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

10
11 In the Matter of:

12 ROBERT A. LOVINGOOD,

13 Respondent.

FPPC No. 14/1149

14 STIPULATION, DECISION, AND ORDER

15
16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondent Robert A. Lovingood (“Lovingood”) agree that this Stipulation will be submitted for
19 consideration by the Fair Political Practices Commission (“Commission”) at its next regularly scheduled
20 meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative hearing
23 to determine the liability of Respondent.

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

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Lovingood violated the Political Reform Act by failing to
4 timely disclose sources of income on his Candidate Statement of Economic Interests, in violation of
5 Government Code Sections 87201 and 87207, subdivision (b)(2) (one count) ; failed to timely disclose
6 sources of income on his Assuming Office Statement of Economic Interests, in violation of Government
7 Code Sections 87202 and 87207, subdivision (b)(2) (one count); and failed to timely disclose sources of
8 income on his 2013 and 2014 Annual Statements of Economic Interests, in violation of Government Code
9 Sections 87203 and 87207, subdivision (b)(2) (two counts), all as described in Exhibit 1. Exhibit 1 is
10 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
11 accurate summary of the facts in this matter.

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

24 Dated: _____
25 Galena West, Chief, on behalf of the Enforcement
26 Division, Fair Political Practices Commission

27 Dated: _____
28 Robert A. Lovingood

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Robert A. Lovingood,” FPPC No.
3 14/1149, 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

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Robert A. Lovingood (“Lovingood”) is a member of the San Bernardino County Board of Supervisors. He was elected in 2012 and re-elected in 2016. Under the Political Reform Act (the “Act”)¹, a county supervisor must disclose his reportable economic interests on a Statement of Economic Interest (“SEI”) at various times. Lovingood violated the Act by failing to timely disclose all reportable income on his Candidate SEI, his Assuming Office SEI, and on his Annual SEIs for 2013 and 2014.

SUMMARY OF THE LAW

All statutory references and discussions of the law pertain to the Act’s provisions as they existed in 2012, 2013, 2014, and 2015.

An express purpose of the Act is to ensure that the assets and income of public officials which may be materially affected by their official actions be disclosed, so that conflicts of interest may be avoided.² In furtherance of this purpose, the Act requires county supervisors to periodically disclose their investments, real property interests, and income.³

When a candidate for county supervisor runs for office, he is required to file an SEI that discloses reportable investments, business positions, interests in real property, and sources of income for the past 12 months.⁴ After a county supervisor is elected, he must file another SEI within 30 days which discloses his reportable economic interests for the past 12 months.⁵ Each year after assuming office, a county supervisor must file SEIs disclosing their reportable economic interests from the previous calendar year.⁶

Under the Act, income includes a person’s share of income from any business entity in which they own a 10% or greater interest.⁷ A public official is required to report on his SEI every person from whom he receives gross income of \$10,000 or more in a calendar year due to the public official’s 10% or greater interest in a business entity.⁸

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.

² Section 81002, subdivision (c).

³ Section 87200.

⁴ Section 87200 and 87201.

⁵ Sections 87200, 87202 and 87202, subdivision (b)(2).

⁶ Section 87200 and 87203.

⁷ Section 82030, subdivision (a).

⁸ Section 87207, subdivision (b)(2).

SUMMARY OF THE FACTS

Lovingood owns and operates two staffing businesses: 1) Industrial Clerical Recruiters, Inc., dba ICR Staffing Services; and 2) Robert A. Lovingood, Inc., dba Industrial Commodity Recruiters. When running for supervisor, Lovingood filed a Candidate SEI in March 2012, disclosing his ownership interest in ICR Staffing but reporting no sources of income of \$10,000 or more per year from ICR Staffing on his SEI. He amended his Candidate SEI in conjunction with this settlement, to disclose four sources of income of \$10,000 or more he received through ICR Staffing: Lucerne Valley Unified School District, Mojave Water Agency, City of Victorville, and Victor Valley Wastewater Reclamation Authority.

In January 2013, Lovingood timely filed his Assuming Office SEI, reporting no sources of income of \$10,000 or more from ICR Staffing. He amended this statement in April 2016 to disclose seven sources of \$10,000 or more he received through ICR Staffing: Calico Ghost Town, Lucerne Valley Unified School District, Mojave Desert Air Quality Management District, Mojave Water Agency, Southwest Gas Company, City of Victorville, and Victor Valley Wastewater Reclamation Authority.

On April 2, 2014, Lovingood filed his 2013 Annual SEI, reporting no sources of income of \$10,000 or more per year from ICR Staffing. Lovingood amended this statement in April 2016 to disclose five sources of \$10,000 or more he received through ICR Staffing: City of Hesperia, Lucerne Valley Unified School District, Southwest Gas Company, City of Victorville, and Victor Valley Wastewater Reclamation Authority.

In March 2015, Lovingood filed three versions of his 2014 Annual SEI, none of which reported income of \$10,000 or more per year from ICR Staffing or Industrial Clerical Recruiters. Lovingood amended this statement in April 2016 to disclose four sources of \$10,000 or more he received through ICR Staffing: Lucerne Valley Unified School District, Southwest Gas Company, City of Victorville, and Victor Valley Wastewater Reclamation Authority.

The Enforcement Division received sworn complaints alleging that Lovingood had a conflict of interest with one of the clients of his staffing companies. During the investigation, Enforcement Division found Lovingood had voted on at least 42 matters involving nine of his staffing clients while sitting as a county supervisor. However, the Enforcement Division did not find Lovingood possessed a financial conflict of interest when voting on these matters. Lovingood asserts he sought advice from County Counsel prior to participating in any vote involving a staffing client to ensure compliance with the Act. These clients were: Town of Apple Valley, Calico Ghost Town, City of Hesperia, Lucerne Valley Unified School District, Mojave Desert Air Quality Management District, Mojave Water Agency, Southwest Gas, Victor Valley Wastewater Reclamation Authority, and City of Victorville.

VIOLATIONS

Count 1: Failure to Timely Disclose Sources of Income on Statement of Economic Interests

Lovingood failed to timely disclose his sources of income of \$10,000 or more to his business on his Candidate Statement of Economic Interests, in violation of Sections 87201 and 87207, subdivision (b)(2).

Count 2: Failure to Timely Disclose Sources of Income on Statement of Economic Interests

Lovingood failed to timely disclose seven sources of income of \$10,000 or more to his business on his Assuming Office Statement of Economic Interests, in violation of Sections 87202 and 87207, subdivision (b)(2).

Count 3: Failure to Timely Disclose Sources of Income on Statement of Economic Interests

Lovingood failed to timely disclose five sources of income of \$10,000 or more to his business on his 2013 Annual Statements of Economic Interests, in violation of Sections 87203 and 87207, subdivision (b)(2).

Count 4: Failure to Timely Disclose Sources of Income on Statement of Economic Interests

Lovingood failed to timely disclose four sources of income of \$10,000 or more to his business on his 2014 Annual Statement of Economic Interests, in violation of Sections 87203 and 87207, subdivision (b)(2).

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per violation, or \$20,000 total.

In determining the appropriate penalty for a particular violation of the Act, the 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 Commission 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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers penalties in prior cases involving similar violations. Similar cases include the following:

- *In the Matter of Victor Uno*, FPPC No. 14/031. (Commission approved a stipulated decision on May 21, 2015.) As a commissioner with the Oakland Port Authority, Uno failed

to report the International Brotherhood of Electrical Workers, Local 595 and the Alameda Labor Council as sources of income on his 2009 through 2014 Statements of Economic Interests, resulting a failure to disclose over \$100,000 in annual income. These two entities did not appear to have been the subject of any of Uno's governmental decisions. The Commission approved a total penalty of \$2,500 for the violations.

- *In the Matter of Clayton Chau*, FPPC No. 13/543. (Commission approved a stipulated decision on November 20, 2014.) As a county health agency manager, Chau failed to report income from his private medical practice and from a pharmaceutical company totaling \$12,033 on his Assuming Office SEI in 2012. During the time Chau worked for the county health agency, the agency approved the use of a drug produced by the pharmaceutical company from which Chau received income. The Commission approved a penalty of \$2,000 for Chau's failure to disclose income on his SEI.

The failure to timely disclose his economic interests violates one of the Act's central purposes: that the assets and income of public officials and designated employees that may materially affect their official decisions should be disclosed in order to avoid conflicts of interest. Lovingood's violations deprived the public of important and timely information regarding his economic interests.

In mitigation, Enforcement Division staff did not find Lovingood had an actual conflict of interest or any intent to conceal his financial interests. Lovingood contends he attempted in good faith to comply with the Act, and that his violations resulted from his mistaken belief he was required to disclose only those clients from whom he received net income over \$10,000, instead of gross income. Lovingood cooperated with the Enforcement Division and amended his SEI's after contact by Enforcement Division staff. Also, Lovingood has no prior history of violating the act.

These violations are similar to the violations in the comparable cases, which involved the failure to disclose income on an SEI without a finding of a conflict of interest. Like the *Chau* case, the violations here involved sources of income with matters before the respondent's agency, thereby justifying a higher total fine than in the *Uno* case.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, it is respectfully requested that the Commission impose a penalty of \$1,500 per count, for a total penalty of \$6,000.