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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

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24
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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”).¹ 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

¹ 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:

Date	Gift	Donor	Value
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.