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5 Attorneys for Complainant  
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
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12 In the Matter of ) FPPC No. 12/027  
13 )  
14 ANDRES HERRERA, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
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18 Complainant the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent Andres Herrera agree that this Stipulation will be submitted for consideration by the Fair  
20 Political Practices Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 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 Andres Herrera violated the Political Reform Act by failing to  
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic  
5 Interests, in violation of Section 87203 of the Government Code (3 counts); accepting gifts, which  
6 exceeded the gift limit, in violation of Section 89503, subdivision (a) of the Government Code (3  
7 counts); and made, participated in the making, or influenced a governmental decision when he voted to  
8 approve an ordinance to authorize the location of a theatre in a Specific Plan and voted to grant authority  
9 to the mayor to approve a Memorandum of Understanding with J.F. Shea Co., & Affiliated Companies,  
10 who was the source of a gift that exceeded the annual gift limit applicable to Respondent, in violation of  
11 Government Code Section 87100 (1 count). All counts are described in Exhibit 1, which is attached  
12 hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate  
13 summary of the facts in this matter.

14 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
15 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount  
16 of Twelve Thousand Five Hundred Dollars (\$12,500). A cashier's check from Respondent in said  
17 amount, made payable to the "General Fund of the State of California," is submitted with this  
18 Stipulation as full payment of the administrative penalty, to be held by the State of California until the  
19 Commission issues its decision and order regarding this matter. The parties agree that in the event the  
20 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)  
21 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered  
22 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent  
23 further stipulates and agrees that in the event the Commission rejects the Stipulation, and a full  
24 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,  
25 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Dated: \_\_\_\_\_

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Andres Herrera,  
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Andres Herrera,” FPPC No. 12/027,  
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: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondent Andres Herrera (“Respondent”) was a member of the Oxnard City Council from December 3, 2002 until December 07, 2010. 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”).<sup>1</sup> In this matter, Respondent received gifts exceeding the reporting threshold of \$50 in 2007, 2008, and 2009, and failed to report these gifts on his annual SEIs for those years. In addition, Respondent received gifts exceeding the applicable gift limit from one source in 2007, 2008 and 2009, then impermissibly made, participated in the making, or influenced a governmental decision concerning the donor which had a reasonably foreseeable material financial effect on the source of the gift.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

- COUNT 1: During 2007, Respondent Andres Herrera, a member of the city council for the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2007 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.
- COUNT 2: During 2008, Respondent Andres Herrera, a member of the city council for the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies and E.J. De La Rosa & Co., Inc., in the amount of fifty dollars or more on his 2008 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.
- COUNT 3: During 2009, Respondent Andres Herrera, a member of the city council for the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2009 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.
- COUNT 4: During 2007, Respondent Andres Herrera, a member of the city council for the City of Oxnard, accepted approximately \$545.97 in gifts, which exceeded the \$390 gift limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (a) of the Government Code.
- COUNT 5: During 2008, Respondent Andres Herrera, a member of the city council for the City of Oxnard, accepted approximately \$737.83 in gifts, which exceeded the

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<sup>1</sup> 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.

\$390 gift limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (a) of the Government Code.

COUNT 6: During 2009, Respondent Andres Herrera, a member of the city council for the City of Oxnard, accepted approximately \$518.14 in gifts, which exceeded the \$420 gift limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (a) of the Government Code.

COUNT 7: On or about August 7, 2007, Respondent Andres Herrera, a member of the city council for the City of Oxnard, made, participated in the making, or influenced a governmental decision voted to approve an ordinance to authorize the location of a theatre in a Specific Plan and voted to grant authority to the Mayor to approve a Memorandum of Understanding with J.F. Shea Co., & Affiliated Companies, who was the source of a gift that exceeded the annual gift limit applicable to Respondent, in which he knew or should have known was in violation of Government Code Section 87100.

## **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 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.

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 annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) Section 87200 includes chief administrative officers of counties, mayors, city managers, chief administrative officers and *members of city councils of cities*, and other public officials who manage public investments, and to 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 salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).) When income is required to be reported, the SEI shall contain the name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$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.)

## **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 2007 and 2008, the applicable gift limit from a single source was \$390. For 2009 and 2010, 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 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift.

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 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 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift. For tickets or passes, the value is the face value of the ticket as offered to the general public. (Reg. 18946.1.)

## **Conflicts of Interest**

The primary purpose of the conflict of interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).) In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use this official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Section 87100 and 87103, there

are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.<sup>2</sup>

**1. Public Official:** The individual must be a public official. Section 82048 defines “public official” to include “every member, officer, employee or consultant” of a local government agency.

**2. Decisions:** The official must make, participate in making, or attempt to use his official position to influence a governmental decision. A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is made because of his or her financial interest. (Reg. 18702.1, subd. (a).) A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Reg. 18702.2.) A public official “attempts to use his or her official position to influence a governmental decision” of his her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. (Reg. 18702.3.)

**3. Economic Interests:** The official must have an economic interest, as defined in Section 87103, that may be financially affected by the governmental decision. In 2007, a public official had a financial interest in any donor of a gift or gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Reg.18940.2.) In 2009, a public official had a financial interest in any donor of a gift or gifts aggregating \$420 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Reg.18940.2.)

**4. Direct of Indirect Financial Effect on Economic Interests:** It must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Reg. 18704.) A source of a gift is directly involved in a decision if he or she is the “subject of the proceeding.” (Reg. 18704.1.)

**5. Material Financial Effect on Economic Interests:** It must be determined if the governmental decision has a material financial effect on the economic interest. In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. (Reg. 18705.4, subd. (a).)

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<sup>2</sup> The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

**6. Forseeability:** At the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Reg. 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

**SUMMARY OF THE FACTS**

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Herrera was a member of the city council for the City of Oxnard from December 3, 2002 until December 07, 2010. Respondent Herrera failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on his annual SEIs for the years 2007 – 2009 after receiving meals, drinks and golf from Shea LLC exceeding the \$50 reporting threshold and, in 2007 and 2008, exceeding the \$390 gift limit threshold. Respondent Herrera also received a meal and golf from Shea LLC in 2009, which exceeded the \$420 gift limit threshold. Respondent also failed to disclose E.J. De La Rosa & Co., Inc. (“De La Rosa”), a municipal bond underwriter who does business with the City of Oxnard, on his annual SEI for 2008 after receiving meals from De La Rosa exceeding the \$50 reporting threshold. In addition, Respondent Herrera, while on the Oxnard City Council, voted to approve an ordinance to amend a development agreement as well as granting authority to the Mayor to enter into a Memorandum of Understanding between the City of Oxnard and Shea LLC development after receiving gifts exceeding the \$390 limit in 2007 from Shea LLC.

**COUNT 1**

**Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent Herrera was a member of the city council for the City of Oxnard from December 3, 2002 until December 07, 2010. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2007 SEI with the Oxnard City Clerk on March 14, 2008 and disclosed an investment interest in HAV & Associates, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Herrera in 2007:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
05/20/07	Drinks	Shea LLC	\$16.10
05/20/07	Dinner	Shea LLC	\$201.72
05/21/07	Golf	Shea LLC	\$225.00
06/13/07	Dinner	Shea LLC	\$103.15
TOTAL:			\$545.97

By failing to report \$545.97 in gifts received from Shea LLC in 2007 on his 2007 annual SEI, Respondent violated Section 87203 of the Government Code.

**COUNT 2**

**Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent Herrera was a member of the city council for the City of Oxnard, from December 3, 2002 until December 07, 2010. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2008 SEI with the Oxnard City Clerk on March 4, 2009 and disclosed an investment interest in HAV & Associates, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Herrera in 2008:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
05/18/08	Dinner (Respondent & Wife)	Shea LLC	\$478.72
06/30/08	Dinner	De La Rosa	\$127.79
12/03/08	Dinner (Respondent & Wife)	De La Rosa	\$181.56 <sup>3</sup>
12/05/08	Dinner	Shea LLC	\$216.40
12/21/08	Lunch	Shea LLC	\$42.71
TOTAL (De La Rosa):			\$309.35
TOTAL (Shea LLC):			\$737.83

By failing to report \$737.83 in gifts received from Shea LLC and \$309.35 in gifts received from De La Rosa in 2008 on his 2008 annual SEI, Respondent violated Section 87203 of the Government Code.

**COUNT 3**

**Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent Herrera was a member of the city council for the City of Oxnard, from December 3, 2002 until December 07, 2010. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2009 SEI with the Oxnard City Clerk on February 1, 2010 and disclosed an investment interest in HAV & Associates, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Herrera in 2009:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
05/17/09	Dinner (Respondent & Wife)	Shea LLC	\$409.14
05/19/09	Golf	Shea LLC	\$109.00
TOTAL:			\$518.14

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<sup>3</sup> Note that only half of this dinner, \$90.78, counts towards the gift limit for the year from De La Rosa since Respondent states that he gave a speech that night to accept an award on behalf of the City of Oxnard. However, the entire amount is still reportable even though not subject to limits. (Section 89506, Reg. 18942, subd. (a)(11).)

By failing to report \$518.14 in gifts received from Shea LLC in 2009 on his 2009 annual SEI, Respondent violated Section 87203 of the Government Code.

**COUNT 4**

**Acceptance of Gifts in Excess of the Annual Gift Limit**

During 2007, Respondent Andres Herrera was a member of the city council for the City of Oxnard. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2007. As shown in the chart from Count 1 (page 5), Respondent accepted gifts totaling approximately \$545.97 in 2007 from Shea LLC, \$155.97 over the annual gift limit.

By accepting gifts over the annual gift limit in 2007, Respondent violated Section 89503, subdivision (a), of the Government Code.

**COUNT 5**

**Acceptance of Gifts in Excess of the Annual Gift Limit**

During 2008, Respondent Andres Herrera was a member of the city council for the City of Oxnard. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$390 annual gift limit for 2008. As shown in the chart from Count 2 (page 6), Respondent accepted gifts totaling approximately \$737.83 in 2008 from Shea LLC, \$347.83 over the annual gift limit.

By accepting gifts over the annual gift limit in 2008, Respondent violated Section 89503, subdivision (a), of the Government Code.

**COUNT 6**

**Acceptance of Gifts in Excess of the Annual Gift Limit**

During 2009, Respondent Andres Herrera was a member of the city council for the City of Oxnard. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$420 annual gift limit for 2009. As shown in the chart from Count 3 (page 6), Respondent accepted gifts totaling approximately \$518.14 in 2009 from Shea LLC, \$98.14 over the annual gift limit.

By accepting gifts over the annual gift limit in 2009, Respondent violated Section 89503, subdivision (a), of the Government Code.

## COUNT 7

### **Making, Participating and Influencing of a Governmental Decision Concerning the Donor of the Gifts Accepted in Excess of the Annual Gift Limit**

During 2007, Respondent Andres Herrera was a member of the city council for the City of Oxnard. As stated above, on May 20, 2007, May 21, 2007, and June 13, 2007, Respondent Herrera accepted gifts of drinks, dinner and golf from Shea LLC totaling \$545.97. The gift limit for 2007 was \$390, making the gifts from Shea LLC \$155.97 over the gift limit.

At the August 7, 2007, Oxnard City Council meeting, Respondent Herrera voted to approve two items regarding RiverPark A, LLC. RiverPark A, LLC is a wholly owned subsidiary and affiliated entity of J.F. Shea Co., & Affiliated Companies (a.k.a. Shea LLC). The first item was the adoption of Ordinance #2744 to authorize the location of a multiplex theater in the RiverPark Specific Plan, an amendment to the development agreement. The second item was to authorize the Oxnard Mayor to sign and execute a Memorandum of Understanding relating to the development of the RiverPark Project. Respondent voted "Aye" on both of these items. Shea LLC was directly involved in the decision since it was the "subject of the proceeding" involving its own development. In fact, Shea LLC signed both the ordinance amending the development agreement and the Memorandum of Understanding on behalf of RiverPark A, LLC. The decision had a reasonably foreseeable material financial effect on Shea LLC, (in this case the effect is presumed to be material), the project amendments were approved, and the project moved forward.

## **CONCLUSION**

This matter consists of seven counts, which carries a maximum possible administrative penalty of Thirty Five Thousand Dollars (\$35,000).

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.

**SEI Non-Disclosure:** Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

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

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interest provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Herrera did not disclose gifts received from a developer who regularly does business within his jurisdiction and a municipal bond underwriter who does business with the City of Oxnard. Respondent states that he was not aware that the developer, Shea LLC, paid for the dinners and events that he attended, and for that reason, he did not disclose the gifts. Respondent has no prior history of violating the Act. Respondent amended his SEIs when contacted by the Enforcement Division. Based on the above prior cases and the information provided in this case, imposition of a \$1,000 penalty for each count is recommended.

**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 Patrick Moloney*, FPPC No. 09/826 (Approved June 10, 2010). Patrick Moloney, Executive Director of the Pilot Commission for the Bays of San Francisco, San Pablo and

Suisun, received gifts in the form of free monthly waterfront parking from an association representing the pilots the board regulates. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit, for a total penalty of \$4,000.

In this matter, Respondent Herrera received gifts over the limits from a developer who has regular business with the City of Oxnard. As stated above, he was unclear that Shea LLC paid for the meals, drinks and golf since he believed the City of Oxnard was picking up his expenses. Respondent has paid down the gifts received to 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 each count is recommended.

**Conflict of Interest:** Making a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict of interest. Penalties for conflict of interest violations in the last couple of years range between \$2,500 to \$4,500 but depending on the circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

- *In the Matter of Theodore Park*, FPPC No. 11/058 (Approved July 12, 2012). Theodore Park was the Acting Deputy Director of the Real Estate Services Division of the California Department of General Services. His conflict of interest stemmed from his wife's income from a client of her business, which Mr. Park signed certifications to allow the contracts for that business to be executed. The approved stipulated settlement was \$3,500 for the violation of the conflict of interest rules.
- *In re Louie Martinez*, referred to above, \$4,000 was the fine 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 resulting from his gifts received over the limits.

In this case, although Respondent takes full responsibility for his actions, he asserts that since he was unclear as to the source of the gifts from Shea LLC, he also did not know that he could not approve items regarding Shea LLC's development project. Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,500 is justified. 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 patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Twelve Thousand Five Hundred Dollars (\$12,500) is recommended.



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 670 • Sacramento, CA 95814-2329

(916) 322-5600 • Fax (916) 322-0886

September 6, 2012

Timothy Flynn

**REDACTED**

**RE: Advisory Letter  
FPPC No. 12/505; Timothy Flynn**

Dear Mr. Flynn:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act").<sup>1</sup> As you are aware, the Commission initiated an investigation regarding the allegation that you may have violated the gift disclosure provisions of the Act. After a review of your annual Statements of Economic Interests and other information, the Enforcement Division has determined that there is insufficient evidence to find that you violated the Act in this particular circumstance. Therefore, we have decided to close this matter with an Advisory letter.

Our investigation revealed that you failed to disclose dinners received from a developer and a bond underwriter who did business within your jurisdiction while you had full disclosure of your economic interests due to your service as a member of the Oxnard City Council in 2005 and 2006. You then reported these meals on the appropriate Statement of Economic Interests in August, 2012, in response to a request from the Enforcement Division. Since these violations fall outside of the statute of limitations for prosecution, the Enforcement Division has decided to close this matter with this Advisory letter.

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. 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 annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably

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<sup>1</sup> 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.

be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) "Income" is defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).)

Your failure to comply with the provisions of the Act in the future may result in an enforcement action against you, including monetary penalties of up to \$5,000 for each violation.

The FPPC publishes forms and manuals to facilitate compliance with the provisions of the Act. If you need forms or manuals, or guidance regarding your obligations, please call the FPPC's Technical Assistance Division at 1-866-275-3772. You can also visit our website at [www.fppc.ca.gov](http://www.fppc.ca.gov). Contact me at (916) 322-5796 with any questions you may have regarding this letter.

Sincerely,

**REDACTED**

Galena West  
Senior Commission Counsel  
Enforcement Division

1 GARY S. WINUK  
Chief of Enforcement  
2 GALENA WEST  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5660

5 Attorneys for Complainant  
6  
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
11

12 In the Matter of ) FPPC No. 12/028  
13 )  
14 BRYAN MACDONALD, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent Bryan MacDonald agree that this Stipulation will be submitted for consideration by the Fair  
20 Political Practices Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 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 Bryan MacDonald violated the Political Reform Act by failing to  
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic  
5 Interests, in violation of Section 87203 of the Government Code (1 count); and accepting gifts, which  
6 exceeded the gift limit, in violation of Section 89503, subdivision (a) of the Government Code (1 count).  
7 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as though  
8 fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.  
10 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount  
11 of Three Thousand Dollars (\$3,000). A cashier's check from Respondent in said amount, made payable  
12 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the  
13 administrative penalty, to be held by the State of California until the Commission issues its decision and  
14 order regarding this matter. The parties agree that in the event the Commission refuses to accept this  
15 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission  
16 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with  
17 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the  
18 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission  
19 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be  
20 disqualified because of prior consideration of this Stipulation.

21  
22 Dated: \_\_\_\_\_

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

23  
24  
25  
26 Dated: \_\_\_\_\_

\_\_\_\_\_  
Bryan MacDonald,  
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Bryan MacDonald,” FPPC No. 12/028,  
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: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Bryan MacDonald (“Respondent”) has been a member of the Oxnard City Council since December 9, 2008, including 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”).<sup>1</sup> In this matter, Respondent received gifts exceeding the reporting threshold of \$50 in 2009, and failed to report these gifts on his annual SEIs for that year. In addition, Respondent received gifts exceeding the applicable gift limit from one source in 2009.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

**COUNT 1:** During 2009, Respondent Bryan MacDonald, a member of the city council for the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2009 annual Statement of Economic Interests, in violation of Section 87203 of the Government Code.

**COUNT 2:** During 2009, Respondent Bryan MacDonald, a member of the city council for the City of Oxnard, accepted approximately \$518.14 in gifts, which exceeded the \$420 gift limit, from the J.F. Shea Co., & Affiliated Companies, in violation of Section 89503, subdivision (a) 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 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. 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 annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) Section 87200 includes chief administrative officers of counties, mayors, city managers, chief administrative officers and *members of city councils of cities*, and other public officials

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<sup>1</sup> 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.

who manage public investments, and to 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 salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).) When income is required to be reported, the SEI shall contain the name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$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.)

### **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 2007 and 2008, the applicable gift limit from a single source was \$390. For 2009 and 2010, 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 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift.

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 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 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift. For tickets or passes, the value is the face value of the ticket as offered to the general public. (Reg. 18946.1.)

## SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney's office. Respondent MacDonald has been a member of the city council for the City of Oxnard since December 9, 2008, including all times relevant to this matter. Respondent MacDonald failed to disclose J.F. Shea Co., & Affiliated Companies ("Shea LLC"), a developer who does business in the City of Oxnard, on his annual SEI for the year 2009 after receiving a meal and golf from Shea LLC exceeding both the \$50 reporting threshold as well as the \$420 gift limit threshold.

### COUNT 1

#### **Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent MacDonald has been a member of the city council for the City of Oxnard since December 9, 2008. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2009 SEI with the Oxnard City Clerk on January 29, 2010, and disclosed "No reportable interests." The chart below identifies the gifts received by Respondent MacDonald in 2009:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
05/17/09	Dinner (Respondent & Wife)	Shea LLC	\$409.14
05/19/09	Golf	Shea LLC	\$109.00
TOTAL:			\$518.14

By failing to report \$518.14 in gifts received from Shea LLC in 2009 on his 2009 annual SEI, Respondent violated Section 87203 of the Government Code.

### COUNT 2

#### **Acceptance of Gifts in Excess of the Annual Gift Limit**

During 2009, Respondent Bryan MacDonald was a member of the city council for the City of Oxnard. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$420 annual gift limit for 2009. As shown in the chart from Count 1 (page 3), Respondent accepted gifts totaling approximately \$518.14 in 2009 from Shea LLC, \$98.14 over the annual gift limit.

By accepting gifts over the annual gift limit in 2009, Respondent violated Section 89503, subdivision (a), of the Government Code.

## CONCLUSION

This matter consists of two counts, which carries a maximum possible administrative penalty of Ten Thousand Dollars (\$10,000).

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.

**SEI Non-Disclosure:** Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

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

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interest provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent MacDonald did not disclose gifts received from a developer who regularly does business within his jurisdiction. Respondent states that he was not aware that the developer, Shea LLC, paid for the dinner and event that he attended, and for that reason, he did not disclose the gifts. Respondent has no prior history of violating the Act. Respondent amended his SEI regarding the dinner prior to being contacted by the Enforcement Division.

Based on the above prior cases and the information provided in this case, imposition of a \$1,000 penalty is recommended.

**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 Patrick Moloney*, FPPC No. 09/826 (Approved June 10, 2010). Patrick Moloney, Executive Director of the Pilot Commission for the Bays of San Francisco, San Pablo and Suisun, received gifts in the form of free monthly waterfront parking from an association representing the pilots the board regulates. The approved stipulated settlement was \$2,000 per count for the violations of receiving gifts over the limit, for a total penalty of \$4,000.

In this matter, Respondent MacDonald received gifts over the limits from a developer who has regular business with the City of Oxnard. As stated above, he was unclear that Shea LLC paid for the meal and golf since he believed the City of Oxnard was paying his expenses. Respondent has paid down the gifts received to 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 Three Thousand Dollars (\$3,000) is recommended.

1 GARY S. WINUK  
Chief of Enforcement  
2 GALENA WEST  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5660

5 Attorneys for Complainant  
6  
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
11

12 In the Matter of ) FPPC No. 12/395  
13 )  
14 DEAN MAULHARDT, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent Dean Maulhardt agree that this Stipulation will be submitted for consideration by the Fair  
20 Political Practices Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 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 Dean Maulhardt violated the Political Reform Act by failing to  
4 report gifts received in the amount of fifty dollars or more on his annual Statement of Economic  
5 Interests, in violation of Section 87203 of the Government Code (1 count). All counts are described in  
6 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.  
7 Exhibit 1 is a true and accurate summary of 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 One Thousand Dollars (\$1,000). 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.

20  
21 Dated: \_\_\_\_\_

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

22  
23  
24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Dean Maulhardt,  
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Dean Maulhardt,” FPPC No. 12/395,  
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: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondent Dean Maulhardt (“Respondent”) was a member of the Oxnard City Council from December, 2002 until December 07, 2010. 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”).<sup>1</sup> In this matter, Respondent received gifts that exceeded the reporting threshold of \$50 in 2007, and failed to report these gifts on his annual SEI for that year.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: During 2007, Respondent Dean Maulhardt, a member of the city council for the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2007 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 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.

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 annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) Section 87200 includes chief administrative officers of counties, mayors, city managers, chief administrative officers and *members of city councils of cities*, and other public officials who manage public investments, and to 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 salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).) When

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<sup>1</sup> 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.

income is required to be reported, the SEI shall contain the name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$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. 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.” Regulation 18944 states that a gift confers a personal benefit on the official when the official<sup>2</sup> 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. 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 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

### **SUMMARY OF THE FACTS**

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Maulhardt was a member of the city council for the City of Oxnard from December, 2002 until December 07, 2010. Respondent Maulhardt failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on his annual SEI for the year 2007 after receiving meals from Shea LLC exceeding the \$50 reporting threshold.

### **COUNT 1**

#### **Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent Maulhardt was a member of the city council for the City of Oxnard from December 3, 2002 until December 07, 2010. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed his 2007 SEI with the Oxnard City Clerk on March 19, 2008 and disclosed multiple economic interests, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Maulhardt in 2007:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
05/21/07	Dinner	Shea LLC	\$100.00
05/22/07	Dinner	Shea LLC	\$100.00
TOTAL:			\$200.00

---

<sup>2</sup> Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

By failing to report \$200.00 in gifts received from Shea LLC in 2007 on his 2007 annual SEI, Respondent violated Section 87203 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.

**SEI Non-Disclosure:** Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

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

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interest provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two

parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Maulhardt did not disclose gifts received from a developer who regularly does business within his jurisdiction. Respondent states that he was not aware that the developer, Shea LLC, paid for the dinners that he attended, and for that reason, he did not disclose the gifts. Respondent has no prior history of violating the Act. Respondent amended his SEI when contacted by the Enforcement Division.

### **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 One Thousand Dollars (\$1,000) is recommended.

1 GARY S. WINUK  
Chief of Enforcement  
2 GALENA WEST  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
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12 In the Matter of ) FPPC No. 12/310  
13 )  
14 DR. IRENE G. PINKARD, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent Dr. Irene G. Pinkard agree that this Stipulation will be submitted for consideration by the  
20 Fair Political Practices Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 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 Dr. Irene G. Pinkard violated the Political Reform Act by failing  
4 to report gifts received in the amount of fifty dollars or more on his annual Statement of Economic  
5 Interests, in violation of Section 87203 of the Government Code (1 count). All counts are described in  
6 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.  
7 Exhibit 1 is a true and accurate summary of 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 One Thousand Dollars (\$1,000). 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.

20  
21 Dated: \_\_\_\_\_

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

22  
23  
24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Dr. Irene G. Pinkard,  
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Dr. Irene G. Pinkard,” FPPC No.  
3 12/310, 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.

5  
6 IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondent Dr. Irene G. Pinkard (“Respondent”) is a member of the Oxnard City Council and has held that position since December, 2007, and 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”).<sup>1</sup> In this matter, Respondent received gifts that exceeded the reporting threshold of \$50 in 2009, and failed to report these gifts on her annual SEI for that year.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: During 2009, Respondent Dr. Irene G. Pinkard, a member of the city council for the City of Oxnard, failed to report gifts from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on her 2009 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 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. 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 annual SEI disclosing his investments, his interests in real property and all sources of income, including gifts received of \$50 or more from a single source, who may foreseeably be affected materially by any decision made or participated in by the city councilmember by virtue of his position. (Section 87203.) Section 87200 includes chief administrative officers of counties, mayors, city managers, chief administrative officers and *members of city councils of cities*, and other public officials who manage public investments, and to 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 salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).) When

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<sup>1</sup> 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.

income is required to be reported, the SEI shall contain the name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$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.)

### SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Pinkard is a member of the Oxnard City Council and has held that position since December, 2007, and at all times relevant to this matter. Respondent Pinkard failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on her annual SEI for the year 2009 after receiving meals from Shea LLC exceeding the \$50 reporting threshold.

#### COUNT 1

#### **Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent Pinkard was a member of the city council for the City of Oxnard in 2009 and at all times relevant to this matter. As such, Respondent was required to file an annual SEI disclosing all income received, including gifts. Respondent filed her 2009 SEI with the Oxnard City Clerk on February 4, 2010, and disclosed multiple economic interests, but did not report the receipt of any gifts. The chart below identifies the gifts received by Respondent Pinkard in 2009:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
05/17/09	Dinner (Respondent & Spouse)	Shea LLC	\$409.14
TOTAL:			\$409.14

By failing to report \$409.14 in gifts received from Shea LLC in 2009 on her 2009 annual SEI, Respondent violated Section 87203 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.

**SEI Non-Disclosure:** Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

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

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interest provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Pinkard did not disclose gifts received from a developer who regularly does business within her jurisdiction. Respondent has no prior history of violating the Act. Respondent amended her SEI when contacted by the Enforcement Division.

### **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 patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand Dollars (\$1,000) is recommended.

1 GARY S. WINUK  
Chief of Enforcement  
2 GALENA WEST  
Senior Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
428 J Street, Suite 620  
4 Sacramento, CA 95814  
Telephone: (916) 322-5660

5 Attorneys for Complainant  
6  
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA  
10  
11

12 In the Matter of ) FPPC No. 12/309  
13 )  
14 MATTHEW G. WINEGAR, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent Matthew G. Winegar agree that this Stipulation will be submitted for consideration by the  
20 Fair Political Practices Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an  
28 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 Matthew G. Winegar violated the Political Reform Act by failing  
4 to report a gift received in the amount of fifty dollars or more on his annual Statement of Economic  
5 Interests, in violation of Sections 87300 and 87302 of the Government Code (1 count). All counts are  
6 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth  
7 herein. Exhibit 1 is a true and accurate summary of 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 One Thousand Dollars (\$1,000). 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.

20  
21 Dated: \_\_\_\_\_

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

22  
23  
24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
Matthew G. Winegar,  
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Matthew G. Winegar,” FPPC No.  
3 12/309, 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.

5  
6 IT IS SO ORDERED.

7  
8 Dated: \_\_\_\_\_

\_\_\_\_\_   
Ann Ravel, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Matthew G. Winegar (“Respondent”) has been the Development Services Director for the City of Oxnard since at least 2003, including all times relevant to this matter. As a designated employee, Respondent is required to file an annual Statement of Economic Interests (“SEI”) disclosing all income received as required by the Political Reform Act (the “Act”).<sup>1</sup> In this matter, Respondent received a gift exceeding the reporting threshold of \$50 in 2007, and failed to report this gift on his annual SEI for that year.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

**COUNT 1:** In 2007, Respondent Matthew G. Winegar, as Development Services Director for the City of Oxnard, failed to report a gift received from J.F. Shea Co., & Affiliated Companies, in the amount of fifty dollars or more on his 2007 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 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 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. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter. (Section 87300.)

#### **Disclosure Provisions**

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.” Each Conflict of Interest Code shall require that each designated employee file annual statements, disclosing reportable investments, business positions, interests in real property and sources of income. (Section 87302.) “Income” is

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<sup>1</sup> 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.

defined, in part, as a payment received, including but not limited to any salary, wage, or gift, including any gift of food or beverage. (Section 82030, subd. (a).)

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.” Regulation 18944 states that a gift confers a personal benefit on the official when the official<sup>2</sup> 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. 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 18945, subdivision (b), states that official may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and that Code shall have the force of law. In addition, any violation of that Code by a designated employee shall be a violation of 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 and that the information required to be disclosed describing these interests is the same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

The City of Oxnard’s Conflict of Interest Code (“Oxnard Code”) incorporates the Regulation 18730 model code by reference and lists the position of “Development Services Director” as a designated employee who makes or participates in making governmental decisions which may foreseeably have a material effect on their financial interests. The Oxnard Code lists the Development Services Director as a designated employee in Disclosure Category 1. The Oxnard Code states that Disclosure Category 1 requires that the designated employee complete all schedules of his annual SEI to disclose<sup>3</sup>:

- “1. All financial interests, sources of income, investments and business positions and business entities located within or subject to the jurisdiction of the City [of Oxnard].
2. Business entities doing business, planning to do business, or having done business during the prior two years within the City [of Oxnard].

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<sup>2</sup> Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

<sup>3</sup> This disclosure excludes income from pensions for disability or retirement paid by a governmental entity.

3. Any other financial interest, investment, interest in real property, source of income, or business position if the business entity in which the investment or business position is held, the interest in real property, financial interest or source of income may foreseeably be affected materially by any decision made or participated in by the designated person by reason of the City [of Oxnard] position held.”

### SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney’s office. Respondent Winegar was the Development Services Director for the City of Oxnard at all times relevant to this matter. Respondent Winegar failed to disclose J.F. Shea Co., & Affiliated Companies (“Shea LLC”), a developer who does business in the City of Oxnard, on his annual SEI for the year 2007 after receiving a meal from Shea LLC exceeding the \$50 reporting threshold.

#### COUNT 1

#### **Failure to Disclose Gifts on a Statement of Economic Interests**

Respondent Winegar was the Development Services Director for the City of Oxnard at all times relevant to this matter. As a designated employee, Respondent was required to file an annual Statement of Economic Interests disclosing all income received, including gifts. Respondent filed his 2007 SEI with the Oxnard City Clerk on April 8, 2009, and disclosed his spouse’s source of income interest, but did not report the receipt of any gifts.

The chart below identifies the gifts received by Respondent in 2007:

<b>Date</b>	<b>Gift</b>	<b>Donor</b>	<b>Value</b>
08/30/07	Dinner	Shea LLC	\$170.39
TOTAL:			\$170.39

By failing to report \$170.39 in gifts received from Shea LLC in 2007 on his 2007 annual SEI, Respondent violated Sections 87300 and 87302 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.

Penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

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

- *In re Michael Rubio*, FPPC No. 07/293 (Approved January 28, 2011). Michael Rubio, as a member of the Kern County Board of Supervisors, failed to disclose his wife's income on his 2006 SEI. No evidence was found to show that his wife's income was intentionally omitted from his SEI. Further, he stated that he was married shortly before taking office and was unaware of the requirement to disclose his wife's income. However, this source of income was the source of a conflict of interest when he voted to approve a contract for his wife's employer. The approved stipulated settlement was \$1,000 for the violation of failing to disclose income on an SEI and \$2,500 for the violation of the conflict of interests provisions of the Act.
- *In re Gregory Fox*, FPPC No. 10/798 (Approved November 10, 2011). The Commission also approved a \$1,000 per violation regarding the non-disclosure of real property interests. In that case, Respondent Fox failed to disclose his interest in two undeveloped properties but insisted that he had received advice that led him to believe that the two parcels could be treated as part of his personal residence property and therefore not disclosed.

In this matter, Respondent Winegar did not disclose a gift of a dinner received from a developer who regularly does business within his jurisdiction. Respondent states that he was not aware that the developer paid for the dinner that he attended, and for that reason, he did not disclose the gift. Respondent has no prior history of violating the Act. Respondent amended his SEI when contacted by the Enforcement Division.

### **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 patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand Dollars (\$1,000) is recommended.