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2 ADAM SILVER
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3 **FAIR POLITICAL PRACTICES COMMISSION**
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5 Attorneys for Complainant
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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11

12 In the Matter of) FPPC No. 13/054
13)
14) STIPULATION, DECISION and
MARC RICHARDSON,) ORDER
15)
16) Respondent.
17)

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Marc Richardson agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
3 stipulated and agreed that Respondent Marc Richardson violated the Political Reform Act by failing to
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic
5 Interests, in violation of Sections 87300 and 87302 of the Government Code (1 count); accepting gifts,
6 which exceeded the gift limit, in violation of Section 89503, subdivision (c) of the Government Code (1
7 count); and making, participating in the making, or influencing a governmental decision by assisting in
8 the negotiations of agreements with Bennett Valley Golf Course and recommending to the Santa Rosa
9 City Council that it enter into and amend agreements with Bennett Valley Golf Course, who was the
10 registered agent of the source of a gift that exceeded the annual gift limit applicable to Respondent, in
11 violation of Government Code Section 87100 (1 count). All counts are described in Exhibit 1, which is
12 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
13 accurate summary of the facts in this matter.

14 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
15 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
16 of Six Thousand Five Hundred Dollars (\$6,500). A cashier's check from Respondent in said amount,
17 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
18 payment of the administrative penalty, to be held by the State of California until the Commission issues
19 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
20 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
21 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
22 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
23 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
24 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
25 shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

Marc Richardson,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Marc Richardson,” FPPC No. 13/054,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

This case is the result of a referral from the City Clerk of Santa Rosa. Respondent Marc Richardson (“Respondent”) served as the Director of the Recreation and Parks Department for the City of Santa Rosa until he left his position on December 20, 2012. As a designated employee, Respondent is required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received gifts exceeding the reporting threshold of \$50, and failed to report these gifts on his annual SEIs for 2008-2011. In addition, Respondent received gifts exceeding the applicable gift limit from one source in 2009-2012, and then impermissibly made, participated in the making, or influenced governmental decisions concerning the donor, which had a reasonably foreseeable material financial effect on the source of the gift.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: From 2008-2011, Respondent Marc Richardson, a designated employee of the City of Santa Rosa, failed to report gifts from Bennett Valley Municipal Golf Course, in the amount of fifty dollars or more on his annual Statements of Economic Interest, in violation of Sections 87300 and 87302 of the Government Code.

COUNT 2: Respondent Marc Richardson, a designated employee of the City of Santa Rosa, accepted gifts in excess of the \$420 gift limit in 2009-2012, from Bennett Valley Municipal Golf Course, in violation of Section 89503, subdivision (c) of the Government Code.

COUNT 3: Respondent, a designated employee of the City of Santa Rosa, made, participated in the making, or influenced a governmental decision by recommending to the Santa Rosa City Council that it enter into contracts with Bennett Valley’s Course Operator, Mr. Robert Borowicz, who was the registered agent of the source of the gifts that exceeded the annual gift limit applicable to Respondent, in which he knew or should have known was in violation of Government Code Section 87100.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

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.

1 An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the
2 assets and income of public officials, that may be materially affected by their official actions, be
3 disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300
4 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code
5 shall have the force of law and any violation of a Conflict of Interest Code by a designated employee
6 shall be deemed a violation of this chapter. (Section 87300.)

7 **Disclosure Provisions**

8 Section 82019, subdivision (a), defines “designated employee” to include any member of any
9 agency whose position is “designated in a Conflict of Interest Code because the position entails the
10 making or participation in the making of decisions which may foreseeably have a material effect on any
11 financial interest.” Each Conflict of Interest Code shall require that each designated employee file
12 annual statements, disclosing reportable investments, business positions, interests in real property and
13 sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but
14 not limited to any salary, wage, or gift. (Section 82030, subd. (a).)

15 Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and
16 that Code shall have the force of law. In addition, any violation of that Code by a designated employee
17 shall be a violation of the Act. Section 87302, subdivision (b), provides that an agency’s Conflict of
18 Interest Code must require each designated employee of the agency to file annual statements of
19 economic interests at a time specified in the agency’s conflict of interest code, disclosing investments,
20 income, business positions, and interests in real property, held or received at anytime during the
21 previous calendar year and that the information required to be disclosed describing these interests is the
22 same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may
23 incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

24 The City of Santa Rosa’s Conflict of Interest Code (“Santa Rosa Code”) lists the position of
25 “Director” under section “Recreation, Parks & Community Services Department” as designated
26 employees who make or participate in making governmental decisions which may foreseeably have a
27 material effect on their financial interests. The Santa Rosa Code lists the “Director” as a designated
28 employee in Disclosure Category A. The Santa Rosa Code states that Disclosure Category A requires
that the designated employee complete all schedules of his annual SEI to disclose²:

“All income, investment interests, management positions, and interests in real property
within the City of Santa Rosa or within two miles of its boundaries, other than savings accounts,
insurance policies, or government bonds and interest, premiums or dividends derived therefrom,
and dividends or returns on securities registered with the U.S. Securities and Exchange
Commission.”

²This disclosure does not require the reporting of gifts from outside the agency’s jurisdiction if the purpose of disclosure of
the source of the gift does not have some connection with or bearing upon the functions or duties of the position for which
the reporting is required.

1 **Disclosure of Gifts**

2 Section 89503, subdivision (c), of the Act states that “No member of a state board or commission
3 or designated employee of a state or local government agency shall accept gifts from any single source
4 in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee
5 would be required to report the receipt of income or gifts from that source on his or his statement of
6 economic interests.” The \$250 gift limit amount is adjusted biennially to reflect changes in the
7 Consumer Price Index pursuant to Section 89503, subdivision (f). For 2007 and 2008, the applicable
8 gift limit from a single source was \$390. For 2009 - 2012, the applicable gift limit from a single source
9 was \$420.

10 Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal
11 benefit on the recipient, to the extent that consideration of equal or greater value is not received.
12 Regulation 18941 states that “...a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she
13 has either actual possession of the gift or takes any action exercising direction or control over the gift.”
14 Regulation 18944 states that a gift confers a personal benefit on the official when the official enjoys a
15 direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over
16 who will use the gift or how to dispose of the gift.³ In addition, Regulation 18945, subdivision (a),
17 states that a person is the source of a gift if the person either gives the gift directly to the official or the
18 “person makes a payment to a third party and in fact directs and controls the use of the payment to make
19 a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official
20 may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946
21 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

22 **Conflicts of Interest**

23 The primary purpose of the conflict of interest provisions of the Act is to ensure that, “public
24 officials, whether elected or appointed, perform their duties in an impartial manner, free from bias
25 caused by their own financial interests or the financial interests of persons who have supported them.”
26 (Section 81001, subd. (b).) In furtherance of this goal, Section 87100 prohibits a public official from
27 making, participating in making, or in any way attempting to use this official position to influence a
28 governmental decision in which the official knows, or has reason to know, that he has 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 an economic interest of the official
or any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty
dollars (\$250) or more in value provided to, received by, or promised to the public official within 12
months prior to the time when the decision is made. As previously mentioned, the \$250 gift limit
amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503,
subdivision (f). For 2007 and 2008, the applicable gift limit from a single source was \$390. For 2009 -
2012, the applicable gift limit from a single source was \$420.

³ Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

1 For purposes of Section 87100 and 87103, there are six analytical steps to consider when
2 determining whether an individual has a conflict of interest in a governmental decision.⁴

3 1. **Public Official:** The individual must be a public official. Section 82048 defines “public
4 official” to include “every member, officer, employee or consultant” of a local government agency.

5 2. **Decisions:** The official must make, participate in making, or attempt to use his official position
6 to influence a governmental decision. A public official “makes a governmental decision” when the
7 official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a
8 person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any
9 contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such
10 determination is made because of his or her financial interest. (Reg. 18702.1, subd. (a).) A public
11 official “participates in making a governmental decision” when, acting within the authority of his or her
12 position, the official negotiates, without significant substantive review, regarding a governmental
13 decision or advises or makes recommendations to the decisionmaker either directly or without
14 significant intervening substantive review. (Reg. 18702.2.) A public official “attempts to use his or her
15 official position to influence a governmental decision” of his her agency when the official acts or
16 purports to act, on behalf of, or as the representative of his or her agency to any member, officer,
17 employee, or consultant. (Reg. 18702.3.)

18 3. **Economic Interests:** The official must have an economic interest, as defined in Section 87103,
19 which may be financially affected by the governmental decision. In 2007 and 2008, a public official
20 had a financial interest in any donor of, or any intermediary or agent for a donor of, a gift or gifts
21 aggregating \$390 or more in value provided to, received by, or promised to the public official within 12
22 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c);
23 Reg.18940.2.) In 2009, the threshold for an economic interest was raised to \$420 (Sections 87103, subd.
24 (e), and 89503, subd. (c); Reg.18940.2.)

25 4. **Direct or Indirect Financial Effect on Economic Interests:** It must be determined if the economic
26 interest of the official is directly or indirectly involved in the decision. (Reg. 18704.) A source of a
27 gift is directly involved in a decision if he or she, or their agent, is the “subject of the proceeding.”
28 (Reg. 18704.1.) A person is considered the “subject of the proceeding if the decision in question
“involves the issuance, renewal, approval, denial or revocation of any license, permit, or other
entitlement to, or contract with, the subject person.”

5. **Material Financial Effect on Economic Interests:** It must be determined if the governmental
decision has a material financial effect on the economic interest. In the case of an economic interest
that is the directly involved donor of a gift, the financial effect is presumed to be material. (Reg.
18705.4, subd. (a).)

6. **Foreseeability:** At the time of the governmental decision, it must have been reasonably foreseeable
that the decision would have a material financial effect. A material financial effect on an economic
interest is reasonably foreseeable if it is substantially likely that one or more of the materiality
standards applicable to the economic interest will be met as a result of the governmental decision.
(Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

SUMMARY OF THE FACTS

⁴The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

1 This matter arose from a referral from the City Clerk of Santa Rosa. Respondent was Director of
2 Recreation and Parks Department for the City of Santa Rosa at all times relevant to this matter.
3 Respondent failed to disclose either Bennett Valley, a municipal golf course, or the Course's operator,
4 Mr. Robert Borowicz, on his annual SEIs from 2008-2011, after receiving free course access, range
5 access, cart use, lessons and merchandise discounts exceeding the \$50 reporting threshold. In 2009,
6 2010, 2011 and 2012, those gifts exceeded the applicable \$420 gift limit threshold.

7 In 2009, Respondent assisted in negotiating a successor agreement with Mr. Borowicz that
8 reduced his yearly cost of living adjustments by 38 percent and extended his contract by ten years. On
9 June 30, 2009, Respondent presented before the Santa Rosa City Council (the "Council") a
10 recommendation that the Council adopt the successor agreement.

11 In 2012, Respondent assisted in negotiating amendments to the City's operating agreement with
12 Bennett Valley that would reduce the City's operating costs by \$418,162. Respondent presented in
13 support of these amendments before the Council.

14 On December 20, 2012, Respondent left his position as Director.

15 COUNT 1

16 Failure to disclose gifts on a Statement of Economic Interests

17 Respondent was Director of the Recreation and Parks Department for the City of Santa Rosa at
18 all times relevant to this matter. As a designated employee, Respondent was required to file an annual
19 SEI disclosing all income and gifts received. Respondent filed his SEIs from 2008-2011 with the Santa
20 Rosa City Clerk, but the only income he disclosed was his wife's salary. Upon being advised by the
21 City that these gifts from Bennett Valley were reportable, Respondent immediately submitted amended
22 SEI's disclosing \$3,057.98 in gifts received by Respondent from the Bennett Valley Golf Course from
23 2008-2011.

24 By failing to report \$3,057.98 in gifts received from Bennett Valley from 2008-2011 on his
25 annual SEIs, Respondent violated Sections 87300 and 87302 of the Government Code.

26 COUNT 2

27 Acceptance of Gifts in Excess of the Annual Gift Limit

28 Respondent was Director of the Recreation and Parks Department for the City of Santa Rosa at
all times relevant to this matter. As a designated employee, Respondent was prohibited from accepting
gifts from a single source in excess of the \$420 annual gift limit for the years of 2009-2012. However,
Respondent's amended SEI's disclosed that he had received gifts from Bennett Valley in excess of the
gift limits in 2009, 2010, 2011 and 2012.

By accepting gifts over the annual gift limit during those years, Respondent violated Section
89503, subdivision (c), of the Government Code.

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COUNT 3

**Making, Participating in Making or Influencing a Governmental Decision Concerning the Donor
of the Gifts Received in Excess of the Annual Gift Limit**

Respondent was Director of Recreation and Parks for the City of Santa Rosa at all times relevant to this matter. During the periods of June 30, 2008 to June 30, 2009, and June 12, 2011 to June 12, 2012, Respondent accepted gifts from the Bennett Valley Golf Course totaling \$469.29 and \$1,495.81, respectively. Gifts aggregating to \$420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when a decision is made make the source of the gift or gifts an “economic interest” of the official’s. (Sections 87103, subd. (e), and 89503, subd. (c); Reg.18940.2.)

On or about June 30, 2009, Respondent, a designated employee of the City of Santa Rosa, made, participated in the making, or influenced a governmental decision by assisting in negotiating a successor agreement between the City and Mr. Borowicz that would extend the agreement for supervision and operation of the Bennett Valley Municipal Golf Course and lower the cost of living adjustment contained in the original agreement resulting in significant savings to the City. On June 30, 2009, Respondent recommended to the Council that the City approve the successor agreement with Mr. Borowicz, the registered agent of the source of the gifts which was in violation of Government Code Section 87100. Additionally, on or around June 12, 2012, Respondent and Mr. Borowicz negotiated an amendment to the City’s operating agreement for supervision and operation of the Bennett Valley Golf Course. On June 30, 2009, Respondent presented before the Council a recommendation that it adopt the amendment.

Bennett Valley was directly involved in both of these decisions because Bennett Valley and its registered agent were the “subject[s] of the proceeding.” Both decisions are presumed to have a reasonably foreseeable material financial effect on Bennett Valley because Bennett Valley and its agent were directly involved.

By making, participating in making or influencing the decision regarding Bennett Valley, Respondent violated Section 87100 of the Government Code.

CONCLUSION

This matter consists of three counts, which carry a maximum possible administrative penalty of 15,000 Thousand Dollars (\$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): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a

1 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily
2 filed amendments to provide full disclosure.

3 **SEI Non-Disclosure:** Penalties for SEI non-disclosure violations range widely depending on the
4 circumstances of each case. Disclosure of economic interests is important to provide transparency and
5 prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of
6 the Act because it deprives the public of important information about a public official's economic
7 interests and it has the potential to conceal conflicts of interest.

8 Regarding the failure to disclose gifts received over the \$50 reporting threshold on SEIs, the
9 typical penalty amounts have varied depending on the circumstances of the case. Recent prior penalties
10 concerning SEI disclosure violations include:

- 11 • *In re James Cameron*, FPPC No. 12/027 (Approved April 25, 2013). James Cameron, as the
12 Chief Financial Officer of Oxnard, failed to disclose gifts received from a developer who does
13 business in the city on annual SEIs and failed to disclose gifts received from a municipal bond
14 underwriter who does business with the city. The gifts received were \$496.81 over the applicable
15 gift limit. The Commission approved a \$1,000 penalty for failing to disclose income on his SEI.
- 16 • *In re Bryan MacDonald*, FPPC No. 12/028 (Approved December 13, 2012). Bryan
17 MacDonald, as a member of the Oxnard City Council, failed to disclose gifts received from a
18 developer who does business in the city on his SEI. No evidence was found to show that the gifts
19 were intentionally omitted from his SEI. Further, he stated that he was unaware of the
20 requirement to disclose the gifts. The gifts were also over the applicable limit. The Commission
21 approved a \$1,000 penalty for failing to disclose income on his SEI.

22 In this matter, Respondent did not disclose gifts received from Bennett Valley, a municipal golf
23 course that is under the purview of the Department of Recreation and Parks. Though Respondent takes
24 full responsibility for his actions, he asserts that he did not consider free course access a gift given his
25 supervisory responsibilities with the City's Department of Recreation and Parks. Additionally,
26 Respondent amended his SEIs and reimbursed Bennett Valley in full for the gifts received once he
27 realized that he was required to disclose the gifts. The amendments and reimbursements were made
28 before being contacted by the Enforcement Division.

Based on the above prior cases and the information provided in this case, imposition of a \$1,000
penalty is recommended for this violation.

29 **Over-the-limits Gift:** Penalties for gifts received over the applicable limits violations in the last
30 couple of years range between \$1,500 for gifts of low amounts with little possibility of causing a conflict
31 of interest to \$2,500 depending on the circumstances of each case. Recent prior penalties concerning
32 gifts received over the applicable limits violations include:

- 33 • *In re James Cameron*, FPPC No. 12/027 (Approved April 25, 2013). James Cameron, as the
34 Chief Financial Officer of Oxnard, failed to disclose gifts received from a developer who does
35 business in the city on annual SEIs and failed to disclose gifts received from a municipal bond
36 underwriter who does business with the city. The gifts received were \$496.81 over the applicable
37 gift limit. The Commission approved a \$2,000 penalty for exceeding the applicable gift limit.

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- *In re Louie Martinez*, FPPC No. 09/261 (Approved June 9, 2011). Louie Martinez, a senior project manager for the City of Irvine, received discounted landscaping service with a company who contracted with the City. The Commission approved a stipulated settlement for \$2,000 per count for the violations of receiving gifts over the limit and \$4,000 for the violation of the conflict of interest provisions of the Act when he approved an invoice for payment of approximately \$86,000 to the company that provided him the services.

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In this matter, Respondent did not disclose gifts received from Bennett Valley, a municipal golf course that is under the purview of the Department of Recreation and Parks. Though Respondent takes full responsibility for his actions, he asserts that he did not consider free course access a gift given his supervisory responsibilities with the City's Department of Recreation and Parks. Additionally, Respondent amended his SEIs and reimbursed Bennett Valley in full for the gifts received once he realized that he was required to disclose the gifts. The amendments and reimbursements were made before being contacted by the Enforcement Division.

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Based on the above prior cases and the information provided in this case, imposition of a \$2,000 penalty is recommended for this violation.

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Conflict of Interest: Making a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict of interest. Penalties for conflict of interest violations in the last couple of years range between \$2,500 to \$4,500 depending on the circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

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- *In re Andres Herrera*, FPPC No. 12/027 (Approved December 13, 2012). Andres Herrera, as a member of the Oxnard City Council, failed to disclose gifts received from a developer who does business in the city on his 2007, 2008, and 2009 SEIs and failed to disclose gifts received from a municipal bond underwriter who does business with the city on his 2008 SEI. Respondent Herrera stated that he was unaware of the reporting requirements and no evidence was found that the gifts were intentionally omitted. In addition, the gifts in excess of the limits caused Respondent to have a conflict of interest when voting to approve a development project involving the source of the gifts over the limits. The Commission approved a \$3,500 fine for the conflict of interest violation.
 - *In the Matter of Edmund Sotelo*, FPPC No. 12/029 (Approved August 16, 2012). Edmund Sotelo, the City Manager for the City of Oxnard, failed to disclose J.F. Shea Co., & Affiliated Companies ("Shea LLC"), a developer who does business in the City of Oxnard, on his annual SEIs for the years 2007 – 2009 after receiving meals, drinks and golf from Shea LLC exceeding the \$50 reporting threshold and, in 2007 and 2008, exceeding the \$390 gift limit threshold. Respondent Sotelo approved a Revised Development Schedule in 2008 and 2009 regarding a Shea LLC development project after receiving gifts exceeding the \$390 threshold Shea LLC. The Commission approved a \$3,500 fine for the conflict of interest violation.

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In this case, although Respondent takes full responsibility for his actions, he asserts that he did not consider free course access a gift given his supervisory responsibilities at the Department of Recreation and Parks. Furthermore, Respondent believed the agreements he negotiated were in the best interests of the City of Santa Rosa. His beliefs were justified by the over \$1.6 million in savings

1 experienced by the City as a result of the contracts Respondent negotiated and recommended to the
2 Council. Under these circumstances, it is respectfully submitted that imposition of an agreed upon
3 penalty in the amount of \$3,500 is justified. A higher penalty is not being sought because Respondent
4 cooperated fully with the Enforcement Division of the Fair Political Practices Commission by agreeing
5 to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise
6 would have been held. Additionally, there is no history of prior violations of the Act by Respondent.

7 **PROPOSED PENALTY**

8 After consideration of the factors of Regulation 18361.5, including whether the behavior in
9 question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as
10 consideration of penalties in prior enforcement actions, the imposition of a penalty of Six Thousand Five
11 Hundred Dollars (\$6,500) is recommended.
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