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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 12/586
13)
14) STIPULATION, DECISION and
15) ORDER
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Complainant the Enforcement Division of the Fair Political Practices Commission, and Respondent David “Chico” Fuentes agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear 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

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 David “Chico” Fuentes violated the Political Reform Act by
4 accepting gifts, which exceeded the gift limit, in violation of Section 89503, subdivision (a) of the
5 Government Code (1 count). All counts are described in Exhibit 1, which is attached hereto and
6 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
7 the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
10 of Two Thousand Dollars (\$2,000). A cashier’s check from Respondent in said amount, made payable
11 to the “General Fund of the State of California,” is submitted with this Stipulation as full payment of the
12 administrative penalty, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

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21 Dated: _____

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

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25 Dated: _____

David “Chico” Fuentes,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of David “Chico” Fuentes,” FPPC No.
3 12/586, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
4 Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent David “Chico” Fuentes (“Respondent”) is the former Mayor of the City of Irwindale, having held that position at all times relevant to this matter. As such, Respondent was 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 a gift exceeding the applicable gift limit from one source in 2012.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

COUNT 1: During 2012, Respondent David “Chico” Fuentes, Mayor of the City of Irwindale, accepted a \$1,000 gift, which exceeded the \$420 gift limit, from the Royal Coach & Towing, in violation of Section 89503, subdivision (a) of the Government Code.

SUMMARY OF THE LAW

Prohibition Against Accepting Gifts in Excess of the Gift Limit

Section 89503, subdivision (a), of the Act states that “No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).” The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2012, the applicable gift limit from a single source was \$420.

Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Regulation 18941 states that “...a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.” In addition, Regulation 18945, subdivision (a), states that a person is the source of a gift if the person either gives the gift directly to the official or the “person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials.”

Regulation 18944, subdivision (a), states that a gift given to both a public official and a member of his immediate family is a gift to the official for the full value of the gift. This is also

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

true when the official exercises discretion and control over who will use the gift. (Reg. 18944, subd. (b)(3).) A gift confers a personal benefit on the official when the official enjoys a direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift. (Reg. 18944.)

Regulation 18943, as it was in effect in 2012, determines when a gift given to a member of a public official's family is attributable to the official. When the public official's child² receives a gift from someone who is involved in actions or decisions before the official's agency, or regularly seeks contracts with or comes before the official's agency for the purpose of receiving a license, permit or other entitlement, the gift is attributed to the public official.

Pursuant to Regulation 18941(c)(3), a gift may be paid down within 30 days of receipt or acceptance by reimbursing the donor. In such event the value of the gift is reduced by the amount of the reimbursement.

SUMMARY OF THE FACTS

Respondent Fuentes has been a member of the city council for the City of Irwindale since December 9, 2008, and the city's mayor since 2011. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$420 annual gift limit for 2012.

In early 2012, Respondent Fuentes' son, Nicodemus, was soliciting donations to help fund his college education from local businesses at the suggestion of his former guidance counselor. Several local businesses obliged. One response to the solicitation was from Royal Coaches & Towing, a company that has a towing contract with the City of Irwindale. Royal Coaches & Towing gave \$1,000 to Nicodemus Fuentes to be used for his college tuition on May 15, 2012.

Gifts to an official's children are gifts to the official in many cases. Regulation 18943 provides the criteria for when a gift to an official with a child over 18 would be considered a gift to the official. These criteria, as well as the facts of this specific case, are: (1) Nicodemus is at least 18 but no more than 23 years old, (2) he is a full-time or part-time student, (3) he resides at the same principal residence as his father when not attending school, and (4) he does not provide over one-half of his own support. Since all of these factors are met, and Royal Coaches & Towing have a contract with the city, the gift to Respondent's son is a gift to Respondent Fuentes.

In September, 2012, Respondent Fuentes discovered this donation to his son by the towing company and wrote a check to Royal Coaches & Towing in the amount of \$581, in order to buy down the gift below the gift limit ceiling of \$420.

² The official's child, for the purposes of Regulation 18943, includes a child who is at least 18 but no more than 23 years old, is a full-time or part-time student, has the same principal residence as the official when not attending school, and does not provide over one-half of his or her own support.

By accepting a gift over the annual gift limit in 2012, Respondent violated Section 89503, subdivision (a), of the Government Code.

CONCLUSION

This matter consists of one count, which carries a maximum possible administrative penalty of Five Thousand Dollars (\$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): 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 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

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

- *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 approved stipulated settlement was \$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.
- *In re Bob Archuleta*, FPPC No. 11/097 (Approved September 22, 2011). Bob Archuleta, a city council member for the City of Pico Rivera, received gifts in the form of admissions from Krikorian Premier Theaters valued in the amount of \$1,616. Respondent was a first time councilmember who bought down the gift after the full value of the passes was made known to him. The approved stipulated settlement was \$1,500 for the violation of receiving gifts over the limit.

In this matter, Respondent Fuentes received a gift over the limits through his son. However, this gift of money was from a business which was attempting to obtain a contract with the city of Irwindale. In fact, Respondent Fuentes was involved in the earlier discussions which determined that the City's towing contract should be shared between more than one company, rather than exclusively with one company, which was the status quo. This discussion opened the door for the later vote to provide Royal Coaches & Towing part of the city contract for towing. Respondent Fuentes recused himself from the later vote after becoming aware of the money

received by his son from Royal Coaches & Towing. At that time, Respondent also paid down the gift received to below the amount of the applicable gift limit. Based on the above prior cases and the information provided in this case, imposition of a \$2,000 penalty for this count is recommended. A higher penalty is not being sought because Respondent cooperated fully with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Additionally, there is no history of prior violations of the Act by Respondent.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.

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