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8	BEFORE THE FAIR POLITICAL PRACTICES COMMISSION	
9	STATE OF CALIFORNIA	
10		
11	In the Matter of:	FPPC Case No. 17/453
12	KATHRIN SEARS,	STIPULATION, DECISION AND ORDER
13	Respondent.	
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15	INTRODUCTION	
16	Kathrin Sears is currently a Marin County Supervisor and has been since 2011. Additionally,	
17	Sears is the Chair of the MCE Clean Energy Board. Sears was appointed to the MCE Clean Energy	
18	Board ("Board") by Marin County.	
19	This case involves a violation of the conflict of interest provisions of the Political Reform Act. ¹	
20	SUMMARY OF THE LAW	
21	The Act and its regulations are amended from time to time. For this reason, all legal references	
22	and discussions of law pertain to the Act's provisions as they existed at that time—unless otherwise	
23	noted.	
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27	¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission	
28	are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.	
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Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

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

One purpose of the Act is to promote transparency and prohibit conflicts of interest by ensuring that public officials disclose their assets and income.⁴ Along these lines, the Act includes comprehensive disclosure requirements.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."⁶

Conflicts of Interest

A public official may not make, participate in making or 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.⁷ A public official includes any person designated as such by the conflict of interest code of the official's agency.⁸ 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 any business entity in which the official has a direct or indirect investment worth two thousand dollars or more.⁹ A business entity is a "parent" if it is a corporation that controls more than 50% of the voting stock of another corporation.¹⁰ The reasonably foreseeable financial effect of a governmental decision on a business entity in which an official has a financial interest is material whenever the business entity offers to make a sale of a service or a product to the official's agency.¹¹

- ² Section 81001, subdivision (h).
- ³ Section 81003.
- ⁴ Section 81002, subdivision (c).
- ⁵ Sections 87200, et seq.
- ⁶ Section 81002, subdivision (f).
- ⁷ Section 87100.
- ⁸ Regulation 18940.1(b).
- 9 Section 87103.
 - $\begin{bmatrix} 10 \\ \text{Regulation 18700.3, subdivision (b)(1).} \end{bmatrix}$
- Regulation 18705.1(a)(2) and (3).

SUMMARY OF THE FACTS

Sears has been a member of the Marin County Board of Supervisors since 2011. Marin County appointed Sears to the Board. Sears is the Chair of the Board, a designated position in the agency's conflict of interest code. As Chair of the Board, Sears was authorized to execute short term power purchase agreements for energy. In this capacity, on November 14, 2014, Sears signed a contract with Shell Energy North America for a term of 3 years, from January 1, 2015, though December 31, 2017, with a maximum annual amount of approximately \$5 million for hydroelectric power.

At the time of signing this contract with Shell Energy North America, she owned stock in Royal Dutch Shell, the parent company to Shell Energy North America, of approximately \$27,750. Sears disclosed her interest in the Royal Dutch Shell stock on her 2014 Annual Statements of Economic Interests. Sears inherited the stock from her parents after her mother's death. She contends that she did not actively trade the stock and did not recall that she owned the stock at the time she participated in the decision.

This case was opened as the result of a formal complaint alleging a conflict of interest under the Act and a Government Code Section 1090 violation. After review of the evidence, the Enforcement Division did not charge the Government Code Section 1090 based on the non-interest exemption in Section 1091.5, subdivision (a)(1), which states that an official has a non-interest in a business corporation, in which they own less than 3% of its shares, as long as the official's total annual income from dividends and stock dividends from the corporation amounts to less than 5% of his or her total annual income received from the corporation also amounts to less than 5% of his or her total annual income.

VIOLATIONS

Count 1

Conflict of Interest

Sears, who owned Royal Dutch Shell stock, the parent company to Shell Energy North America, valued at over \$2,000, reviewed and signed the contract with Shell Energy North America as the Chair of the Board. This decision had a reasonably foreseeable material financial effect on Shell Energy North America because it resulted in Shell Energy North America receiving a contract to provide energy with a

STIPULATION, DECISION AND ORDER FPPC Case No. 17/453 maximum annual amount of approximately \$5 million.

In this way, Sears violated Section 87100.

PROPOSED PENALTY

This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per count.¹²

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹³ Additionally, the Commission considers penalties in prior cases with comparable violations.

Applying the factors to this case, a conflict of interest violation is a serious violation under the Act. However, the evidence suggests that there was no intent to conceal, deceive or mislead, as the stock was timely disclosed on her SEIs. She contends she did not realize she had a conflict of interest when she participated in making the decision, and made no attempt to conceal her action or financial interest. Furthermore, after learning of her mistake, Sears contends she divested the stock on May 15, 2017, in order to eliminate the potential for future conflicts related to Shell Energy North America and this incident was isolated and not part of a pattern.

The Commission approved a settlement in a similar type of case. *In the Matter of Gregory Cox, FPPC No. 16/292*, in April 2016, the Commission approved a settlement involving the Coastal Commissioner Gregory Cox, who voted on a matter involving SeaWorld while he and his wife owned approximately \$8,679 in SeaWorld stock. In mitigation, Cox contended that he did not realize his wife purchased the SeaWorld stock and he self-reported this conflict of interest. A penalty of \$3,000 was

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¹² See Section 83116, subdivision (c).

¹³ Regulation 18361.5, subdivision (d).

imposed for this violation.

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In this matter, Sears fully cooperated with the Enforcement Division and agreed to settle early in this case. Further, she does not have a history of prior violations of the Act.

For the foregoing reasons, the total penalty that is being recommended in this case is \$3,000.

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Kathrin Sears hereby agrees as follows:

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

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

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

4. Respondent has consulted with her attorney, James Harrison of Remcho, Johansen & Purcell, LLP, and understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoen a witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

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

1	6. If the Commission refuses to approve this stipulation—then this stipulation shall become		
2	null and void, and within fifteen business days after the Commission meeting at which the stipulation is		
3	rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to		
4	Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing		
5	before the Commission becomes necessary, neither any member of the Commission, nor the Executive		
6	Director, shall be disqualified because of prior consideration of this Stipulation.		
7	7. The parties to this agreement may execute their respective signature pages separately. A		
8	copy of any party's executed signature page-including a hardcopy of a signature page transmitted via		
9	fax or as a PDF email attachment—is as effective and binding as the original.		
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12	Dated:		
13	Fair Political Practices Commission		
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15	Dated: Kathrin Sears, Respondent		
16	Ruthin Bours, Respondent		
17	The foregoing stipulation of the parties "In the Matter of Kathrin Sears," FPPC Case No. 17/453,		
18	is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective		
19	upon execution below by the Chair.		
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21	IT IS SO ORDERED.		
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23	Dated: Joann Remke, Chair		
24	Fair Political Practices Commission		
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	6 STIDULATION DECISION AND ODDED		
	STIPULATION, DECISION AND ORDER FPPC Case No. 17/453		
	STIPULATION, DECISION AND ORDER		