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

11  
12 In the Matter of ) FPPC No. 12/286  
13 )  
14 JONI GRAY, ) STIPULATION, DECISION and  
15 Respondent. ) ORDER  
16 )  
17 )

18 Complainant, the Fair Political Practices Commission, and respondent Joni Gray (“Respondent”)  
19 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission  
20 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.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by making a  
4 governmental decision in which she knew, or had reason to know, she had a financial interest, in  
5 violation of Government Code section 87100 (1 count).

6 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as  
7 though fully set forth 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 her an administrative penalty in the amount  
10 of \$3,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of  
11 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,  
12 to be held by the State of California until the Commission issues its decision and order regarding this  
13 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall  
14 become null and void, and within 15 business days after the Commission meeting at which the  
15 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be  
16 reimbursed to Respondent. Respondent further stipulate and agree that in the event the Commission  
17 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither  
18 any member of the Commission, nor the Executive Director, shall be disqualified because of prior  
19 consideration of this Stipulation.

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

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

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

\_\_\_\_\_  
Joni Gray, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties "In the Matter of Joni Gray" FPPC No. 12/286,  
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 Dated: \_\_\_\_\_

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

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## EXHIBIT 1

### INTRODUCTION

Respondent Joni Gray (“Respondent”) was a member of the Santa Barbara County Board of Supervisors from 1998 through 2012. As a public official, Respondent was prohibited by Government Code section 87100 of the Political Reform Act (the “Act”)<sup>1</sup> from making, participating in making, or attempting to use her official position to influence any governmental decision in which she knew, or had reason to know, she had a financial interest.

At all relevant times, Respondent was one of three partners in the firm Wittenburg, O’Neill & Gray, LLP. One of the firm’s clients was the Lompoc Housing and Community Development Corporation, a not-for-profit organization that provided affordable housing in the City of Lompoc.

For the purposes of this Stipulation, Respondent’s violation of the Act is stated as follows:

**COUNT 1:** On April 1, 2008, Respondent Joni Gray, in her capacity as a member of the Santa Barbara County Board of Supervisors, made a governmental decision in which she knew, or had reason to know, she had a financial interest, by voting to authorize the Chair of the Santa Barbara County Board of Supervisors to execute a forgivable loan in the amount of \$50,000 to the Lompoc Housing and Community Development Corporation, in violation of Government Code section 87100.

### SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

#### Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

#### Conflict-of-Interest

The primary purpose for 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).)

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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.

In furtherance of this goal, Section 87100 prohibits public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have 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 a recognized economic interest of the official. For purposes of Sections 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>

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local government agency. Section 82041 defines “local government agency” to include a county board.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. A public official “makes a governmental decision” when the official votes on a matter. (Regulation 18702.1, subd. (a)(1).)

Third, the official must have an economic interest that may be financially affected by the governmental decision. A public official has an economic interest in any person from whom he or she has received income aggregating \$500 or more within 12 months prior to the time when the relevant governmental decision is made. (Regulation 18703.3, subd. (a)(1).) This includes a pro-rata share of any income of any business entity or trust in which the official or spouse owns at least a ten percent interest. (Section 82030, subd (a).)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official’s agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request, or; (2) is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. (Regulation 18704.1, subd. (a).)

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Any reasonably foreseeable financial effect on a person who is a source of income to the public official, and who is directly involved in a decision before the official’s agency, is deemed material. (Regulation 18705.3, subd. (a).)

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. 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. (Regulation 18706, subd. (a), *In re Thorner* (1975) 1 FPPC Ops. 198.)

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<sup>2</sup> Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

## SUMMARY OF THE FACTS

At all relevant times, Respondent was a member of the Santa Barbara County Board of Supervisors and one of three partners in the firm Wittenburg, O'Neill & Gray, LLP (the "Firm"). One of the Firm's clients was the Lompoc Housing and Community Development Corporation (the "LHCDC"), a not-for-profit organization that provided affordable housing in Lompoc, a city in Santa Barbara County.

Between April 1, 2007, and April 1, 2008, the LHCDC paid the Firm \$1,666.20 for legal services rendered. On April 1, 2008, Respondent, in her capacity as a member of the Santa Barbara County Board of Supervisors, voted to authorize the chair of the Santa Barbara County Board of Supervisors to execute a forgivable loan to the LHCDC in the amount of \$50,000.

### Count 1

#### **Failure to Disqualify Herself from Making a Governmental Decision Concerning the Lompoc Housing and Community Development Corporation**

1. Respondent was a Public Official:

At all times relevant to this matter, Respondent was a member of the Santa Barbara County Board of Supervisors, and thus a public official under the Act.

2. Respondent Participated in a Governmental Decision:

On April 1, 2008, Respondent, in her capacity as a member of the Santa Barbara County Board of Supervisors, voted to authorize the Chair of the Santa Barbara County Board of Supervisors to execute a forgivable loan in the amount of \$50,000 to the LHCDC. By voting on the matter, Respondent made a governmental decision.

3. Respondent had an Economic Interest:

Between April 1, 2007, and April 1, 2008, the LHCDC paid the Firm \$1,666.20 for legal services rendered. During that time, Respondent was one of three partners at the Firm, and therefore her pro-rata share of income received, for the purposes of Section 82030, subdivision (a), from LHCDC was \$555.40. She therefore had an economic interest in the LHCDC on April 1, 2008.

4. Respondent's Economic Interest was Directly Involved in the Governmental Decision:

The LHCDC was the subject of the governmental decision that Respondent made, and was therefore directly involved in the governmental decision. Because LHCDC was an economic interest of Respondent's at the time of the governmental decision, Respondent had an economic interest directly involved in the governmental decision.

5. Any Reasonably Foreseeable Financial Effect on Respondent's Economic Interest Meets the Materiality Standard:

The LHCDC was directly involved in the governmental decision, and therefore the financial effect of the decision is presumed to be material. (Regulation 18705.3, subd. (a).)

6. It was Substantially Likely that the Government Decision would have a Financial Effect on Respondent's Economic Interest:

Respondent's governmental decision was to authorize the execution of a forgivable loan in the amount of \$50,000 from Santa Barbara County to the LHCD. It was reasonably foreseeable at the time Respondent made the governmental decision that giving the LHCD a forgivable \$50,000 loan would have some financial effect on the LHCD.

Thus, by making the above governmental decision in which she had a financial interest, Respondent committed a violation of Section 87100.

### CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$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): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Participating in a government 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.

Recent penalties concerning conflict-of-interest violations include:

*In the Matter of Theodore Park*, FPPC No. 11/058: In July 2012, the Commission fined the Acting Deputy Director of the Real Estate Services Division of the California Department of General Services \$3,500 for making a series of governmental decisions in which he had a disqualifying financial interest by virtue of his community property interest in his wife's pro-rate share of partnership income. The respondent took full responsibility for his actions, cooperated with the Enforcement Division by agreeing to an early settlement of the matter, and had no prior enforcement actions. The spouse's total share of income attributable to the client that was directly involved in the governmental decision was \$40,000 over the four year period during which the respondent made five governmental decisions that were reasonably foreseeable to have a material financial effect on that client.

*In the Matter of Claudia Chandler*, FPPC No. 10/806: In December 2011, the Commission fined the Chief Deputy Director of the California Energy Commission \$3,000 per count for participating in the government decision to award a contract to a company in which she had disqualifying economic interest through her community property interest in her husband's business. The amount of revenue that her husband's business received from the company was

relatively low, under \$10,000, and the respondent cooperated with the Enforcement Division by agreeing to an early settlement of the matter.

In this matter, Respondent has no history of enforcement actions, and has cooperated with the Enforcement Division by agreeing to an early settlement of the matter. Additionally, Respondent is no longer a public official.

However, she voted to give LHCDC a forgivable loan of \$50,000, and therefore the reasonably foreseeable financial effect of her decision on her economic interest was high.

**PROPOSED PENALTY**

Accordingly, the imposition of an administrative fine of \$3,000 is recommended.

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