pursuant to Section 87100 (Ex. A, Proposed Decision, p.5-6, ¶7.) The Accusation did not charge, nor do the Factual Findings show, that Respondent Burgess participated in making a governmental decision.

- Regulation 18702.4, subdivision (a) – the exceptions applicable to when a public official “participates in making a governmental decision” for conflicts of interest violations pursuant to Section 87100. (Ex. A, Proposed Decision, p.7, ¶10b.) The Accusation did not charge, nor do the Factual Findings show, that Respondent Burgess participated in making a governmental decision.

- Regulation 18703.3 – the law applicable to when a public official has an economic interest in a source of income for conflicts of interest violations pursuant to Section 87100. (Ex. A, Proposed Decision, p.8, ¶11a.) The Accusation did not charge, nor do the Factual Findings show, that Burgess northAmerican was a source of income to Respondent Burgess. It appears that ALJ Waxman mistakenly included Regulations 18703.3 and 18703.5 instead of 18703.1.

- Regulation 18703.5 – the law applicable to when a public official has an economic interest in his personal finances, which are not otherwise enumerated in Section 87103,
subdivisions (a) through (e), for conflicts of interest violations pursuant to Section 87100. (Ex. A, Proposed Decision, p.9, ¶11b.) The Accusation charged, and the Factual Findings show, that Burgess northAmerican was a business entity encompassed by Section 87103, subdivision (d), therefore Regulation 18703.5 does not apply to Burgess northAmerican. It appears that ALJ Waxman mistakenly included Regulations 18703.3 and 18703.5 instead of 18703.1.

Discussion regarding the Enforcement Division’s position on the disposition of these citations is included in subsections 4c and 4d, below.

Additionally, the Proposed Decision includes law which is inaccurately stated because it cites to the current version of the law instead of the version which was in effect in April 2010:

- Regulation 18706, subdivision (a) – the law applicable to whether a financial effect on an economic interest that is explicitly involved in a governmental decision is reasonably foreseeable. (Ex. A, Proposed Decision, p11, ¶14a.)

- Regulation 18706, subdivision (b) – the law applicable to whether a financial effect on an economic interest that is not explicitly involved in a governmental decision is reasonably foreseeable. (Ex. A, Proposed Decision, p11, ¶14c.)

Amendments to Regulation 18706 were operative May 31, 2014. Prior to that date, Regulation 18706 had not changed since 2002. The Accusation included the version of Regulation 18706 that was in effect on April 6, 2010. The version in effect on April 6, 2010 should have been applied in the Proposed Decision, as well, but ALJ Waxman mistakenly applied the 2014 version. However, this is a harmless error because application of the 2010 version would lead to the same result as ALJ Waxman’s application of the current version. Further discussion regarding the Enforcement Division’s position on the disposition of these citations is included in subsection 4e, below.

3. Whether there is additional material evidence that could not, with reasonable diligence, have been discovered and presented at the administrative hearing

The Enforcement Division is not aware of any additional material evidence, which could, with reasonable diligence, have been discovered and presented at the administrative hearing.
4. Which of the dispositions provided for in Government Code section 11517 is recommended by the Enforcement Division and why

The Proposed Decision reaches the correct result in this matter, but there are some minor changes that should be made for clarification. The Commission has made such changes to Proposed Decisions in other matters when necessary.

Pursuant to Government Code section 11517, subdivision (c)(2)(C), of the California Administrative Procedure Act, the Enforcement Division requests that the Commission make clarifying, minor and technical changes to the Proposed Decision.

Section 11517, subdivision (c)(2), provides that within 100 days of the Commission’s receipt of the proposed decision, the Commission may do any of the following:

(A). Adopt the proposed decision in its entirety.

(B). Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

(C). Make technical or other minor changes in the proposed decision and adopt it as the decision. However, action by the Commission in this regard is limited to “a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.” (Gov. Code, § 11517, subd. (c)(2)(C).)

(D). Reject the proposed decision and refer the case back to the ALJ to take additional evidence and prepare a revised, proposed decision.

(E). Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. (By stipulation of the parties, the Commission may decide the case upon the record without including the transcript.) If the Commission chooses this option, all of the following provisions apply:

(i) A copy of the record shall be made available to the parties. The Commission may require payment of fees covering direct costs of making the copy.

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4 The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.
(ii) The Commission itself shall not decide the case without affording the parties the opportunity to present either oral or written argument before the Commission itself. If additional oral evidence is introduced before the Commission itself, no Commission member may vote unless the member heard the additional oral evidence.

(iii) The authority of the Commission itself to decide the case in this regard includes authority to decide some but not all issues in the case.

As will be discussed below, the Enforcement Division requests that the Commission make clarifying, minor and technical changes to the Proposed Decision, as follows:

a. Witness List

Oral evidence was presented at the administrative hearing by way of four witnesses, however, the Exhibit/Witness List attached to the Proposed Decision does not list the witnesses. This omission is a minor oversight, and the following information should be added to the Exhibit/Witness List:

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b. Reference to the six elements of conflicts of interests violations

The reference that the six elements for conflicts of interests violations is not mandated by statute or regulation should be stricken from the Proposed Decision as a clarifying, technical change.

On page 6, in the second sentence of paragraph 8, the Proposed Decision states:

Although the use of the above [six-element] construct is not mandated by statute or regulation, it serves as a useful tool in determining liability under that statute.
However, Regulation 18700, reiterates the core conflict of interests law in Section 87100, and then states:

(b) To determine whether a given individual has a disqualifying conflict of interest under the Political Reform Act, proceed with the following analysis:

(1) Determine whether the individual is a public official, within the meaning of the Act. (See Government Code section 82048; 2 Cal. Code Regs. § 18701.) If the individual is not a public official, he or she does not have a conflict of interest within the meaning of the Political Reform Act.

(2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (See 2 Cal. Code Regs. § 18702.) If the public official is not making, participating in making, or using or attempting to use his/her official position to influence a government decision, then he or she does not have a conflict of interest within the meaning of the Political Reform Act.

(3) Identify the public official’s economic interests. (See 2 Cal. Code Regs. § 18703.)

(4) For each of the public official’s economic interests, determine whether that interest is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (See 2 Cal. Code Regs. § 18704.)

(5) Determine the applicable materiality standard for each economic interest, based upon the degree of involvement determined pursuant to California Code of Regulations, title 2, section 18704. (See 2 Cal. Code Regs. § 18705.)

(6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect (as defined in California Code of Regulations, title 2, section 18705) on each economic interest identified pursuant to California Code of Regulations, title 2, section 18703. (See 2 Cal. Code Regs. § 18706.)

Thus, the six elements are clearly enumerated in Regulation 18700, subdivision (b).

ALJ Waxman’s mistaken assertion that the elements are not mandated by statute or regulation is harmless error. Despite his mistaken assertion, ALJ Waxman correctly identifies and applies the six elements in the Proposed Decision to determine whether Respondent Burgess violated Section 87100.

Therefore, the above reference to the six elements should be stricken and language added, as follows:

- Strike: On page 6, paragraph 8: the second sentence in its entirety;
- Add: (See California Code of Regulations, title 2, section 18700, subdivision (b).)

c. Citations related to participating in making a governmental decision

The citations related to participating in making a governmental decision should be stricken from the Proposed Decision as a clarifying, technical change.
Section 87100 (Ex. A, Proposed Decision, p.4, ¶3.), is the core conflict of interests law in the Act:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Regulation 18702.3, subdivision (a) (Ex. A, Proposed Decision, p.7, ¶10a.) specifies when a public official is attempting to use his official position to influence a governmental decision.

Regarding the governmental decision element, the Accusation charged only that Respondent Burgess attempted to use his official position to influence a governmental decision. The Accusation did not charge that Respondent Burgess participated in making a governmental decision.

The Factual Findings in the Proposed Decision do not show that Respondent Burgess participated in making a governmental decision. Moreover, the Legal Conclusions in the Proposed Decision, other than the actual limited citations, do not discuss whether Respondent Burgess participated in making a governmental decision.

Striking these irrelevant legal citations is a clarifying change to the Proposed Decision – the omission of the citations will not affect either the factual or legal basis for the Proposed Decision. The Factual Findings in the Proposed Decision are not affected at all by eliminating superfluous legal citations. Additionally, the Legal Conclusions in the Proposed Decision are essentially unchanged. ALJ Waxman's legal analysis and ultimate legal conclusions regarding whether Respondent Burgess had attempted to use his official position to influence a governmental decision were not based upon these citations, but upon the law articulated in Sections 87100 and Regulation 18702.3, subdivision (a), both of which are properly cited in the Proposed Decision, and will remain unchanged.

Thus, the legal citations related to participating in making a governmental decision are irrelevant to this matter, and should be stricken, as follows:

- Strike: On pages 5-6, paragraph 7: the citation to 18702.2;
- Strike: On page 7, paragraph 10b: the citation to subdivision (a) of Regulation 18702.4.

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d. Citations related to whether a source of income or personal finances are an economic interest

The citations related to whether a source of income or personal finances are an economic interest should be stricken from the Proposed Decision as a clarifying, technical change. It appears that ALJ Waxman mistakenly included Regulations 18703.3 and 18703.5, instead of including Regulation 18703.1. Regulation 18703.1 reiterates Section 87103, subdivision (d) [business positions as a basis for an economic interest]. Section 87103, subdivision (d) is included in the Proposed Decision.

The Accusation only charged that Respondent Burgess had an economic interest in a business entity, Banning Van & Storage, Inc., dba Burgess northAmerican ("Burgess northAmerican"), by virtue of his roles as the president/CEO and a manager of the business entity. The Factual Findings and the Legal Conclusions discuss only whether Respondent Burgess had an economic interest in Burgess northAmerican by virtue of his business positions, and include no discussion of source of income or personal finances.

Striking the irrelevant legal citations is a clarifying change to the Proposed Decision – the omission of the citations will not affect either the factual or legal basis for the Proposed Decision. The Factual Findings in the Proposed Decision are not affected at all by eliminating superfluous legal citations. Additionally, the Legal Conclusions in the Proposed Decision are essentially unchanged. ALJ Waxman’s legal analysis and ultimate legal conclusions regarding whether Respondent Burgess had a qualifying economic interest in Burgess northAmerican were not based upon these citations, but upon the law articulated in Sections 87100 and 87103, subdivision (d), both of which are properly cited in the Proposed Decision, and will remain unchanged.

ALJ Waxman applied the correct standard, but mistakenly cited the incorrect regulation. Thus, the source of income and personal finances legal citations are irrelevant to this matter, and should be stricken and language added, as follows:

- Strike: On page 5, paragraph 6: the citation to subdivision (c) of Section 87103;
- Strike: On page 8, paragraph 11a: the citation to Regulation 18703.3;
- Add: On page 8, paragraph 11a:
In April 2010, Regulation 18703.1 stated:

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in a business entity if any of the following are true: …
(b) The public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.

- Strike: On page 9, paragraph 11b: the citation to Regulation 18703.5.

e. Citations related to reasonable foreseeability

The citations related to reasonable foreseeability should be stricken from the Proposed Decision as described below, as a clarifying, technical change.

Section 87100 (Ex. A., Proposed Decision, p.4, ¶3.), is the core conflict of interests law. Section 87103 (Ex. A, Proposed Decision, p.5, ¶6.), enumerates the requirement that it was reasonably foreseeable that the decision will have a material financial effect on the official's economic interest, including business entities. Section 87103 was in full force and effect in April 2010. Both the Accusation and the Proposed Decision cite Sections 87100 and 87103.

In April 2010, Regulation 18706, subdivisions (a) and (b) stated:

(a) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§ 18704, 18705) applicable to that economic interest will be met as a result of the governmental decision.
(b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:
(1) The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;
(2) The market share held by the official or the official's source of income in the jurisdiction;
(3) The extent to which the official or the official's source of income has competition for business in the jurisdiction;
(4) The scope of the governmental decision in question; and
(5) The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

The Accusation included a citation to Regulation 18706 as it was in effect in April 2010. However, the Proposed Decision cites Regulation 18706 which became effective on May 31, 2014.
The main difference between the 2010 version of Regulation 18706 with the 2014 version is that the newer version includes a presumption for establishing the reasonably foreseeable element. However, in the Proposed Decision, ALJ Waxman specifically analyzes the reasonably foreseeable element without the presumption, and finds that the evidence establishes that the material financial effect on Burgess northAmerican was reasonably foreseeable.

Section 87103, which establishes the reasonably foreseeable requirement, was applicable in both 2010 and 2014, and is correctly cited in the Proposed Decision. Additionally, the 2010 version of Regulation 18706 includes similar general guidelines – not mandated factors – to the 2014 version for determining the reasonably foreseeable element. The Proposed Decision concludes that:

Respondent stood to lose a lucrative contract with the hospital if the hospital board voted to change storage companies to Docu-Trust. ... the financial effect on [Respondent’s economic] interests by the board’s decision was more than reasonably foreseeable. (Ex. A. Proposed Decision, p. 12, ¶14d.)

ALJ Waxman’s analysis of the evidence regarding the reasonably foreseeable element under the 2014 version is exactly the same analysis as is made under the 2010 version of Regulation 18706. Thus, ALJ Waxman’s use of the 2014 version of Regulation 18706 is harmless error.

Striking the 2014 version and adding the 2010 version of Regulation 18706 is a clarifying change to the Proposed Decision – the replacement of the 2014 version with the 2010 version of Regulation 18706 will not affect either the factual or legal basis for the Proposed Decision. The Factual Findings in the Proposed Decision are not affected at all by using the correct legal citation. Additionally, the Legal Conclusions in the Proposed Decision are essentially unchanged. ALJ Waxman’s legal analysis and ultimate legal conclusions regarding the reasonably foreseeable element is the same using either the 2014 version or the 2010 version. The Commission must use the 2010 version because that was the law in effect at the time of the violation. Additionally, the reasonably foreseeable element is articulated in Section 87103, which is properly cited in the Proposed Decision, and will remain unchanged.

Thus, the 2014 version of Regulation 18706 should be stricken, and the 2010 version of Regulation 18706 added to the Proposed Decision, as follows:

OPENING BRIEF OF THE ENFORCEMENT DIVISION RE: PROPOSED DECISION OF ALJ
In the Matter of Frank J. Burgess
OAH NO. 2014060674; FPPC NO. 12516
• Strike: On page 11, paragraph 14: subparagraphs a, b, and c in their entirety;

• Add: On page 11, paragraph 14a:

In April 2010, Regulation 18706, subdivisions (a) and (b) stated:
(a) A material financial effect on an economic interest is reasonably foreseeable, within the meaning of Government Code section 87103, if it is substantially likely that one or more of the materiality standards (see Cal. Code Regs., tit. 2, §§ 18704, 18705) applicable to that economic interest will be met as a result of the governmental decision.
(b) In determining whether a governmental decision will have a reasonably foreseeable material financial effect on an economic interest as defined in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines:
1. The extent to which the official or the official's source of income has engaged, is engaged, or plans on engaging in business activity in the jurisdiction;
2. The market share held by the official or the official's source of income in the jurisdiction;
3. The extent to which the official or the official's source of income has competition for business in the jurisdiction;
4. The scope of the governmental decision in question; and
5. The extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

• Change: On page 12: Change the numbering for paragraph 14d to 14b.

f. Typographical Errors

On page 2, paragraph 5, the Proposed Decision states “Statements of Financial Interests.” This should be changed to “Statements of Economic Interests,” so as to be consistent with the correct name of the Commission Form 700, which the Proposed Decision properly identifies on page 2, paragraph 2.

In several places on page 3, paragraph 10, and footnote 1, Dr. Kaibel’s name is spelled incorrectly by adding an extra “l” to her last name, and should be replaced with the accurate spelling.

5. Any other issue the Enforcement Division determines to be relevant

Respondent Burgess’ due process rights have been properly met in this matter. Respondent Burgess was personally, timely and properly served with the Accusation in this case. The Accusation included all of the applicable law, and thoroughly alleged the facts which would establish the violation. Respondent Burgess timely and properly responded to the Accusation, and an Administrative Hearing
was held before an Administrative Law Judge. Respondent Burgess had the opportunity to respond to the allegations brought against him, and to present evidence in his defense.

After being afforded these rights, ALJ Waxman properly determined that Respondent Burgess violated section 87100, and should pay the maximum penalty afforded under the law. The Proposed Decision states:

The violation was serious in that it involved Respondent’s direct attempt to influence the hospital board into maintaining a lucrative contract with the company of which he had been president for 46 years. Although he made no attempt to deceive or mislead the board or to conceal any fact from it, his actions were neither negligent nor inadvertent. Respondent acted deliberately with no attempt or intent to consult the Commission staff or any other government agency before preparing and distributing the packet and attempting to lobby the board members. In fact, he did so over the repeated admonishments of the Chair. The only mitigating factors are the fact that Respondent’s actions constituted a single, isolated incident in an otherwise long and distinguished career in public service and private enterprise, and his remorse for his actions on April 6, 2010. However, in light of the nature and blatancy of Respondent’s conduct, those factors are insufficient to warrant a reduction of the monetary penalty from the maximum amount allowable by law, specifically, $5,000 for the single violation.

III. CONCLUSION

The Proposed Decision reaches the just result in this case. The evidence presented at the Administrative Hearing proves that Respondent Burgess violated conflict of interests laws on April 6, 2010, when he attempted to use his official position to influence a governmental decision which directly impacted the corporation for which he was president, and the evidence supports an order that he pay the maximum penalty.

Therefore, it is respectfully submitted that the Commission should adopt the Proposed Decision of ALJ Waxman, with the limited, minor, technical changes of a clarifying nature that are described more fully above.

Dated: January 16, 2015

FAIR POLITICAL PRACTICES COMMISSION
By: Gary S. Winuk
Chief of Enforcement

Angela J. Breton
Senior Commission Counsel

OPENING BRIEF OF THE ENFORCEMENT DIVISION RE: PROPOSED DECISION OF ALJ
In the Matter of Frank J. Burgess
OAH NO. 2014060674; FPPC NO. 12/516
BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of
FRANK J. BURGESS

Case No. 12/516

Respondent.

OAH No. 2014060674

PROPOSED DECISION

This matter came on regularly for hearing on December 8 and 9, 2014, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

The Fair Political Practices Commission (Complainant or FPPC) was represented by Angela J. Brereton, Senior Commission Counsel, and Adam Edward Silver, Commission Counsel.

Frank J. Burgess was present and represented himself.

Oral and documentary evidence was received. The record was closed on December 9, 2014, and the matter was submitted for decision.

Pursuant to California Code of Regulations, title 2, section 18361.4, subdivision (e), the Accusation in this case was prepared and served following a February 18, 2014 finding of probable cause that Respondent violated provisions of the Political Reform Act (Gov. Code, § 81000 et seq.).

FACTUAL FINDINGS

1. San Gorgonio Memorial Hospital (hospital) is a 71-bed acute care hospital located in Banning, California. It operates as a California nonprofit 501(c)(3) public benefit corporation. It is owned by the San Gorgonio Memorial Healthcare District (district), a political subdivision of the State of California. The hospital leases its land, building, and equipment from the district under a long-term lease.

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2. The hospital is, and at all relevant times was, governed by two boards. The San Gorgonio Memorial Healthcare District Board (district board) consists of five elected members. It is a public agency and, as such, each member is a public official who must file with the FPPC an annual “Form 700” Statement of Economic Interests, disclosing sources of income and other economic interests that could actually or potentially trigger a conflict of interest with the member’s official duties. The San Gorgonio Memorial Hospital Board (hospital board) is comprised of 13 members, five of whom are the district board members. Because the other eight members sit with the five district board members, the hospital board is also considered a public agency, and all 13 board members must file Statements of Economic Interests annually.

3. From June 2009 through December 2010, Respondent was a member of the district board. As a member of that board, he was also a member of the hospital board. Prior to his sitting on the district and hospital boards, Respondent was a member of the Banning City Council for 12 years.

4. Respondent has also been a businessman for over 40 years. At all relevant times, he was President and Chief Executive Officer (CEO) of Banning Van & Storage, Inc., dba Burgess North American (BNA), a company engaged in the business of moving and storage. Initially incorporated in 1964, BNA’s officers included Respondent as President and his wife as Secretary. As of January 2010, Respondent’s son, Todd Burgess was BNA’s secretary following Mrs. Burgess’s death. Respondent oversaw the Banning office. Todd Burgess oversaw the Palm Springs office.

5. Respondent regularly reported his financial interest in BNA in all of his annual Statements of Financial Interests.

6. In April 2005, the hospital entered into a contract with BNA for BNA to store and manage the hospital’s records. The term of the contract was indefinite, and the contract did not include an expiration date. The hospital paid BNA for its services pursuant to a specified Schedule of Charges. BNA’s annual income from the account exceeded $30,000. The contract was in full force and effect at all relevant times.

7. In or around April 2010, the hospital board considered reducing its medical record storage and management costs either by negotiating a new rate with BNA or by terminating the contract with BNA and entering into a contract with another company. A comparison was made between BNA and a company named Docu-Trust. The results of that comparison showed that the hospital could realize a 24.54 percent annual savings, totaling $7,767.95, by contracting with Docu-Trust instead of BNA. An item was placed on the hospital board’s agenda for the April 6, 2010 meeting for the hospital board to decide whether to terminate BNA’s contract in favor of one with Docu-Trust.

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8. Prior to the April 6, 2010 meeting, Respondent and/or his son prepared a 10-page packet of materials relating to the hospital board’s choice between BNA and Docu-Trust. The packet contained eight sections, including but not limited to “Questions to be addressed Before voting [sic],” “Fees due prior to removal Of Containers [sic]; “Corrected annual cost comparison” [sic]; and a schedule of charges for the hospital’s account.

9. On April 6, 2010, the district board met before the meeting of the hospital board. The two meetings were separated by a dinner break. During the dinner break, Respondent placed the packet of materials at the place of each of the 13 members of the hospital board. Respondent had not attempted to have the packet placed with the agenda materials that had been prepared for the meeting. Roberta (Bobbi) Duffy, the executive assistant to the hospital’s CEO, saw Respondent distributing the packet for the hospital board members and told him she had to make a copy of it. Respondent gave her one of the packets for that purpose.

10. In April 2010, Jerilynn Sue Kaibell was the Chair of the hospital board. She continues to hold that position today. Prior to the April 6, 2010 board meeting, Dr. Kaibell¹ spoke with Respondent concerning the agenda item relating to his company and told him he should refrain from the discussion and abstain from the vote due to his conflict of interest. She recommended to Respondent that he be absent from the room during the discussion and vote. Dr. Kaibell observed Respondent distributing his packet before the hospital board meeting, and she chastised him for lobbying the board members on his company’s behalf. When the agenda item was called, Respondent did not exit the room. Instead, he remained in his board member’s seat, and he attempted to speak to the board members about the packet while holding the packet up in his hand. Dr. Kaibell repeatedly called him out of order because of his conflict of interest. Respondent abstained from the vote, and the contract with Docu-Trust was unanimously approved with abstentions by Respondent and one other board member.

11. Respondent admits he prepared and distributed the packet for the hospital board members, but claims he did so because the chart used to compare BNA and Docu-Trust was incomplete, inaccurate, and untrue. At the administrative hearing, Respondent continuously argued that he had not been dishonest in connection with his actions relating to the hospital board’s April 6, 2010 meeting. Respondent’s protestations in that regard are misplaced. He is not alleged to have been dishonest.

12. Respondent raised a number of issues in his defense, none of which was relevant to the sole issue alleged in the Accusation, specifically, that he attempted to use his official position to influence a governmental decision in which he had a financial interest. Respondent now describes his actions on April 6, 2010 as “a big mistake.” (Respondent’s term.) He regrets having made it.

¹ Dr. Kaibell is a doctor of chiropractic.
LEGAL CONCLUSIONS

1. Cause exists to impose a monetary penalty against Respondent pursuant to Government Code sections 87100 and 83116, subdivision (c), for attempting to use his official position to influence a governmental decision in which he had a financial interest, as set forth in Factual Findings 1 through 12.


3. Government Code section 87100 states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

4. Government Code section 83116 states:

When the [Fair Political Practices] 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.

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5. Respondent argued that he is not subject to the provisions of Government Code sections 87100 and 83116, subdivision (c) because he was serving on the board of directors of a private, non-profit corporation at the time he distributed the packet, and that the hospital board was not subject to the Political Reform Act. He is incorrect. Respondent's duties as a member of the district board included his service on the hospital board. Because the district board members all served on the hospital board, all hospital board members were required to submit Statements of Economic Interests annually.

6. Government Code section 87103 states in pertinent part:

A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars ($2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

7. California Code of Regulations, title 2, section 18702.2, states:

A public official "participates in making a governmental decision," except as provided in Title 2, California Code of Regulations, section 18702.4, when, acting within the authority of his or her position, the official:

(a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
(b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:

(1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or

(2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A).

8. Complainant offered a six-element analytical construct by which to determine whether an individual has violated Government Code section 87100. Although the use of the above construct is not mandated by statute or regulation, it serves as a useful tool in determining liability under that statute. Accordingly, each of the above elements is analyzed below. The elements are:

a. The individual must have been a public official as defined by the Political Reform Act.

b. The individual must have made, participated in making, or attempted to use his/her official position to influence a governmental decision.

c. The individual must have had an economic interest in the business entity in question.

d. The individual’s economic interest must have been directly involved in the governmental decision.

e. The financial effect of the decision on the individual’s economic interest was material.

f. The material financial effect was reasonably foreseeable.

9. **Was Respondent a public official?** Yes. Government Code section 82048 defines a “public official” as “every member, officer, employee or consultant of a state or local government agency.” The district was a political subdivision of the State of California. As a member of the district’s board of directors, Respondent was a public official. Because Respondent’s membership on the hospital board was directly derivative of his district board membership, he (along with the other hospital board members) was a public official even when sitting on the hospital board.
10. Did Respondent make, participate in making, or attempt to use his official position to influence a governmental decision? Yes.

   a. California Code of Regulations, title 2, section 18702.3, subdivision (a), states:

      With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

   b. An exception to this rule exists for a public official who acts as a member of the public in a matter relating solely to his/her personal interests: California Code of Regulations, title 2, section 18702.4, provides in relevant part:

      (a) Making or participating in making a governmental decision shall not include:

      [¶] . . . [¶]

      (2) Appearances by a public official as a member of the general public before an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to the official's personal interests as defined in Title 2, California Code of Regulations, section 18702.4(b)(1) . . .

      [¶] . . . [¶]

      (b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:

      (1) Appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function solely to represent himself or herself on a matter which is related to his or her personal interests. An official's "personal interests" include, but are not limited to:

      [¶] . . . [¶]
(B) A business entity wholly owned by the official or members of his or her immediate family.

c. Here, Respondent used his official position to enter the meeting room between board meetings, distribute his packets, remain in his official seat during the discussion and the vote, and verbally lobby the hospital board to retain his company as the hospital’s record storage provider. Respondent’s conduct on April 6, 2010 does not qualify for the exception referenced in subdivision (b) above. By his conduct, he acted in his official capacity and not as a member of the general public.

11. Did Respondent have an economic interest in the governmental decision?
Yes.

a. California Code of Regulations, title 2, section 18703.3, subdivision (a), states:

(a)(1) For purposes of disqualification under Sections 87100 and 87103, a public official has an economic interest in any person from whom he or she has received income, including commission income and incentive compensation as defined in this regulation, aggregating five hundred dollars ($500) or more within 12 months prior to the time when the relevant governmental decision is made. A public official’s income includes income which has been promised to the public official but not yet received by him or her, if he or she has a legally enforceable right to the promised income.

(2) Parent, Subsidiary, Otherwise Related Business Entity. An official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has an interest as defined in Section 87103(c). “Parents, subsidiaries, and otherwise related business entities” are defined in Regulation 18703.1(d).

(3) In addition to having an economic interest in any business entity from which the official has received income of five hundred ($500) or more within 12 months prior to the time when the relevant governmental decision is made, the official has a source-of-income economic interest in all of the following:

(A) Any individual owning a 50 percent or greater interest in that business entity.

(B) Any individual, regardless of the extent of the individual’s ownership interest in that entity, who has the power to direct or cause the direction of the management and policies of the business entity.

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b. California Code of Regulations, title 2, section 18703.5 states:

For purposes of disqualification under Government Code sections 87100 and 87103, a public official has an economic interest in his or her personal finances and those of his or her immediate family. A governmental decision will have an effect on this economic interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing.

c. In April 2010, Respondent and his son were the sole owners of BNA. As president and CEO of the corporation, Respondent had an economic interest in the hospital board’s decision whether to terminate the hospital’s contract with BNA.

12. Was Respondent’s economic interest directly involved with the governmental decision? Yes.

a. California Code of Regulations, title 2, section 18704.1, subdivision (a), states in relevant part:

(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent:

[¶] ... [¶]

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

b. Respondent’s company was the subject of the April 6, 2010 agenda item relating to the hospital’s record storage. As such, Respondent’s economic interest was directly involved with the governmental decision.

13. Was the financial effect of the governmental decision material to Respondent’s economic interest? Yes.

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a. California Code of Regulations, title 2, section 18705.1, states in pertinent part:

(a) Introduction.

(1) If a business entity in which a public official has an economic interest is directly involved in a governmental decision (see Regulation 18704.1(a)), use the standards in subdivision (b) of this regulation.

(2) If a business entity in which a public official has an economic interest is indirectly involved in a governmental decision (see Regulation 18704.1(b)), use the standards in subdivision (c) of this regulation.

(b) Directly involved business entities.

(1) General Rule: Unless the exception in subdivision (b)(2) of this regulation applies, the financial effects of a governmental decision on a business entity which is directly involved in the governmental decision is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the business entity.

(2) Exception: If the public official’s only economic interest in the business entity is an investment interest (see Section 87103(a)), and the public official’s investment in the business entity is worth $25,000 or less, apply the materiality standards in either of the following provisions, as applicable:

(A) Subdivision (c)(1) of this regulation if the business entity is listed in the Fortune 500, or if not listed in the Fortune 500, has revenues that are no less than the revenues of the business entity that ranks 500th in the Fortune 500 list.

(B) Subdivision (c)(2) of this regulation if the business entity is listed on the New York Stock Exchange, or if not listed on the New York Stock Exchange, for its most recent fiscal year had net income of no less than $2.5 million.

b. Respondent had more than an investment interest in BNA. He was the company’s president and CEO, and he had been so since 1964. The exception in California Code of Regulations, title 2, section 18705.1, subdivision (b)(2) does not apply in this case, and the presumption in subdivision (b)(1) is not rebutted.
14. **Was the material financial effect of the governmental decision on Respondent’s economic interest reasonably foreseeable?** Yes.

   a. California Code of Regulations, title 2, section 18706, subdivision (a), states:

   (a) Economic Interest Explicitly Involved: A financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. An economic interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the economic interest, and includes any governmental decision affecting a real property economic interest as described in Regulation 18705.2(a)(1)-(6).

   b. The governmental decision in this case involved the revocation, termination, or continuance of the contract between the hospital and Respondent’s company. Respondent did not rebut the presumption of reasonable foreseeability.

   c. Even if Respondent’s economic interest in the decision was not explicitly involved in the decision, the financial effect of the decision on his economic interest would nonetheless have been reasonably foreseeable. California Code of Regulations, title 2, section 18706, subdivision (b), states:

   Economic Interest Not Explicitly Involved in Decision: A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable. In determining whether a governmental decision will have a reasonably foreseeable financial effect on an economic interest other than an interest described in subdivision (a) above, the following factors should be considered. These factors are not intended to be an exclusive list of all the relevant facts that may be considered in determining whether a financial effect is reasonably foreseeable, but are included as general guidelines.

   (1) The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency.

   (2) Whether the public official should anticipate a financial effect on his or her economic interest as a potential outcome under normal circumstances when using appropriate due diligence and care.
(3) Whether the public official has an economic interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has an economic interest.

(4) Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official’s economic interest could compromise the public official’s ability to act in a manner consistent with his or her duty to act in the best interests of the public.

(5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official’s economic interests, including whether the economic interest may be entitled to compete or be eligible for a benefit resulting from the decision.

(6) Whether the public official has the type of economic interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her economic interest in formulating a position.

(d) Respondent stood to lose a lucrative contract with the hospital if the hospital board voted to change storage companies to Docu-Trust. Knowing this, he prepared and distributed his packet to the other board members and then attempted to orally lobby them at the meeting before the vote. Respondent not only had an economic interest in the vote, the financial effect on that interest by the board’s decision was more than reasonably foreseeable.

15. Cause for imposing a monetary penalty on Respondent having been established, several factors must be considered in determining the amount of the penalty.

16. California Code of Regulations, title 2, section 18361.5, subdivision (d), states:

Factors to be Considered by the Commission. In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to:

(1) The seriousness of the violation;

(2) The presence or absence of any intention to conceal, deceive or mislead;

(3) Whether the violation was deliberate, negligent or inadvertent;
(4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);

(5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.[2]

17. The violation was serious in that it involved Respondent's direct attempt to influence the hospital board into maintaining a lucrative contract with the company of which he had been president for 46 years. Although he made no attempt to deceive or mislead the board or to conceal any fact from it, his actions were neither negligent nor inadvertent. Respondent acted deliberately with no attempt or intent to consult the Commission staff or any other government agency before preparing and distributing the packet and attempting to lobby the board members. In fact, he did so over the repeated admonishments of the Chair. The only mitigating factors are the fact that Respondent's actions constituted a single, isolated incident in an otherwise long and distinguished career in public service and private enterprise, and his remorse for his actions on April 6, 2010. However, in light of the nature and blatancy of Respondent's conduct, those factors are insufficient to warrant a reduction of the monetary penalty from the maximum amount allowable by law, specifically, $5,000 for the single violation. (Gov. Code, § 83116, subd. (c.).)

ORDER

Respondent, Frank J. Burgess, shall pay a penalty of $5,000 to the General Fund of the State of California within 90 days of the effective date of this Decision.

* Dated: December 18, 2014

[Signature]

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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[2] Factor No. 6 is not applicable to this case.
BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of ) FPPC No. 12/516

FRANK J. BURGESS, ) ACCUSATION

Respondent. ) (Gov. Code §11503)

Complainant, the Fair Political Practices Commission, after a finding of probable cause made pursuant to Government Code Section 83115.5, hereby alleges the following:

JURISDICTION

1. Complainant is the Fair Political Practices Commission (the “Commission”) and makes this Accusation in its official capacity and in the public interest.

2. The authority to bring this action is derived from Title 2, California Code of Regulations, Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of California, specifically including, but not limited to, Government Code Sections 83111, 83116, and 91000.5, which assign to the Commission the duty to administer, implement, and enforce the provisions of the Political Reform Act, found at Government Code Sections 81000 through 91014.
3. When enacting the Political Reform Act (the “Act”), California voters specifically found and declared, as stated in Sections 81001, subdivision (h), and 81002, subdivision (f), that previous laws regulating political practices had suffered from inadequate enforcement, and it was their purpose to ensure that the Act be vigorously enforced.

4. To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

5. One of the purposes of the Act is to prevent conflicts of interest by public officials. (Section 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

6. The primary purpose for the conflicts of interests provisions of the Act is to ensure that “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

7. In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest.

**RESPONDENT**

8. Respondent Frank J. Burgess was a member of the Board of Directors for San Gorgonio Memorial Healthcare District (SGMHD) from June 6, 2009 through December 3, 2010. In such capacity, Respondent Burgess was also a member of the Board of Directors for San Gorgonio Memorial Hospital (SGMH), located in the city of Banning in Riverside County, CA.

9. The actions of Respondent – attempting to use his official position to influence a governmental decision in which he had a financial interest, as hereinafter stated – are in violation of the law and public policies of the State of California.

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1The Political Reform 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.
APPLICABLE LAW

10. All applicable law referenced herein is the law as it existed during the relevant time for the violations alleged in this Accusation, namely on or about April 6, 2010.

A. Definitions

11. Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency...” (Section 82048.) Local government agency means a “county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.).

B. Conflicts of Interests

12. To prevent conflicts of interests in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps seven and eight of the standard step by step analysis are exceptions to the Act, and the respondent has the responsibility to provide facts and evidence that support the use of these exceptions. (Regulations 18707, 18708.) Because the facts and evidence do not indicate that either of the exceptions are applicable to this case, these exceptions are not discussed. The six relevant steps of the analysis follow below.

13. First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency...” (Section 82048.) Local government agency means a “county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” (Section 82041.)
14. Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. With regard to a governmental decision which is within or before an official's agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee, or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer. (Regulation 18702.3, subd. (a).)

15. Third, a public official has an economic interest in a business entity if the public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity. (Section 87103, subd. (a) and (d), Regulation 18703.1, subd. (a) and (b).) Additionally, an official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in Government Code section 87103(a) or (d). (Regulation 18703.1, subd. (c).)

16. Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Regulation 18704.1 provides that a person who is a source of income to a public official is directly involved in a decision before an official's agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made or; (2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of the proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

17. Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Under Regulation 18705.1, subdivision (b), if a business entity is directly involved in a governmental decision, the financial effect on the business entity is presumed to be material.

18. Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is
reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (In re Thorner (1975) 1 FPPC Ops. 198.)

19. When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent's economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question, and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency. (Regulation 18706, subd. (b.).)

C. Probable Cause Proceedings

20. Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a.).)

21. Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) 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 the Act. Additionally, Section 83115.5 states that the required 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.

22. Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

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1 The Thorner opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.
D. **Factors to be Considered by the Commission**

23. In framing a proposed order following a finding of a violation pursuant to Section 83116, the Commission and the administrative law judge shall consider all the surrounding circumstances including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Section 83114(b); (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure. (Regulation 18361.5, subd. (d).)

**GENERAL FACTS**

24. Complainant incorporates paragraphs 1 – 23 of this Accusation, as though completely set forth herein.

25. Respondent Frank J. Burgess was a member of the Board of Directors for San Gorgonio Memorial Healthcare District (SGMHD) from June 6, 2009 through December 3, 2010. Before sitting on the Board of Directors for SGMHD, Respondent Burgess was a member of the Banning City Council for 12 years.

26. All five Members of the Board of Directors for the SGMHD sit as members of the Board of Directors for San Gorgonio Memorial Hospital (SGMH). Thus, Respondent Burgess was also a member of the Board of Directors for SGMH.

27. The Board of Directors for SGMH is a Board of the SGMHD. The Board of Directors for SGMH operates the SGMH on behalf of the SGMHD.

28. At all relevant times, in his private capacity, Respondent Burgess was the President and Chief Executive Officer of Banning Van & Storage, Inc., dba Burgess northAmerican, a moving and document storage business located in Banning, CA. According to documents maintained by the California Secretary of State, Banning Van & Storage, Inc., was established in 1964, and as of at least 1971, Respondent Burgess, as president, and his wife, as secretary, each held a 50% ownership interest.
In 2002, after his wife passed away, Respondent Burgess sold his 50% interest to his son, Todd F. Burgess, and managed his wife’s 50% interest as trustee of her estate. Banning Van & Storage, Inc., dba Burgess northAmerican had two locations: Respondent Burgess managed the Banning office, and Todd Burgess managed the Palm Springs office as well as all the document storage contracts and services. At all relevant times, Respondent Burgess did not receive any compensation from Banning Van & Storage, Inc., dba Burgess northAmerican.

29. In April 2005, nearly four years before Respondent Burgess joined the Board of Directors for SGMHD, Burgess northAmerican entered into a contract for document storage and records management with SGMH. This contract had no expiration date, and SGMH was billed and obligated to pay monthly fees as long as documents remained in Burgess northAmerican’s warehouse. Between April 6, 2009 and April 6, 2010, SGMH paid fees to Burgess northAmerican in the amount of approximately $44,420.

30. In a staff report included in the April 6, 2010 agenda packet for the SGMH Board, SGMH staff stated that they approached Burgess northAmerican in October 2009 to reduce its fees, and Burgess northAmerican provided a proposal for fee reduction. To ensure competitive pricing, SGMH staff stated that they solicited proposals from other document storage companies to compare to the Burgess offer. The staff report stated that Docu-Trust Storage provided a comparable services proposal that reflected an approximate annual savings of $7,700 over Burgess northAmerican’s best offer. SGMH staff recommended that the SGMH Board of Directors approve a 3-year document storage and service agreement with Docu-Trust Storage.

31. Immediately before the meeting on April 6, 2010, Respondent Burgess, with the approval of the SGMH Board executive secretary, placed a detailed 10-page packet of materials for the SGMH Board of Directors to read before voting to approve the Docu-Trust Storage agreement. The packet included a document entitled “Questions To Be Addressed Before Voting” regarding the Docu-Trust agreement, and a “corrected” annual cost comparison between the Docu-Trust proposal and Burgess northAmerican’s services (the staff report for this agenda item included an annual cost comparison). When this item came before the SGMH Board, Respondent Burgess addressed the SGMH Board members indicating that he had distributed the packets and they “should review [the
packet] before acting on this item." Respondent Burgess abstained from the vote, and the SGMH Board of Directors voted to approve the 3-year document storage and service agreement with DocuTrust Storage.

32. Respondent does not deny that he distributed the packets and addressed the SGMH Board of Directors. However, Respondent Burgess contends that he was not acting with dishonesty or malicious intent in addressing the SGMH Board – he simply wanted the SGMH Board to have all the relevant information before they voted on the matter. Respondent Burgess handed out the packet because 1) the SGMH staff statement that Burgess northAmerican provided a fee reduction proposal was false – Burgess northAmerican was never given the opportunity to offer a competitive bid; and 2) the SGMH staff report contained an incomplete analysis regarding the comparison between Burgess northAmerican’s services and the proposal from Docu-Trust. Respondent Burgess contends that the proposal approved by the SGMH Board was ultimately much more expensive than the services provided by Burgess northAmerican at the time of the decision. Respondent Burgess believes that SGMH did not change document service companies to save money, but rather to punish him for being an outspoken member of the SGMH Board.

33. Respondent Burgess also contends that if the SGMH Board executive secretary had not given him permission, he would not have handed out the packet to the SGMH Board. Respondent Burgess’ son, Todd, compiled the information in the packet that was presented to the SGMH Board. Todd Burgess could have presented the packet of materials, but Respondent Burgess did not believe that it was a problem to handle it himself. Counsel for the SGMHD and SGMH was not present at the April 6, 2010 SGMH Board of Directors meeting.

PROCEDURAL HISTORY

34. Complainant incorporates paragraphs 1 – 33 of this Accusation, as though completely set forth herein.

35. In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent Burgess in this matter by serving him with a packet containing a cover letter, a Report in Support of a Finding of Probable Cause (the "Report"), a fact sheet regarding probable cause proceedings, selected sections of the California Government Code regarding probable
cause proceedings for the Fair Political Practices Commission, and selected regulations of the Fair
Political Practices Commission regarding probable cause proceedings. (Exhibit A.)

36. Respondent was served by certified mail, return receipt requested. The original return
receipt addressed to Respondent was signed on November 12, 2013, and was returned to the
Enforcement Division. (Exhibit B.) Therefore, the administrative action commenced on
November 12, 2013, the date the registered mail receipt was signed, and the five year statute of
limitations was effectively tolled on this date.

37. The information contained in the above-mentioned packet advised Respondent that he
had 21 days in which to request a probable cause conference and/or to file a written response to the
Report.

38. On November 20, 2013, Respondent Burgess requested a Probable Cause Conference in
this matter. (Exhibit C.)

39. A Probable Cause Conference was held on February 5, 2014.

40. The Hearing Officer issued an Order Re: Probable Cause, which was served on
February 18, 2014, finding that probable cause exists to believe Respondent Burgess violated the
Political Reform Act. (Exhibit D.)

VIOLATIONS

41. Complainant incorporates paragraphs 1 – 40 of this Accusation, as though completely
set forth herein.

42. Accordingly, Respondent Burgess committed one violation of the Act, as follows:

COUNT 1

Attempting to Use His Official Position to Influence a Governmental Decision in Which the Public
Official Had a Financial Interest

43. Complainant incorporates paragraphs 1 – 42 of this Accusation, as though completely set
forth herein.

3 Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or
agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the
law. (Section 8311.)
44. Respondent Burgess violated the conflict of interest provisions of the Act by attempting to use his official position to influence a governmental decision when he gave a packet of informative materials to SGMH Board Members before they voted on whether to approve an agreement with Docu-Trust Storage, and discontinue storing documents with Burgess northAmerican, in which he had an economic interest as the President and CEO.

45. As a member of the Board of Directors for San Gorgonio Memorial Healthcare District (SGMHD), and consequently as a member of the Board of Directors for San Gorgonio Memorial Hospital (SGMH), which is a Board of SGMHD, Respondent Burgess was a public official.

46. On or about April 6, 2010, Respondent Burgess attempted to use his official position to influence a governmental decision by giving a packet of informative materials to SGMH Board Members before they voted on whether to continue storing documents with Burgess northAmerican or to approve an agreement with Docu-Trust Storage instead.

47. Respondent Burgess had an economic interest in Burgess northAmerican because he was President, Chief Executive Officer, and managed the Banning office of Banning Van & Storage, Inc., dba Burgess northAmerican.

48. Burgess northAmerican was directly involved in the decision because the SGMH Board of Directors was voting to approve a document storage agreement with Docu-Trust Storage which would replace and terminate services which had been provided up until that time by Burgess northAmerican.

49. In the 12 months prior to the decision, Burgess northAmerican received approximately $44,420 from SGMH for document storage. Consequently, Burgess northAmerican would lose significant income if another company provided document storage services to SGMH, and thus, the financial effect of the governmental decision upon Burgess northAmerican was material.

50. Additionally, it was reasonably foreseeable that the decision would have a material financial effect on Burgess northAmerican because Burgess northAmerican would unquestionably lose annual revenue if the SGMH Board of Directors approved an agreement with a competing document storage company.

51. Thus, by attempting to use his official position to influence a governmental decision in which he had a financial interest, Respondent Burgess violated Government Code Section 87100.
MITIGATING OR EXCULPATORY FACTORS

52. Complainant incorporates paragraphs 1 – 51 of this Accusation, as though completely set forth herein.

53. In mitigation, in 2010, Respondent Burgess did not receive any compensation from Burgess northAmerican, and the evidence shows that Respondent Burgess did not act maliciously. Respondent Burgess cooperated with the investigation of this matter, and throughout his nearly fourteen years of public service, he has no prior violations of the Act.

AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS

54. Complainant incorporates paragraphs 1 – 53 of this Accusation, as though completely set forth herein.

55. In this matter, Respondent Burgess attempted to use his official position to influence a governmental decision in which he had a financial interest by giving a packet of informative materials to members of the SGMH Board of Directors before they voted on whether to continue storing documents with Burgess northAmerican or to approve an agreement with a competing company.

56. The evidence shows that the Board members knew Respondent Burgess had an economic interest in Burgess northAmerican, and that Respondent Burgess intended to influence the vote, telling the Board members that they “should review [the packet] before acting on this item.”

57. Respondent Burgess’ conduct amounted to advocacy for the direct benefit of Respondent’s business interests.

58. Respondent Burgess, as an experienced public official, should have known that such use of his official position would be in violation of the Act.

59. Additionally, nothing prevented Respondent Burgess’ son from appearing before the SGMH Board in this regard.

60. Attempting to use his official position to influence a governmental decision in which an official has a financial interest is a serious violation of the Act as it may create the appearance that a governmental decision was made on the basis of an official’s financial interest.

PRAYER

WHEREFORE, Complainant prays as follows:
58. That the Fair Political Practices Commission hold a hearing pursuant to Government Code Section 83116 and Title 2, California Code of Regulations, Section 18361.5, and at such hearing find that Respondent Burgess violated the Political Reform Act as alleged herein;

59. That the Commission, pursuant to Government Code Section 83116, subdivision (c), order Respondent to pay a monetary penalty of at least Four Thousand Dollars ($4,000) and not more than Five Thousand Dollars ($5,000) for the violation of the Political Reform Act alleged herein in Count 1;

60. That the Commission, pursuant to Title 2, California Code of Regulations, Section 18361.5, subdivision (d), consider the following factors in framing a proposed order following a finding of a violation pursuant to Government Code Section 83116: (1) the seriousness of the violation; (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation was deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114(b); (5) whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

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

Dated: 3/27/14

Gary S. Winuk
Chief of Enforcement
Fair Political Practices Commission