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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. 12/527
12)
13 JOCELYN WOODARD,)
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,¹ Respondent Jocelyn Woodard has
20 been served with all of the documents necessary to conduct an administrative hearing regarding the
21 above-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.

27
28 ¹The 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 Jocelyn
4 Woodard explicitly stated that a Notice of Defense must be filed in order to request a hearing.
5 Respondent 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 Defense,
7 the Commission may take action, by way of a default, based upon the respondent's express admissions
8 or upon other evidence, and that affidavits may be used as evidence without any notice to the
9 respondent.

10 Respondent Jocelyn Woodard 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: _____

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

2 The Commission issues this Default Decision and Order and imposes an administrative penalty
3 of Four Thousand Dollars (\$4,000) upon Respondent Jocelyn Woodard, payable to the “General Fund of
4 the State of California.”

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

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Jocelyn Woodard (“Respondent”) was a Member of the County of Los Angeles Commission on HIV (“LACHIV”) from April 2011 through July 2013.

As a member of the LACHIV, Respondent is a “designated employee,” as defined in Section 82019, subdivision (a), of the Political Reform Act (the “Act”)¹ and in the Conflict of Interest Code for the LACHIV. As a designated employee, Respondent is required to file annual statements of economic interests (“SEI”) disclosing the economic interests that she held during the preceding calendar year with the County of Los Angeles Board of Supervisors.

This case resulted from a referral from the County of Los Angeles Board of Supervisors, the filing officer for the LACHIV, which alleged that Respondent failed to file an annual statement of economic interests as required under the Act.

In this matter, Respondent failed to file a statement of economic interests for calendar year 2011 by the April 2, 2012, due date.

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

COUNT 1: Respondent Jocelyn Woodard, as a Member of the County of Los Angeles Commission on HIV, failed to file a 2011 annual statement of economic interests, by the April 2, 2012, due date, 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”).² (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.)

¹The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

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

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 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 her 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.³ The original return receipt addressed to Respondent was signed on April 18, 2013, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on April 18, 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 she 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.)

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.

³ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

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 1, 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 9, 2013, were personally served on Respondent on July 25, 2013. (Certification, Exhibit A-5.)

The "Statement to Respondent" notified Respondent that she 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, she 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 August 9, 2013.

As a result, on September 3, 2013, the Enforcement Division sent a letter to Respondent advising her that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for September 19, 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 LACHIV conflict of interest code incorporates Regulation 18730, and thus, the filing deadline for annual statements of economic interests is April 1. Since April 1, 2012, fell on a Sunday, under Regulation 18116, LACHIV 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 County of Los Angeles Board of Supervisors, the filing officer for the LACHIV. The conflict of interest code for the LACHIV designates members of the LACHIV as persons who must file annual statements of economic interest. Because Respondent was a member of the LACHIV, she was required to file annual statements of economic interests disclosing her reportable economic interests held during the preceding calendar year.

Count 1

Failure to File a 2011 Annual Statement of Economic Interests

As a designated employee of the LACHIV, Respondent Woodard had a duty to timely file an annual SEI for the 2011 calendar year. According to the County of Los Angeles Board of Supervisors, Respondent did not file the 2011 SEI by the April 2, 2012, due date.

On or about May 4, 2012, the County of Los Angeles Board of Supervisors sent Respondent a letter advising her that her annual SEI was past due and requesting that she file the statement within thirty days. Respondent did not respond to the letter or file her 2011 annual SEI. On or about June 13, 2012, the County of Los Angeles Board of Supervisors sent a second letter to Respondent, advising that her annual SEI remained past due and requesting that she file the statement immediately. The June 13th letter further advised Respondent that if the

delinquent statement was not received with a postmark date of June 25, 2012 or before, the matter would be referred to the Commission's Enforcement Division ("Enforcement"). Respondent did not respond to the second letter or file her 2011 annual SEI. On or about July 26, 2012, the County of Los Angeles Board of Supervisors sent a third letter to Respondent, notifying her that her annual SEI remained past due and that the matter had been referred to Enforcement. Respondent did not respond to the third letter or file her 2011 annual SEI.

On or about October 2, 2012, Enforcement sent a letter to Respondent encouraging her to participate in the Streamlined SEI Enforcement Program by filing her delinquent 2011 annual SEI. Respondent failed to respond. Respondent did not respond to the letter or file her 2011 annual SEI. On or about October 18, 2012, Enforcement sent another letter to Respondent further encouraging her to file her missing annual 2011 SEI. Respondent did not respond to the second letter or file her 2011 annual SEI. On December 13, 2012, Enforcement sent an email and left a voice mail message for Respondent at her last known home telephone number. Again, Respondent did not respond to the email and telephone message, or file her 2011 annual SEI. On March 28, 2013, voicemail messages were left for Respondent advising her to file her delinquent statements and contact Enforcement. Respondent did not respond to the voicemail messages or file her 2011 annual SEI.

Thereafter, as previously stated, Respondent was served with a Probable Cause Report, a Finding of Probable Cause, and an Accusation in this matter. Respondent received each of these documents, did not respond to any of them, and did not file her 2011 annual SEI.

In total, Respondent received five (5) written notices, an email, several telephone messages, a Probable Cause Report, and a Finding of Probable Cause, and Respondent was personally served with an Accusation in this matter. To date, Respondent has failed to file her 2011 annual statement of economic interests. By failing to timely file the 2011 annual SEI by the April 2, 2012, due date, Respondent Woodard violated Section 87300 of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000 per count, for a total maximum administrative penalty of \$5,000.

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 file a 2011 annual statement of economic interests. Respondent has disregarded numerous written and telephonic notifications from the County of Los Angeles Board of Supervisors, and the Commission's Enforcement Division regarding her duty to file her 2011 annual statement 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 Samuel Moore*, FPPC No. 12/354 (Default Decision). This case involved three counts of failure to file annual statements of economic interests. The respondent disregarded numerous notifications from his filing officer and the Commission's Enforcement Division regarding his duty to file his annual statements of economic interests, and he did not file the delinquent statements of economic interests until several years to several months after the deadline had passed and only after significant time and effort was expended by Commission staff. For each of these three counts, the Commission approved a \$2,000 penalty on August 22, 2013.
- *In the Matter of Jonathan Leone*, FPPC No. 11/932 (Default Decision). This case involved two counts of failure to file annual statements of economic interests. The respondent disregarded numerous notifications from his filing officer and the Commission's Enforcement Division regarding his duty to file his annual statements of economic interests, and he did not file the delinquent statements. Additionally, Respondent remained in office, and showed a pattern of willful disregard of his filing obligations. For each of these two counts, the Commission approved a maximum \$5,000 penalty on August 22, 2013.

Due to the number of written, electronic, and telephonic notices Respondent received from the County of Los Angeles Board of Supervisors and the Commission's Enforcement Division while she was still a member of the LACHIV, Respondent should have been well aware of her filing obligations. While she left office in July 2013, Respondent has disregarded all requests to file made by her filing officer and the Commission's Enforcement Division. Significant time and effort was expended by Commission staff, and to date, Respondent has not filed her 2011 annual statement of economic interests.

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RECOMMENDED 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 Four Thousand Dollars (\$4,000) is recommended for Count 1.

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