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

10
11 In the Matter of:

12 KEVIN JOHNSON,

13 Respondent.

FPPC No. 12/555

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

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

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

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

1 It is further stipulated and agreed that Respondent committed 25 violations of the Political
2 Reform Act. These violations are described in Exhibit 1, which is a true and accurate summary of the
3 facts in this matter. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth
4 herein.

5 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
6 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
7 \$37,500. One or more checks or money orders totaling said amount—to be paid to the General Fund of
8 the State of California—is/are submitted with this Stipulation as full payment of the administrative
9 penalty described above, and same shall be held by the State of California until the Commission issues its
10 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
11 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
12 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
13 connection with this Stipulation shall be reimbursed. Respondent further stipulates and agrees that in the
14 event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission

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1 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
2 disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

5 Gary S. Winuk, Chief of Enforcement
6 Fair Political Practices Commission

7 Dated: _____

8 Kevin Johnson, Respondent

9 **DECISION AND ORDER**

10 The foregoing Stipulation of the parties “In the Matter of Kevin Johnson,” FPPC No. 12/555,
11 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
12 Practices Commission, effective upon execution below by the Chairman.

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14 IT IS SO ORDERED.

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16 Dated: _____

17 Ann Ravel, Chair
18 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Kevin Johnson (“Respondent”) was the Mayor of Sacramento. Under the Political Reform Act (the “Act”)¹, a payment of \$5,000 or more made at the behest of an elected officer for charitable purposes must be reported by the officer within 30 days of the date the payment was made. In 2009, 2010, 2011 and 2012, Respondent violated the Act by failing to report such payments within 30 days of the payments being made.

For purposes of this stipulation, Respondent’s violations of the Act are set forth as follows:

- Count 1: On or about March 12, 2009, the Bill and Melinda Gates Foundation made a charitable payment in the amount of \$51,700 to Gifts to Share at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 2: On or about July 10, 2009, AT&T made a charitable payment in the amount of \$65,000 to Gifts to Share at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 3: On or about November 1, 2009, the Eli and Edythe Broad Foundation made a charitable payment in the amount of \$200,000 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 4: On or about March 31, 2010, Kaiser Permanente made a charitable payment in the amount of \$65,000 to Gifts to Share at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 5: On or about April 12, 2010, the Walmart Foundation made a charitable payment in the amount of \$75,000 to Gifts to Share at the behest of Respondent, but Respondent failed to disclose this by filing a behested

¹ The 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.

payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

- Count 6: On or about June 20, 2011, the Wells Fargo Foundation made a charitable payment in the amount of \$100,000 to City Year at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 7: On or about June 23, 2011, the Sacramento Kings made a charitable payment in the amount of \$137,000 to the Sacramento Public Policy Foundation at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 8: On or about June 25, 2011, the Morgan Family Foundation made a charitable payment in the amount of \$150,000 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 9: On or about June 27, 2011, the Silicon Valley Community Foundation made a charitable payment in the amount of \$75,000 to City Year at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 10: On or about June 29, 2011, the Sacramento Kings made a charitable payment in the amount of \$160,500 to the Sacramento Public Policy Foundation at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 11: On or about July 13, 2011, the W.K. Kellogg Foundation made a charitable payment in the amount of \$258,756 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 12: On or about August 16, 2011, the Walmart Foundation made a charitable payment in the amount of \$100,000 to City Year at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).
- Count 13: On or about September 30, 2011, Siemens Industry, Inc. made a charitable payment in the amount of \$200,000 to Valley Vision at the behest of Respondent, but Respondent failed to disclose this by filing a behested

payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 14: On or about October 18, 2011, State Farm made a charitable payment in the amount of \$100,000 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 15: On or about October 19, 2011, AT&T made a charitable payment in the amount of \$130,000 to City Year at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 16: On or about December 6, 2011, the Sacramento Region Community Foundation made a charitable payment in the amount of \$100,000 to City Year at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 17: On or about January 19, 2012, State Farm (via Stand Up) made a charitable payment in the amount of \$100,000 to Teach for America at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 18: On or about January 19, 2012, the Morgan Family Foundation made a charitable payment in the amount of \$150,000 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 19: On or about January 19, 2012, the Walton Family Foundation made a charitable payment in the amount of \$200,000 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 20: On or about March 14, 2012, the Cisco Systems Foundation made a charitable payment in the amount of \$300,000 to City Year at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 21: On or about March 23, 2012, the Emerson Education Fund made a charitable payment in the amount of \$200,000 to Stand Up at the behest of Respondent,

but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 22: On or about May 2, 2012, VSP made a charitable payment in the amount of \$100,000 to the Sacramento Public Policy Foundation at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 23: On or about May 10, 2012, AT&T made a charitable payment in the amount of \$150,000 to Teach for America at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 24: On or about June 1, 2012, the Greater Sacramento New Car Dealers Association made a charitable payment in the amount of \$60,000 to Gifts to Share at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

Count 25: On or about June 5, 2012, the Walton Family Foundation made a charitable payment in the amount of \$300,000 to Stand Up at the behest of Respondent, but Respondent failed to disclose this by filing a behested payment report within 30 days, in violation of Section 82015, subdivision (b)(2)(B)(iii).

SUMMARY OF THE LAW

Required Filing of Behested Payment Reports

A payment of \$5,000 or more made at the behest of an elected officer for a charitable purpose must be reported by the elected officer within 30 days of payment by filing a behested payment report with the officer's agency. The report is a public record and must include the name and address of the payor, the amount of the payment, the date of payment, the name and address of the payee, a brief description of the goods or services provided or purchased (if any), and a description of the specific purpose or event for which the payment or payments were made. (See Section 82015, subd. (b)(2)(B)(iii).)

SUMMARY OF THE FACTS

As stated above, at all relevant times, Respondent was the Mayor of Sacramento. Under the Act, a payment of \$5,000 or more made at the behest of an elected officer for charitable purposes must be reported by the officer within 30 days of the date the payment was made. In 2009, 2010, 2011 and 2012, Respondent violated the Act by failing to report such payments within 30 days of the payments being made.

The following chart provides a summary of the behested payments that are the subject of this stipulation:

Count	Payor	Payee	Amount	Payment Date
1	Bill and Melinda Gates Foundation	Gifts to Share	\$51,700	03/12/09
2	AT&T	Gifts to Share	\$65,000	07/10/09
3	Eli and Edythe Broad Foundation	Stand Up	\$200,000	11/01/09
4	Kaiser Permanente	Gifts to Share	\$65,000	03/31/10
5	Walmart Foundation	Gifts to Share	\$75,000	04/12/10
6	Wells Fargo Foundation	City Year	\$100,000	06/20/11
7	Sacramento Kings	Sacramento Public Policy Foundation	\$137,000	06/23/11
8	Morgan Family Foundation	Stand Up	\$150,000	06/25/11
9	Silicon Valley Community Foundation	City Year	\$75,000	06/27/11
10	Sacramento Kings	Sacramento Public Policy Foundation	\$160,500	06/29/11
11	W.K. Kellogg Foundation	Stand Up	\$258,756	07/13/11
12	Walmart Foundation	City Year	\$100,000	08/16/11
13	Siemens Industry, Inc.	Valley Vision	\$200,000	09/30/11
14	State Farm	Stand Up	\$100,000	10/18/11
15	AT&T	City Year	\$130,000	10/19/11
16	Sacramento Region Community Foundation	City Year	\$100,000	12/06/11
17	State Farm (via Stand Up)	Teach for America	\$100,000	01/19/12
18	Morgan Family Foundation	Stand Up	\$150,000	01/19/12
19	Walton Family Foundation	Stand Up	\$200,000	01/19/12
20	Cisco Systems Foundation	City Year	\$300,000	03/14/12
21	Emerson Education Fund	Stand Up	\$200,000	03/23/12
22	VSP	Sacramento Public Policy Foundation	\$100,000	05/02/12
23	AT&T	Teach for America	\$150,000	05/10/12
24	Greater Sacramento New Car Dealers Assoc.	Gifts to Share	\$60,000	06/01/12
25	Walton Family Foundation	Stand Up	\$300,000	06/05/12

Behested payment reports for Counts 7, 10, and 22 were filed approximately 395, 391, and 48 days late, respectively. For the remaining counts, no behested payment reports were filed, but they are being filed in connection with this settlement.

Regarding Counts 7 and 10, Respondent maintains that the money was given to the Sacramento Kings by sponsors who intended for the money to go to the payees, and the money was passed along by the Sacramento Kings accordingly.

By failing to timely file behested payment reports, as described above, Respondent committed 25 violations of Section 82015, subdivision (b)(2)(B)(iii).

CONCLUSION

This matter consists of 25 counts of violating the Act. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed for all 25 counts is \$125,000. (See Section 83116, subd. (c).)

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

There are no comparable cases involving non-reporting or late reporting of a behested payment, but this sort of violation is similar to a failure to report information about contributions received. A recent case involving such a violation imposed a penalty of \$2,000 per count. (See *In the Matter of Human Rights Campaign California Marriage PAC - No On Prop 8 Committee and James Rinefierd*, FPPC No. 12/214, approved Sep. 13, 2012 [\$2,000 penalty imposed per count for three counts of failure to report information about contributions received].)

Arguably, failure to report information about contributions received justifies a slightly higher penalty than failure to file a behested payment report because behested payments are not contributions to the public official. In this case, imposition of an agreed upon penalty in the amount of \$1,500 per count is justified. A higher penalty is not being sought because Respondent has no history of violating the Act. Also, Respondent fully cooperated with the Enforcement Division and voluntarily self-reported many of the payments at issue. Additionally, Respondent maintains that the failure to report was unintentional, resulting from an administrative lapse and inadequate staff training. Also, many payments, and Respondent's role

in soliciting them, were disclosed publicly via press releases, media events, public meetings, and the websites of donor organizations. Additionally, Respondent has established a new protocol to track and report charitable donations made at his behest, and he has instituted regular training for himself and his staff regarding the reporting of behested payments. Finally, there is no evidence that Respondent obtained any personal monetary benefit as a result of the donations in question. The payments were made to charitable organizations to support civic causes.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$37,500 is recommended.