



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*August 18, 2016 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of July 7, 2016 through August 4, 2016, the Enforcement Division received, opened and rejected the following referrals and complaints:

Type	SWORN	PROACTIVE/INFORMAL	NON-FILER
<b>Number Received</b>	17	29	326
<b>Case Opened</b>	4	4	323
<b>Rejected</b>	4	8	1
<b>Under Review</b>	9	17	2

Also during this time, the Division closed a total of 226 cases including:

- 49 warning letters,
- 1 advisory letter,
- 27 no action letters,
- 48 as a result of the adoption of stipulations and defaults at the July Commission meeting, and
- 101 committees were administratively terminated.

The Division had 577 cases in various stages of resolution at the time of the July Monthly Report and currently has approximately 683 cases in various stages of resolution, including the 12 cases before the Commission as listed in the August 2016 agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 182 have been resolved with fines and 268 are being actively worked. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 49 have been resolved with fines and 363 are currently being worked. As for the remaining referrals, they were rejected, the committees were terminated locally without notice to Secretary of State, the committees were administratively terminated or are slated for administrative termination, or the committee received no violation or warning letters.

## II. LEGAL DIVISION

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STAFF:

HYLA WAGNER, GENERAL COUNSEL

JOHN WALLACE, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JACK WOODSIDE, SENIOR COMMISSION COUNSEL

### A. Pending Litigation

*Frank J. Burgess v. Fair Political Practices Commission.*

Frank J. Burgess filed a writ of mandate in Riverside Superior Court on October 4, 2015, seeking relief from the Commission's decision and order in *In re Frank J. Burgess*, Case No. 12/516. Following an administrative hearing in front of an Administrative Law Judge (ALJ), Mr. Burgess challenged that decision to the Commission. After oral argument before the Commission on March 19, 2015 and a thorough review of the record, the Commission rejected the ALJ's decision and decided the case based on the record, oral argument, and the parties' supplemental briefing on the "governmental decision" element of the case. The Commission found that Mr. Burgess violated Government Code Section 87100 of the Political Reform Act (the Act) and imposed a \$5,000 fine on July 7, 2015. Mr. Burgess challenges that decision as an excess of the Commission's jurisdiction, an abuse of discretion, and a denial of due process rights. On May 2, 2016, Mr. Burgess filed his Opening Brief in the Riverside County Superior Court. On June 6, 2016, the Commission filed its Opposition Brief and Mr. Burgess's Reply to the Commission's Opposition was received on July 6, 2016. The hearing will be held on August 19, 2016.

### B. Outreach and Training

Political Reform Consultant Cynthia Jones presented a roundtable workshop to local government agency staff who administer conflict of interest code amendments. There was active participation among attendees regarding topics including which positions should be designated in a code and what level of disclosure to assign to those positions. In addition, Ivy Branaman and Cynthia Jones conducted a webinar on the same topic. There was a high level of interest in this webinar since many agencies need to amend their conflict of interest codes this year, and registration topped 80 participants. Additional webinars are scheduled for late summer and early fall.

In addition, consultants Ivy Branaman and Cynthia Fisher conducted a training session to staff of California Department of Corrections and Rehabilitation (CDCR) at its office in Elk Grove. The outreach was tailored to questions and issues regarding the conflict of interest code amendment specific to CDCR and its more than 66,000 employees.

### C. Advice

In July 2016, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and attorneys collectively responded to more than 1,048 email and telephone requests for advice in July.
- **Advice Letters:** The Legal Division received 20 advice letter requests and issued 25 advice letters.
- **Section 1090 Letters:** Legal Division received three advice letter requests concerning Section 1090 and issued six. This year to date we have received 28 requests regarding Section 1090.

### D. Advice Letter Summaries

#### Conflict of Interest

**Rae Bell Argobast****A-16-060**

A Board member of the Allegheny County Water District may vote to select between two proposed water plans where both plans would have some effect on property owned by the corporation of which she is the secretary and a shareholder. It is not reasonably foreseeable that the decision will materially affect the corporation because the effects are speculative.

**John Bakker****I-16-062**

A city, which contracts with consultants, is responsible for ensuring that its conflict of interest code designates all public officials who make or participate in making decisions including the consultants and that the disclosure categories are tailored to the duties performed by the designated positions. Moreover, the city's filing officer is required to determine whether required statements of economic interests have been filed and notify promptly all persons who have failed to file a statement.

**Geoffrey P. Holbrook****A-16-085**

A county assessor has a conflict of interest under the Act regarding decisions involving a welfare exemption claim for a detention facility because the decision will have a reasonably foreseeable material financial effect on his real property interests due to the nature of the subject property, its potential for expansion, as well as its proximity to the assessor's four property interests.

**Ariel Pierre Calonne****A-16-89**

Allowing food truck vending for a two-hour window in the area where the councilmember's restaurant is located would not create enough competition to contribute to a change in the value of the restaurant because the mobile food service would operate for a limited durations and sells to a different clientele than the restaurant. Therefore, the councilmember is not prohibited from participating in the decision of whether to adopt the draft ordinance because it will not have a foreseeable and material financial effect on his interests.

**Steven T. Mattas****A-16-113**

The Town of Los Altos Hills may not segment the individual amendment options to be considered for the amendment to the town's fire hazard area (FHA) map in order to have otherwise disqualified officials participate in the decision. All the options are inextricably interrelated, meaning those decisions if taken up separately would effectively determine, affirm, nullify, or alter the result of one another. Section 87100 would prohibit three councilmembers who own residences in the FHA from participating in the map decisions. However, the Act does not prohibit a councilmember from making a decision on whether to amend the FHA map if the councilmember owns a residence outside the area, but within 500 feet of the boundary of the FHA because none of the options would impact the councilmember's residence. Finally, the town would be authorized to invoke the "legally required participation" exception to form a quorum, if a quorum cannot otherwise be achieved otherwise.

**Susanne Meyer Brown****A-16-117**

Nothing in the Act prohibits a city attorney from accepting a legal referral fee from a law firm so long as she does not in her official capacity make, participate in making, or influence any governmental decisions concerning that law firm.

**Randy Haney****A-16-120**

A city councilmember that owns a landscape company may participate in modifications to the city leaf blower ordinance where it is not reasonably foreseeable that decisions relating to the leaf blower ordinance will have a material financial effect on his business or on his personal finances. Under the facts provided, the business' current use of leaf blowers is limited and marginal to the business, and power leaf blowers play only a limited a part of his landscape design and installation services. Additionally, the councilmember has no financial affiliation with any landscape maintenance business.

**Rob Epstein****A-16-126**

A councilmember who owns residential property within 500 feet of commercial property that may be used for a homeless service center may not participate in the decision to pick a site for the center.

**Mayor Tom Butt****A-16-128**

A mayor who has an interest in an engineering firm does not have a conflict of interest in a decision involving a redevelopment project in which a client of that firm had previously served as project architect.

**Janet E. Coleson****A-16-134**

A councilmember who owns a residential property within 500 feet of commercial property that includes a church and a small private school, may not participate in a decision to rezone that 2-acre parcel for a redevelopment project that would include 54 housing units.

**Albert Yang****A-16-140**

Palo Alto Planning and Transportation Commissioners are not prohibited from participating in decisions regarding zoning changes that would disfavor commercial development in the

downtown area where their employer leases and occupies multiple commercial buildings in the area. A prudent person would not find it reasonably foreseeable that the decision's financial effect would contribute to a change in the value of the business.

### Gifts

#### **Nick Clair**

#### **A-16-115**

Raffle prizes won by public officials in three separate random drawings at the CSDA Annual Conference attended by public officials and other individuals not regulated by the Act are "gifts." Despite the fact that will be received in a competition, the competition is related to the official status of the officials, and thus constitute a "gift" to those officials within the meaning of the Act.

#### **Humberto Peraza**

#### **A-16-116**

Under the Act, the value of airfare, lodging, and meals provided by the American Israel Public Affairs Committee (AIPAC) to a public official to attend its Hispanic Outreach Summit, less the official's cost to register for the Summit, would be a reportable gift subject to limits. The value of the admission to the Summit and associated conference materials, however, would not be a gift under the Act provided that the purpose of the Summit is primarily to convey information to assist the official in the performance of the official's duties.

### Mass Mailing

#### **Kathrine Pittard**

#### **A-16-107**

The mass mailing provisions do not prohibit the agency from paying for inserts in a local newspaper that will include interviews of two elected officials. Under Regulation 18901, the newspapers distributed are excluded from the mass mailing restrictions because the newspapers are sent in response to unsolicited requests. Moreover, the inserts are not restricted under Regulation 18901.1 because they are not campaign related. However, in regard to the copies of the insert the agency will receive from the newspaper and distribute separately, the agency may not send more than 200 copies of the insert to a person's residence, place of business, or post office box including copies mailed to organizations or other governmental agencies.

### Section 1090

#### **Leon J. Page**

#### **A-16-044**

The County of Orange contracted with two contractors under two separate but related contracts. Science Applications International Corporation (SAIC) was the contractor for Contract 1. Xerox was the original contractor under Contract 2. The county wishes to find a new contractor for Contract 2. SAIC may contract for Contract 2 because SAIC has had, and continues to have, a position strictly as the vendor of Contract 1 and does not exercise influence over Contract 2. If SAIC were to participate, even in the preliminary stages, in the formation of the Contract 2 request for proposal, SAIC would be viewed as having participated in the making of Contract 2 in violation of Section 1090.

**Scott Chadwick****A-16-090**

Section 1090 prohibits the city from contracting with a corporate contractor where that contractor was also the prime consultant pursuant to a prior contract with the city and in that capacity advised the city and exerted influence over the city staff's formation of the second contract.

**Nancy Diamond, Esq.****A-16-111**

A nonprofit would not be prohibited from bidding on a contract with the agency based on the fact that it provided informal advice to the agency regarding the request for proposal. This is because the nonprofit was never hired or compensated by the agency and did not exert influence on the contracting decisions of the agency.

**Gary W. Schons****A-16-114**

Although Section 1090 prohibits a director on the board of the Fallbrook Public Utility District, and the District itself, from participating in the making of a land purchase agreement with the Western Rivers Conservancy, the "rule of necessity" nonetheless applies to allow the District to enter into the agreement.

**Amy R. Webber****A-16-131**

Section 1090 does not prohibit the City of Long Beach Cultural Heritage Commission from making decisions on an application for a Mills Act tax credit contract concerning a commissioner's business entity, so long as the commissioner recuses himself from participating in any manner in the application or resulting contract. The commissioner is an owner of a firm and serving as an appointed member of an unelected commission, thus he has only a remote interest in the resulting contract under Section 1091(b)(17).

**Hilda Cantu Montoy****A-16-136**

A councilmember may vote to ratify warrants for payments previously made on a consent calendar, even though it includes a warrant to his spouse, because the approval of the warrant is ministerial in nature. Under a Section 1090 analysis, the councilmember has a noninterest under Section 1091.5(a)(6), where the warrant involves the existing employment of his spouse (his spouse has been employed as an independent contractor to teach classes for the Kerman City Parks and Recreation Department since 2014). His noninterest pursuant to Section 1091.5(a)(6) does not require his recusal or disclosure for this decision.

### **E. Miscellaneous Decisions**

None to report.

### **F. Upcoming Regulations**

#### **September 15, 2016**

**Regulation 18519 Surplus Funds.** The Act's surplus funds Section 89519 was amended in 2014 (AB 800) to extend the date when campaign funds became surplus by 90 days, giving candidates more time to handle the funds. Proposed amendments to the surplus funds regulation will conform the dates in the regulation to the new dates in Section 89519.

#### **October 20, 2016**

**Regulation 18940 Guide to Gift Regulations; Minor Amendments to Implement SB 21.** Senate Bill 21 (Hill), Chapter 757, Statutes of 2015, requires a nonprofit organization that makes travel payments of \$5,000 or more for one elected state or local officeholder or \$10,000 or more a year for elected state or local elected officeholders, and whose expenses for such travel payments total 1/3 or more of the organization's total expenses in a year as reflected on the organization's Internal Revenue Service Form 990, to disclose to the Commission the names of donors who donated \$1,000 or more and also went on the trips. The bill also requires a person who receives a gift of a travel payment from any source to report the travel destination on his or her Form 700. Current Regulation 18940 is a guide to the regulations underlying the provisions of the Act that relate to gifts. Staff will propose amendments to Regulation 18940(d) to provide notice of the new disclosure requirement added by the enactment of SB 21.

#### **November 17, 2016**

**2017-2018 Consumer Price Index (CPI) Adjustment to Gift Limit and Contribution and Expenditure Limits.** Section 89503, subdivision (f), requires CPI adjustments to the gift limits, affecting Regulations 18700, 18730 and 18940.2. Section 83124 and Regulation 18544 require CPI adjustments to the contribution limits and voluntary expenditure ceiling amounts, affecting Regulation 18545.

## G. Conflict of Interest Codes

### Adoptions and Amendments:

#### *Multi-County Agency Conflict of Interest Codes*

- Chaffey Joint Union High School District
- Kern Community College District
- Laguna Joint Elementary School District
- Metropolitan Transportation Commission
- Orange Cove Irrigation District
- San Francisco EMA HIV Community Planning Council
- San Luis Obispo Community College District
- Westlands Water District

#### *State Agency Conflict of Interest Codes*

- Baldwin Hills Conservancy
- CA Cultural and Historical Endowment
- Franchise Tax Board

### Exemptions and Extensions

#### *Exemptions*

None

#### *Extensions*

- California Actuarial Advisory Panel

## H. Probable Cause Decisions

*\* Please note, a finding of probable cause does not constitute a finding that a violation has actually occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.*

*The following matters were decided based solely on the papers. The respondents did not request a probable cause hearing.*

### **1. In the Matter of James Yoder, FPPC No. 15/318.**

On June 30, 2016, probable cause was found to believe that the named Respondent committed one violation of the Act, as follows:

COUNT 1: Yoder failed to file an Assuming Office Statement of Economic Interests (SEI) within 30 days of taking his position in violation of Sections 87300 and 87302.

### **2. In the Matter of Elena Sweda Neff, Case No. 15/716.**

On July 6, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: Neff failed to file an Annual SEI for the year of 2011 in violation of Sections 87300 and 87302.

COUNT 2: Neff failed to file an Annual SEI for the year of 2012 in violation of Sections 87300 and 87302.

COUNT 3: Neff failed to file an Annual SEI for the year of 2013 in violation of Sections 87300 and 87302.

COUNT 4: Neff failed to file an Annual SEI for the year of 2014 in violation of Sections 87300 and 87302.

COUNT 5: Neff failed to file a Leaving Office SEI within thirty days of leaving office on June 16, 2015 in violation of Sections 87300 and 87302.

**3. In the Matter of Alicia Romero and Romero for City Council 2013, Case No. 15/153.**

On July 18, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNTS 1-5: Romero and the Committee failed to maintain supporting records for contributions received and expenditures made during five reporting periods ending February 16, 2013, June 30, 2013, December 31, 2013, June 30, 2014, and December 31, 2014, violating Section 84104.

**4. In the Matter of Sergio Sanchez for Salinas City Council and Sergio Sanchez, Case No. 15/1422.**

On July 18, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: The Committee and Sanchez failed to pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee and Sanchez failed to pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee and Sanchez failed to pay the 2015 Annual Fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

**5. In the Matter of Families for Sergio Sanchez Mayor 2012, Lupe Sanchez, and Sergio Sanchez, Case No. 15/1423.**

On July 18, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: The Committee, Sergio Sanchez, and Lupe Sanchez failed to timely pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee, Sergio Sanchez, and Lupe Sanchez failed to timely pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee, Sergio Sanchez, and Lupe Sanchez failed to timely pay the 2015 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

**6. In the Matter of Sanchez for Supervisor and Sergio Sanchez, Case No. 15/1462.**

On July 18, 2016, probable cause was found to believe Respondent committed the following violations of the Act:

COUNT 1: The Committee and Sanchez failed to timely pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee and Sanchez failed to timely pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee and Sanchez failed to timely pay the 2015 Annual Fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

**7. In the Matter of Chris Valenzano for City Council 2014 and Chris Valenzano, FPPC No. 15/1472.**

On July 19, 2016, probable cause was found to believe that the named Respondents committed three violations of the Act, as follows:

COUNT 1: The Committee and Valenzano failed to timely pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee and Valenzano failed to timely pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee and Valenzano failed to timely pay the 2014 Annual Fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

**8. In the Matter of Friends of Chris Valenzano and Chris Valenzano, FPPC No. 15/1538.**

On July 19, 2016, probable cause was found to believe that the named Respondents committed three violations of the Act, as follows:

COUNT 1: The Committee and Valenzano failed to timely pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee and Valenzano failed to timely pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee and Valenzano failed to timely pay the 2014 Annual Fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

**9. In the Matter of Violeta Alvarez, Re-Elect Violeta Alvarez for Bell City Council 2015, and Mario Estrada, FPPC No. 15/150.**

On July 19, 2016, probable cause was found to believe that the named Respondents committed six violations of the Act, as follows:

COUNT 1: Alvarez, the Committee and Estrada failed to timely file semi-annual campaign statements for the reporting period of January 1 through June 30, 2014, by the July 31, 2014 due date, violating Section 84200(a).

COUNT 2: Alvarez, the Committee and Estrada failed to timely file semi-annual campaign statements for the reporting period of July 1 through December 31, 2014, by the February 2, 2015 due date, violating Section 84200(a).

COUNT 3: Alvarez, the Committee and Estrada failed to timely file preelection campaign statements for the reporting period of January 1 - January 17, 2015, by the January 22, 2015 due date, violating Sections 84200.5(c), and 84200.8(a) and (b).

COUNT 4: Alvarez, the Committee and Estrada failed to timely file preelection campaign statements for the reporting period of January 18 - February 14, 2015, by the February 19, 2015 due date, violating Sections 84200.5(c), and 84200.8(a) and (b).

COUNT 5: Alvarez, the Committee and Estrada failed to timely file a semi-annual campaign statement for the reporting period of February 15 through June 30, 2015, by the July 31, 2015 due date, violating Section 84200(a).

COUNT 6: Alvarez, the Committee and Estrada failed to timely file a semi-annual campaign statement for the reporting period of July 1 through December 31, 2015, by the February 1, 2016 due date, violating Section 84200(a).

**10. In the Matter of Ili for City Council 2011 and Willhans Ili, FPPC No. 15/662.**

On July 19, 2016, probable cause was found to believe that the named Respondents committed three violations of the Political Reform Act, as follows:

COUNT 1: The Committee and Ili failed to timely pay the 2013 Annual Fee by the February 15, 2013 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 2: The Committee and Ili failed to timely pay the 2014 Annual Fee by the January 15, 2014 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

COUNT 3: The Committee and Ili failed to timely pay the 2015 Annual Fee by the January 15, 2015 due date and failed to pay a penalty of \$150 for failing to timely pay the annual fee, in violation of Section 84101.5(c) and (d).

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: TARA STOCK, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to almost 700 telephone requests for advice in July.

### **Workshops and Webinars**

Political Reform Consultants conducted the following webinars and workshops:

- Alex Castillo and John Kim, presentation regarding campaign and SEI filing officer requirements at the California City Clerk's Association Nuts & Bolts Workshop.
- Deborah Hanephin and I, workshop in the City of Santa Clara for candidates and treasurers.
- John Kim and Alex Castillo, webinar for candidates and treasurers.

The Division is now preparing to present four workshops for candidates and treasurers, and a webinar for campaign filing officers in August.