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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 Kevin Johnson,

13 Respondent.

FPPC No. 13/871

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant Fair Political Practices Commission and Respondent Kevin Johnson hereby agree
17 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its
18 next regularly scheduled meeting.

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

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Kevin Johnson
2 failed to properly report the source of multiple gifts of travel, in the amount of \$50 or more, on his 2012
3 annual Statement of Economic Interests, in violation of section 87203 of the Government Code (1
4 Count). Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
5 herein, is a true and accurate summary of the facts in this matter.

6 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
7 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
8 \$1,000. A cashier's check or money order from Respondent totaling said amount, made payable to the
9 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
10 administrative penalty and shall be held by the State of California until the Commission issues its
11 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
12 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
13 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
14 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
15 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the
16 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
17 shall be disqualified because of prior consideration of this Stipulation.

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19 Dated: _____

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

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21
22 Dated: _____

Kevin Johnson, Respondent

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Kevin Johnson,” FPPC No. 13/871,
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.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

9 _____
Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Kevin Johnson (“Respondent”) has been the Mayor of Sacramento from November 2008 until the present. As such, Respondent was required to file an annual Statement of Economic Interests (“SEI”) disclosing all income and gifts received as required by the Political Reform Act (the “Act”).¹ In this matter, Respondent received gifts of travel that exceeded the reporting threshold of \$50 in 2012, and failed to properly report the source of these gifts of travel on his annual SEI for that year.

For the purposes of this Stipulation, Respondent’s violation of the Political Reform Act (the “Act”)¹ is stated as follows:

COUNT 1: During 2012, Respondent Kevin Johnson, as the Mayor of Sacramento, failed to properly report the source of multiple gifts of travel, in the amount of \$50 or more, on his 2012 annual Statement of Economic Interests, in violation of section 87203 of the Government Code.

SUMMARY OF THE LAW

Duty to File Annual Statement of Economic Interests

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that assets and income of public officials, which may be materially affected by their official actions, should be disclosed in order that conflicts of interest may be avoided.

Under the Act, every person who holds an office specified in Section 87200, which includes mayors and members of city councils, shall, each year at a time specified by Commission regulations, file an SEI disclosing his investments, his interests in real property and his income, including gifts received of \$50 or more from a single source, during the period since the previous SEI was filed. (Section 87203 and 87207.) Section 87200 includes chief administrative officers of counties, *mayors*, city managers, chief administrative officers, members of city councils of cities, and other public officials who manage public investments, and candidates for any of these offices at any election. (Emphasis added.)

Disclosure Provisions

“Income” is defined, in part, as a payment received, including but not limited to any wage, salary, or gift, including reimbursement for expenses, and per diem. (Section 82030, subd. (a)). When the income is required to be reported, the SEI shall contain the name and address of each

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.

source of income aggregating \$500 or more in value or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source. (Section 87207).

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. Section 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 is provided benefit of the gift or takes any action exercising direction or control over the gift.”

Regulation 18945, subdivision (a), states that a “person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions: (1) the person receives a payment from a source and the payment is made to the official and the payment is made to the official after the source identifies the official as the intended recipient of the gift, (2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or (3) the person receives a payment from a source after the payment was solicited by the official or the official’s agent for the purpose of making a gift to the official.” Under any of these conditions, the source of the payment is the source of the gift. (Regulation 18945, subd. (b)).

SUMMARY OF THE FACTS

Respondent has been the Mayor of Sacramento from November 2008 until the present. As such, Respondent was required to file an annual SEI disclosing all income and gifts received as required by the Act. In this matter, Respondent received gifts of travel that exceeded the reporting threshold of \$50 in 2012, and failed to properly report the source of these gifts of travel on his annual SEI for that year.

On or about March 28, 2013, Respondent filed his 2012 SEI and disclosed multiple gifts of travel from Stand Up for Sacramento Schools (“Stand Up”), a 501(c)(3) charitable organization. Respondent is the Founder and Board President of Stand Up. On or about December 13, 2012, Respondent filed a Behested Payment Report disclosing behested payments from the Walton Family Foundation, a 501(c)(3) non-profit organization, to Stand Up in the amount of \$500,000. The grant from Walton Family Foundation paid \$200,000 in the beginning of 2012. However, the remaining \$300,000 was paid after Stand Up received matching funds. In fact, Stand Up received approximately \$400,000 in matching funds, in kind donations and had other unrestricted funds available to support the program. Therefore, the program budget was approximately \$900,000 in 2012.

The Stand Up grant application to the Walton Family Foundation requested funds to cover travel costs for Stand Up staff and others, including the Respondent specifically, in furtherance of Stand Up’s tax-exempt, nonprofit purpose. Respondent signed the grant proposal. As such, the portion of the travel earmarked for Respondent was a gift from the Walton Family Foundation, not directly from Stand Up. Respondent was required to disclose Walton Family Foundation as the source of these gifts of travel on his 2012 annual SEI.

COUNT 1

Failure to Properly Identify the Source of Gifts on a Statement of Economic Interests

Respondent failed to properly identify the source of gifts of travel from the Walton Family Foundation on his 2012 annual SEI, in violation of Section 87203.

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) 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.

SEI Non-Disclosure: Disclosure of economic interests is important to provide transparency. Failure to report all required information on an SEI deprives the public of important information about a public official’s economic interests.

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

- *In re Bryan MacDonald*, FPPC No. 12/028 (Approved December 13, 2012). Bryan MacDonald, as a member of the Oxnard City Council, failed to disclose gifts received from a developer who does business in the city on his SEI. No evidence was found to show that the gifts were intentionally omitted from his SEI. Further, he stated that he was unaware of the requirement to disclose the gifts. The gifts were also over the applicable limit. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI.
- *In re Richard Hovden*, FPPC No. 13/239 (Approved May 16, 2013). Richard Hovden, as the Park Planning and Development Manager for the Recreation and Parks Department for the City of Santa Rosa, failed to disclose gifts received from a golf course on his annual SEIs from 2008 through 2011. The Commission approved a \$1,000 penalty regarding the non-disclosure of the gifts.

In mitigation, Respondent disclosed all of the gifts of travel from Stand Up because Respondent contends that he believed in good faith that Stand Up was the source of the gifts based on Stand Up's receipt of more than \$400,000 from other sources to support the program that was funded in part by the Walton Family Foundation. Thus, Respondent states that the violation was inadvertent. Additionally, the payments from Walton Family Foundation to Stand Up and Respondent's role in soliciting them were previously disclosed publicly via press releases, media events and public meetings. Finally, Respondent cooperated with the Enforcement Division. However, Respondent has a prior history with the Enforcement Division based on his failure to timely file behested payment reports, including the behested payments from the Walton Family Foundation in 2012.

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 \$1,000 is recommended.