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

12 In the Matter of) FPPC No. 12/033
13)
14 KENNETH ORTEGA,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Kenneth Ortega 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 Kenneth Ortega 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 Sections 87300 and 87302 of the Government Code (3 counts); and accepting
6 gifts, which exceeded the gift limit, in violation of Section 89503, subdivision (c) of the Government
7 Code (2 counts). All counts are described in Exhibit 1, which is attached hereto and incorporated by
8 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
9 matter.

10 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
11 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
12 of Seven Thousand Dollars (\$7,000). A cashier's check from Respondent in said amount, made payable
13 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
14 administrative penalty, to be held by the State of California until the Commission issues its decision and
15 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
16 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
17 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
18 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
19 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
20 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
21 disqualified because of prior consideration of this Stipulation.

22
23 Dated: _____

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

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27 Dated: _____

Kenneth Ortega,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Kenneth Ortega,” FPPC No. 12/033,
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 Kenneth Ortega ("Respondent") was the Public Works Director for the City of Oxnard from 2005 until he resigned June 30, 2010. 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").¹ 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 2008 and 2009.

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

- COUNT 1: During 2007, Respondent Kenneth Ortega, a designated employee of the City of Oxnard, failed to report gifts from Kennedy/Jenks /Todd LLC and E.J. De La Rosa & Co., Inc., 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.
- COUNT 2: During 2008, Respondent Kenneth Ortega, a designated employee of the City of Oxnard, failed to report gifts from E.J. De La Rosa & Co., Inc., Ojai Valley Inn, and Kennedy/Jenks /Todd LLC in the amount of fifty dollars or more on his 2008 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 3: During 2009, Respondent Kenneth Ortega, a designated employee of the City of Oxnard, failed to report gifts from E.J. De La Rosa & Co., Inc. and Kennedy/Jenks /Todd LLC, in the amount of fifty dollars or more on his 2009 annual Statement of Economic Interests, in violation of Sections 87300 and 87302 of the Government Code.
- COUNT 4: During 2008, Respondent Kenneth Ortega, a designated employee of the City of Oxnard, accepted approximately \$1,015.95 in gifts, which exceeded the \$390 gift limit, from E.J. De La Rosa & Co., Inc., in violation of Section 89503, subdivision (c) of the Government Code.
- COUNT 5: During 2009, Respondent Kenneth Ortega, a designated employee of the City of Oxnard, accepted approximately \$483.64 in gifts, which exceeded the \$420 gift

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.

limit, from E.J. De La Rosa & Co., Inc., in violation of Section 89503, subdivision (c) 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 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 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 “Public Works 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 Public Works Director as a designated employee in Disclosure Category 1. The Oxnard Code states

that Disclosure Category I requires that the designated employee complete all schedules of his annual SEI to disclose²:

“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].

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.”

Disclosure of Gifts

Section 89503, subdivision (c), of the Act states that “No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or his statement of economic interests.” 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.” Regulation 18944 states that a gift confers a personal benefit on the official when the official³ 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.

² This disclosure excludes income from pensions for disability or retirement paid by a governmental entity.

³ Section 82048 defines “public official” to include “every member, officer, employee or consultant of a state or local government agency.”

SUMMARY OF THE FACTS

This matter arose from a referral from the Ventura County District Attorney's office. Respondent Ortega was the Public Works Director for the City of Oxnard at all times relevant to this matter. Respondent Ortega 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 SEIs for the years 2007 – 2009 after receiving meals, drinks, tickets to a Broadway show for Respondent and his wife, and baseball games from De La Rosa exceeding the \$50 reporting threshold and, in 2008 and 2009, exceeding the \$390 gift limit threshold (2008) and the \$420 gift limit threshold (2009). In addition, Respondent Ortega failed to disclose Ojai Valley Inn, on his 2008 annual SEI after exceeding the \$50 reporting threshold. Respondent Ortega failed to disclose Kennedy/Jenks /Todd LLC ("Kennedy/Jenks"), an engineering consulting firm working on the desalinization project with the City of Oxnard, on his 2007, 2008, and 2009 annual SEIs after receiving meals from Kennedy/Jenks exceeding the \$50 reporting threshold.

COUNT 1

Failure to disclose gifts on a Statement of Economic Interests

Respondent Ortega was the Public Works 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. Respondent filed his 2007 SEI with the Oxnard City Clerk on April 1, 2008 and disclosed "No reportable interests on any schedule." The chart below identifies the gifts received by Respondent Ortega in 2007:

Date	Gift	Donor	Value
02/15/07	Lunch	Kennedy/Jenks	\$14.01
06/21/07	Lunch	Kennedy/Jenks	\$16.94
08/23/07	Lunch	Kennedy/Jenks	\$13.03
08/28/08	Baseball Game	De La Rosa	\$206.68
09/20/07	Lunch	Kennedy/Jenks	\$11.42
10/25/07	Lunch	Kennedy/Jenks	\$12.67
11/20/07	Dinner	Kennedy/Jenks	\$28.00
TOTAL (Kennedy/Jenks):			\$96.07
TOTAL (De La Rosa):			\$206.68

By failing to report \$96.07 in gifts received from Kennedy/Jenks and \$206.68 from De La Rosa in 2007 on his 2007 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 2

Failure to disclose gifts on a Statement of Economic Interests

Respondent Ortega was the Public Works 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. Respondent filed his 2008 SEI with the Oxnard City Clerk on March 3, 2009 and disclosed "No reportable interests on any schedule." The chart below identifies the gifts received by Respondent Ortega in 2008:

Date	Gift	Donor	Value
02/15/08	Lunch	Kennedy/Jenks	\$11.79
03/27/08	Golf	Ojai Valley Inn	\$170.00
05/09/08	Lunch	Kennedy/Jenks	\$29.34
07/15/08	Dinner	Kennedy/Jenks	\$39.77
08/13/08	Lunch	De La Rosa	\$29.90
09/03/08	Drinks	De La Rosa	\$8.88
09/03/08	Drinks	De La Rosa	\$22.90
09/03/08	Baseball Game	De La Rosa	\$321.43
10/01/08	Dinner	Kennedy/Jenks	\$18.00
12/03/08	Dinner(Respondent & Spouse)	De La Rosa	\$181.56
12/04/08	Broadway Show (Respondent & Spouse)	De La Rosa	\$176.50
12/04/08	Dinner (Respondent & Spouse)	De La Rosa	\$261.94
12/04/08	Lunch	De La Rosa	\$12.84
TOTAL (Ojai Valley Inn):			\$170.00
TOTAL (De La Rosa):			\$1,015.95
TOTAL (Kennedy/Jenks):			\$98.90

By failing to report \$170.00 in gifts received from Ojai Valley Inn, \$1,015.95 in gifts received from De La Rosa, and the \$98.90 in gifts received from Kennedy/Jenks in 2008 on his 2008 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 3

Failure to disclose gifts on a Statement of Economic Interests

Respondent Ortega was the Public Works 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. Respondent filed his 2009 SEI with the Oxnard City Clerk on March 30, 2010 and disclosed some gifts received from Mike Fox, Terry Foreman, and John Kim. John Kim is the representative of De La Rosa, and therefore, gifts should have been reported as from De La Rosa. Also, the gifts were undervalued as reported. Both items disclosed by Respondent on his 2009 SEI have been denoted with an asterisk. The value of the baseball game was reported as \$110 (actual value: \$311.54) and the value of the dinner was reported as \$95 (actual value: \$101.52). Therefore, only the difference between the item's actual value (\$483.64) and the value reported (\$205) was used to assess the total amount unreported for 2009.

The chart below identifies the gifts received by Respondent Ortega in 2009:

Date	Gift	Donor	Value
01/08/09	Dinner	Kennedy/Jenks	\$43.59
02/06/09	Meal	Kennedy/Jenks	\$13.13
03/24/09	Lunch	Kennedy/Jenks	\$15.81
04/03/09	Breakfast	Kennedy/Jenks	\$16.99
04/10/09	Lunch	Kennedy/Jenks	\$19.97
07/01/09	Lunch	De La Rosa	\$15.86
08/19/09*	Baseball game	De La Rosa	\$311.54
08/25/09	Meal	Kennedy/Jenks	\$17.07
08/28/09	Meal	Kennedy/Jenks	\$13.06
12/13/09*	Dinner	De La Rosa	\$101.52
12/14/09	Lunch	De La Rosa	\$54.72
TOTAL (De La Rosa):			\$483.64
TOTAL (Kennedy/Jenks):			\$139.62

By failing to report \$278.64 of gifts received from De La Rosa and \$139.62 in gifts received from Kennedy/Jenks in 2009 on his 2009 annual SEI, Respondent violated Sections 87300 and 87302 of the Government Code.

COUNT 4

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Ortega was the Public Works Director for the City of Oxnard at all times relevant to this matter. As a designated employee, 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 5), Respondent received gifts totaling approximately \$1,015.95 in 2008 from De La Rosa, \$625.95 over the annual gift limit.

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

COUNT 5

Acceptance of Gifts in Excess of the Annual Gift Limit

Respondent Ortega was the Public Works Director for the City of Oxnard at all times relevant to this matter. As a designated employee, 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 received gifts totaling approximately \$483.64 in 2009 from De La Rosa, \$63.64 over the annual gift limit.

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

CONCLUSION

This matter consists of five counts, which carries a maximum possible administrative penalty of Twenty Five Thousand Dollars (\$25,000).

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 Ortega did not disclose gifts received from a bond underwriter who regularly do business within his jurisdiction, an engineering consulting firm working on the desalinization project with the City of Oxnard, and a gift of golf from a luxury resort outside the jurisdiction. Respondent has no prior history of violating the Act. Respondent amended his SEIs before being contacted by the Enforcement Division once he realized that he was required to disclose the gifts. Additionally, Respondent reported two of the gifts received, although assessing a lower value. 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 Ortega received gifts over the limits from a bond underwriter who has regular business with the City of Oxnard. 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.

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 Seven Thousand Dollars (\$7,000) is recommended.