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

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11 In the Matter of ) FPPC No. 12/354  
12 )  
13 SAMUEL MOORE, )  
14 )  
15 Respondent. ) (Gov. Code §11503  
16 )

17 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and  
18 Order for consideration at its next regularly scheduled meeting.

19 Pursuant to the California Administrative Procedure Act,<sup>1</sup> Respondent Samuel Moore has been  
20 served with all of the documents necessary to conduct an administrative hearing regarding the above-  
21 captioned matter, including the following:

- 22 1. An Order Finding Probable Cause;
- 23 2. An Accusation;
- 24 3. A Notice of Defense (Two Copies);
- 25 4. A Statement to Respondent; and
- 26 5. Copies of Sections 11506 through 11508 of the Government Code.

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28 <sup>1</sup>The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

1 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense  
2 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a  
3 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent Samuel  
4 Moore explicitly stated that a Notice of Defense must be filed in order to request a hearing. Respondent  
5 failed to file a Notice of Defense within fifteen days of being served with the Accusation.

6 Government Code Section 11520 provides that, if the respondent fails to file a Notice of  
7 Defense, the Commission may take action, by way of a default, based upon the respondent's express  
8 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the  
9 respondent.

10 Respondent Samuel Moore violated the Political Reform Act as described in Exhibit 1, and  
11 accompanying declarations, which are attached hereto and incorporated by reference as though fully set  
12 forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This  
13 Default Decision and Order is submitted to the Commission to obtain a final disposition of this matter.

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15 Dated: \_\_\_\_\_

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16 Gary S. Winuk, Chief of Enforcement  
17 Fair Political Practices Commission  
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**DECISION AND ORDER**

The Commission issues this Default Decision and Order and imposes an administrative penalty of Six Thousand Dollars (\$6,000) upon Respondent Samuel Moore, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ann Ravel, Chair  
Fair Political Practices Commission

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## EXHIBIT 1

### INTRODUCTION

Respondent Samuel Moore (“Respondent”) was elected as a Board Member of the Newcastle Elementary School District in November 2008 and again in November 2012, and currently serves as the Board President.

As a board member of the Newcastle Elementary School District, Respondent is a “designated employee,” as defined in Section 82019, subdivision (a), of the Political Reform Act (the “Act”)<sup>1</sup> and in the Conflict of Interest Code for the Newcastle Elementary School District. As a designated employee, Respondent is required to file annual statements of economic interests (“SEI”) disclosing the economic interests that he held during the preceding calendar year with the Placer County Clerk-Recorder-Elections.

This case resulted from a referral from the Placer County Clerk-Recorder-Elections, the filing officer for the Newcastle Elementary School District, which alleged that Respondent failed to file annual statements of economic interests for calendar years 2010 and 2011 as required under the Act.

After an investigation in this matter, it was determined that Respondent failed to file statements of economic interests for calendar years 2009, 2010, and 2011 by the applicable due dates.

For the purposes of this Default Decision and Order, Respondent’s violations of the Act are stated as follows:

**COUNT 1:** Respondent Samuel Moore, as a Newcastle Elementary School District Board Member, failed to file a 2009 annual statement of economic interests by the April 1, 2010 deadline, in violation of Government Code Section 87300.

**COUNT 2:** Respondent Samuel Moore, as a Newcastle Elementary School District Board Member, failed to file a 2010 annual statement of economic interests by the April 1, 2011 deadline, in violation of Government Code Section 87300.

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<sup>1</sup> 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.

**COUNT 3:** Respondent Samuel Moore, as a Newcastle Elementary School District Board Member, failed to file a 2011 annual statement of economic interests by the April 2, 2012 deadline, in violation of Government Code Section 87300.

### **DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT**

When the Fair Political Practice Commission (the “Commission”) determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).<sup>2</sup> (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

### **PROCEDURAL REQUIREMENTS AND HISTORY**

#### **A. Initiation of the Administrative Action**

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).)

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

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<sup>2</sup> The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

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.

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.

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A-1 through A-6, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent 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. (Certification, Exhibit A-1.) Respondent was served by certified mail, return receipt requested.<sup>3</sup> The original return receipt addressed to Respondent was signed on April 24, 2013, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on April 24, 2013, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

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. Respondent neither requested a probable cause conference nor submitted a written response to the Report.

**B. Ex Parte Request for a Finding of Probable Cause**

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to General Counsel Zackery P. Morazzini on June 25, 2013. (Certification, Exhibit A-3.)

On June 27, 2013, Jack Woodside, Commission Counsel Legal Division, the official designee of General Counsel Zachery P. Morazzini in this regard, issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-4.)

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<sup>3</sup> 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.)

**C. The Issuance and Service of the Accusation**

Under the Act, if the Hearing Officer makes a finding of probable cause, an accusation shall be prepared pursuant to Section 11503 of the APA, and it shall be served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b), sets forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c), provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On July 2, 2013, the Commission's Chief of Enforcement, Gary S. Winuk, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506 through 11508, and a cover letter dated July 2, 2013, were personally served on Respondent on July 10, 2013. (Certification, Exhibit A-5.)

The “Statement to Respondent” notified Respondent that he could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period, which ended on July 25, 2013.

As a result, on July 31, 2013, the Enforcement Division sent a letter to Respondent advising him that this matter would be submitted for a Default Decision and Order at the Commission’s public meeting scheduled for August 22, 2013. A copy of the Default Decision and Order and this Exhibit 1 were included with the letter. (Certification, Exhibit A-6.)

## **SUMMARY OF THE LAW**

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a conflict of interest code.

The following reflects the Act as it was in effect at the time of the relevant violations.

Section 82019, subdivision (a), defines “designated employee” to include any member of any agency whose position is “designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.” Additionally, Section 87302, subdivision (a), provides that an agency’s Conflict of Interest Code must specifically designate the positions within the agency that are required to file statements of economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income. Thus, designated employees must file annual statements of economic interests under the Act.

Section 87302, subdivision (b), provides that an agency’s conflict of interest code must require each designated employee of the agency to file annual statements of economic interests at a time specified in the agency’s conflict of interest code, disclosing investments, income, business positions, and interests in real property, held or received at anytime during the previous calendar year. An agency’s conflict of interest code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference. If so, then the filing deadline is April 1. (Regulation 18730(b)(5)(C)). If not incorporated, an agency’s conflict of interest code must specify a filing date. The Newcastle Elementary School District incorporates Regulation 18730, and thus, the filing deadline for annual statements of economic interests is April 1. The filing deadlines for Newcastle Elementary School District Board Members’ 2009 and 2010 SEIs were April 1, 2010, and April 1, 2011, respectively. Since April 1, 2012 fell on a Sunday, under Regulation 18116, Newcastle Elementary School District Board Members were required to file their 2011 annual SEIs on Monday, April 2, 2012.

Under Section 87300, the requirements of an agency’s conflict of interest code have the force of law, and any violation of those requirements is deemed a violation of the Act.

## SUMMARY OF THE FACTS

This matter arose out of a referral from the Placer County Clerk-Recorder-Elections, the filing officer for the Newcastle Elementary School District. The Conflict of Interest Code for the Newcastle Elementary School District designates board members of the Newcastle Elementary School District as persons who must file annual statements of economic interest. Because Respondent was a board member of the Newcastle Elementary School District, he was required to file annual statements of economic interests disclosing his reportable economic interests held during the preceding calendar year.

### Counts 1 – 3

#### **Failure to File 2009, 2010 and 2011 Annual Statements of Economic Interests**

As a designated employee of the Newcastle Elementary School District, Respondent Moore had a duty to timely file annual SEIs for calendar years 2009, 2010 and 2011. According to the evidence obtained, Respondent did not file his 2009, 2010, and 2011 SEIs by the applicable due dates.

On or about May 12, 2010, October 6, 2010, and December 13, 2010, the Placer County Clerk-Recorder-Elections sent three notification letters to Respondent advising him that his 2009 annual SEI was past due, requesting that he file the statement, and advising that the matter would be referred to the Commission if he did not comply. Additionally, on or about April 22, 2011, June 22, 2011, August 15, 2011, and February 1, 2012 (email), the Placer County Clerk-Recorder-Elections sent four notification letters to Respondent advising him that his 2010 annual SEI was past due, requesting that he file the statement, and that the matter would be referred to the Commission if he did not comply.

On or about May 25, 2012, the Placer County Clerk-Recorder-Elections sent a Statement of Economic Interests Form 700 Non-Filer Enforcement Referral to the Commission's Enforcement Division against Respondent.

On or about July 25, 2012, the Enforcement Division sent a letter to Respondent encouraging him to participate in the Streamlined SEI Enforcement Program by filing his delinquent annual SEIs. Respondent failed to respond.

On or about August 30, 2012, the Enforcement Division sent another letter to Respondent further encouraging her to file his delinquent annual SEIs. Respondent failed to respond.

On or about September 27, 2012, the Enforcement Division left a voicemail message for Respondent advising him to file his delinquent statements and contact Enforcement. Respondent failed to respond.

On or about October 30, 2012, Special Investigator Beatrice Moore<sup>4</sup> contacted the Placer County Clerk-Recorder-Elections office, who confirmed that Respondent had not yet filed his 2009, 2010 or his 2011 annual SEIs.

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<sup>4</sup> Special Investigator Beatrice Moore has no relation to Respondent Samuel Moore.

On or about October 30, 2012, Respondent spoke with Ms. Moore by telephone. Ms. Moore told Respondent that he needed to print the Form 700s from the Commission's Website, and file his 2009, 2010 and 2011 SEIs with Placer County Clerk-Recorder-Elections. Respondent did not file his delinquent SEIs.

On or about December 19, 2012, Ms. Moore left two telephone messages for Respondent. He returned he call on or about December 20, 2012, indicating that he would file his 2009, 2010, and 2011 SEIs that same day. Respondent did not file his delinquent SEIs.

On or about January 2, 2013 and January 7, 2013, Ms. Moore left three telephone messages for Respondent. Respondent returned he calls on or about January 8, 2013, indicating that he would file his 2009, 2010, and 2011 SEIs that same day. On that same day, the Placer County Clerk-Recorder Elections office called indicating that Respondent filed his delinquent 2009, 2010, and 2011 SEIs.

By failing to timely file his 2009, 2010 and 2011 annual SEIs by the applicable due dates, Respondent Moore violated Section 87300 of the Government Code.

## **CONCLUSION**

This matter consists of three counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count, for a total maximum administrative penalty of \$15,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failure to file a statement of economic interests is a serious violation of the Act because it deprives the public of important information about a public official's economic interests which could lead to potential conflicts of interests regarding decisions they may make in his/her official capacity.

In this matter, Respondent failed to timely file three consecutive annual statements of economic interests. Respondent disregarded numerous notifications from the Placer County Clerk-Recorder Elections, and the Commission's Enforcement Division regarding his duty to file his 2009, 2010, and 2011 annual statements of economic interests.

In mitigation, Respondent has no prior enforcement history with the Commission.

Other similar cases regarding failure to file statements of economic interests recently approved by the Commission include:

- *In the Matter of Kristin Franklin*, FPPC No. 08/024 (Default Decision). This case involved two counts of failure to file annual statements of economic interests. The respondent disregarded numerous notifications from her filing officer and the Commission's Enforcement Division regarding her duty to file her annual statements of economic interests, and she did not file the delinquent statements of economic interests until several years after the deadline had passed and only after significant time and effort was expended by Commission staff. For each of these two counts, the Commission approved a \$2,000 penalty on August 12, 2010.
- *In the Matter of Armida Torres*, FPPC No. 09/816 (Default Decision). This case involved two counts, one of which concerned the failure to file an annual statement of economic interest. Respondent never filed the outstanding statement and there were no factors in mitigation. For this count, the Commission approved a \$2,000 penalty on September 17, 2010.

In this case, Respondent's actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. However, Respondent was well aware of his filing obligations and disregarded the requests to file made by his filing officer and the Commission's Enforcement Division for a considerable amount of time after the filing deadlines had passed and only after significant time and effort was expended by Commission staff.

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the presence or absence of good faith, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Six Thousand Dollars (\$6,000) is recommended – \$2,000 each for Counts 1 – 3.

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