STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

February 13, 2024

John Hamon
[redacted]

<u>Warning Letter Re: FPPC Case No. 2019-00344; John Hamon</u>

Dear Mr. Hamon:

The Enforcement Division of the Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act").[1] As you are aware, the Enforcement Division initiated an investigation after receiving complaints alleging that you violated conflict of interest provisions of the Act concerning decisions about short-term rental properties when you were a Councilmember for the City of Paso Robles and that you had failed to disclose a financial interest. The Enforcement Division has completed its investigation of the facts of this case and is closing its file on this matter with this warning letter as discussed below.

I. <u>Conflict of Interest Violations</u>

A. Section 87100 Violation

Section 87100 of the Act prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.[2] A public official has a disqualifying financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the public official's financial interest.[3]

1. Public Official

For purposes of Section 87100, you were a public official in 2019 as a City of Paso Robles Councilmember.[4]

2. Governmental Decision

For purposes of Section 87100, you made governmental decisions on February 5, 2019, when you voted to approve an urgency ordinance affecting short-term rental properties, and on February 19, 2019, when you voted to repeal the February 5 decision.[5]

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[1] The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.
[2] Section 87100; Regulation 18700(a).
[3] Section 87103.
[4] Sections 87200, 82041 and 82048; Regulation 18700(c)(1) and 18700(c)(3).
[5] Regulation 18700(c)(4) and 18704(a).

3. Relevant Interests

The Enforcement Division investigation found that you had the following relevant interests in 2019: You are a beneficiary of your parents' family trust – John & Eva Hamon Trust – that wholly owns real property located at 821 16th Street in Paso Robles, which is used as a long- and short-term vacation rental property. The property owned by the trust is located within the City of Paso Robles and is used as a business entity by renting the property for long- and short-term use.

4. Financial Effect of Decision: Reasonable Foreseeability

At the time of the governmental decision, it was reasonably foreseeable that the decision would affect your financial interest. Here, the real property at issue is used as a short-term rental, and it is realistic for you to have anticipated a financial effect, under normal circumstances when using due diligence, on the financial interests that you hold (a short-term rental property and the rental of that property) as a potential outcome of the vote that you participated in.[6] Also, as a short-term rental property, the property is of the type that would typically be affected by the terms of the governmental decision that you participated in. Therefore, it was reasonably foreseeable that the vote you participated in would have a financial effect on your financial interests.

5. Financial Effect of Decision: Materiality

Additionally, the reasonably foreseeable financial effect of the governmental decision was material to your real property and business entity (rental of the real property). As to your real property, the financial effect of a governmental decision is material when it involves the issuance, denial, or revocation of a license or permit authorizing a specific use of the parcel, when it involves any variance that changes the permitted use of or restrictions placed on that real property, or when it would change the character of the parcel of real property by substantially altering the intensity of use[7]. Here, the financial effect was material because the new ordinance regulations involve short-term rental property licensing, involve the permitted use of and restrictions placed on those properties, and would alter parking and noise levels affecting the intensity of use.

As to your rental of the real property, the financial effect of a governmental decision is material if a prudent person with sufficient information would find it reasonably foreseeable that the decision's financial effect would contribute to a change in the value of a privately held business entity.[8] Here, it was reasonably foreseeable that the new ordinance regulations would change the value of the short-term vacation rental business by imposing additional regulations.

6. Mitigation

Based upon the above analysis, you violated Section 87100 as a member of the Paso Robles City Council when you made a governmental decision regarding short-term rental properties on February 5, 2019, and again when you voted to repeal the earlier decision on February 19, 2019. However, there are mitigating circumstances in this case. The evidence supports that you were unaware that you had the relevant economic interest until after you participated in the short-term rental property ordinance vote on February 5, 2019. Also, after voting and then later being advised of your relevant financial interests, you sought advice from the City Attorney, repealed

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[6] Regulation 18701(b).
[7] Regulation 18702.2(a)(3) and 18702.2(a)(10).
[8] Regulation 18702.1(b).

your vote by invoking "legally required participation" under Regulation 18705, and attempted to recuse yourself from future governmental decisions involving short-term rental properties. Additionally, you attempted to comply with the Act's conflict of interest rules by seeking legal advice from the City Attorney regarding potential conflicts, and you do not have a prior history of violating the Act. Based on these facts, the Enforcement Division has decided to close this case regarding your violation of Section 87100 with this warning letter.

B. Section 87105 Violation

When an official identified in Section 87200 is disqualified from a governmental decision, the official must identify the interest, recuse themself, and leave the room.[9] Your actions violated the Act because, while you attempted to recuse yourself on February 19, 2019, from future votes involving short-term rental properties, you did not publicly identify the conflict of interest yourself (City Attorney, Iris Yang explained the conflict of interest for you) and the short-term rental property financial interest was not sufficiently described by providing the address or another indication of the location of said property. Therefore, because you did not publicly identify your financial interests yourself and because the address or other identifiers of the real property at issue were not provided, the disqualification requirements have not been sufficiently met, and Section 87105 has also been violated. However, you attempted to recuse yourself on February 19, 2019, and you did not vote on short-term rental property items or participate in related discussions other than the vote to repeal your prior February 5, 2019 vote invokng legally required participation under Regulation 18705. Based on these facts, the Enforcement Division has decided to close this case regarding your violation of Section 87105 with this warning letter.

C. Legally Required Participation

A public official who has a financial interest in a decision may establish that he or she is legally required to participate in the making of a governmental decision if no alternative source of decision exists.[10] Here, City Attorney Yang explained the conflict of interest that arose from your financial interest in your parents' trust and the short-term rental property it owns. Yang provided a summary of the circumstances giving rise to the conflict, the legal basis for concluding that there is no alternative source of decision, that four votes were needed for an urgency ordinance, and that two members had a conflict of interest. The requirements for legally required participation were generally met, allowing you to participate in the February 19, 2019 vote to repeal the February 5, 2019 ordinance vote.

II. <u>SEI Violations</u>

Section 87200 of the Act requires certain public officials to disclose reportable interests on a SEI. Every person enumerated within Section 87200 must file a SEI within 30 days of assuming office, annually thereafter at the time specified by Commission regulations, and within 30 days of leaving office. As a Councilmember and Mayor for the City of Paso Robles, you are required to annually file SEIs.[11]

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[9] Section 87105 and Regulation 18707.
[10] Regulation 18700(e) and 18705.
[11] Section 87200.

Your 2018 Annual SEI failed to disclose your financial interest in both your parents' family trust and the short-term rental property described above. Although you later filed an amendment shortly after being advised of the potential SEI non-reporting violations, the amendment contained inaccuracies and failed to fully and accurately disclose your financial interest in the short-term rental property. Specifically, you listed your parents' family trust on Schedule A-2, providing the address of the short-term rental property owned by the trust as the address and indicating "Short and Long Term Rental" in the general description. However, section 4 of Schedule A-2 specifically asks for "investments and interests in real property held or leased by the business entity or trust." This section has specific boxes to check and information requested regarding investments or interests in real property held by the listed trust. Additionally, your 2019, 2020, 2021, and 2022 Annual SEIs contained similar inaccuracies, failing to fully and accurately disclose the short-term rental property.

Based on the reporting, it appears that a good-faith effort was made to comply with the reporting requirements. You stated that you asked for assistance on how to report your parents' family trust and the short-term rental property it owned and were advised to report it as it appears. Though inaccurate and potentially misleading (causing potential ambiguity regarding whether the property located at the address provided is held by the trust), the error caused minimal public harm. Based on these facts, the Enforcement Division has decided to close this case regarding your violation of Section 87200 with this warning letter.

III. Conclusion

Due to the mitigating circumstances previously noted, that you have no prior history of violating the Act, and in accordance with the Enforcement Division Policy Directives formally adopted by the Commission on January 26, 2023, which requires the Enforcement Division to take all appropriate actions within their discretion to decrease the Division's annual carryover caseload, the Enforcement Division is closing this case concerning all violations (conflict of interest violations and 2018-2022 SEI violations) with this warning letter.[12] Discretion was used based upon mitigating or aggravating circumstances and the totality of the circumstances.[13] This resolution may not be used as a comparable case for other enforcement matters.[14]

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or

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[12] https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2023/january/15.0-Enforcement-directives.pdf
[13] Regulation 18360.1.
[14] Regulation 18361.5(e)(3).

hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

We encourage you to reach out to the Commission's Legal Division for advice regarding whether you have a conflict of interest under Section 87100 in future decisions. If you need guidance regarding the Act's provisions, please contact the Commission for telephone advice at 1-866-275-3772, visit our website at www.fppc.ca.gov, or submit a specific question to advice@fppc.ca.gov.

If you have questions regarding this letter, please contact me at abrereton@fppc.ca.gov or (916) 322-5771.

Sincerely,

Angela J. Brereton

Angela J. Brereton
Assistant Chief
Enforcement Division

Cc: Elizabeth Hull via email: Elizabeth.Hull@bbklaw.com