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7

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

12 In the Matter of ) FPPC No. 12/976  
13 )  
14 STEVEN T. NICHOLS, ) STIPULATION, DECISION and  
15 ) ORDER  
16 Respondent. )  
17

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and  
19 Respondent Steven T. Nichols 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 Steven T. Nichols violated the Political Reform Act by failing to  
4 report gifts received in the amount of fifty dollars or more on his annual Statements of Economic  
5 Interests, in violation of Sections 87300 and 87302 of the Government Code (1 count); and accepting  
6 gifts, which exceeded the gift limit, in violation of Section 89503, subdivision (c) of the Government  
7 Code (3 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 Five Thousand Five Hundred Dollars (\$5,500). A cashier's check from Respondent in said amount,  
13 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full  
14 payment of the administrative penalty, to be held by the State of California until the Commission issues  
15 its decision and order regarding this matter. The parties agree that in the event the Commission refuses  
16 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the  
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in  
18 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and  
19 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the  
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
21 shall be disqualified because of prior consideration of this Stipulation.

22  
23 Dated: \_\_\_\_\_

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

24  
25  
26  
27 Dated: \_\_\_\_\_

\_\_\_\_\_  
Steven T. Nichols,  
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Steven T. Nichols,” FPPC No. 12/976,  
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: \_\_\_\_\_

\_\_\_\_\_   
Sean Eskovitz, Vice Chair  
Fair Political Practices Commission

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1 **EXHIBIT 1**

2 **INTRODUCTION**

3 At all times relevant to this matter, Respondent Steven T. Nichols (“Respondent”) was employed  
4 as the Assistant Electric Director for the City of Redding, Resource Planning Department. He resigned  
5 from the position of Assistant Electric Director on September 11, 2012. As a designated employee,  
6 Respondent is required to file an annual Statement of Economic Interests (“SEI”) disclosing all income  
7 received as required by the Political Reform Act (the “Act”)<sup>1</sup> and the City of Redding Conflict of  
8 Interest Code (the “Redding Code”). In this matter, Respondent received eighteen gifts exceeding the  
9 reporting threshold of \$50 and failed to report the gifts on his annual SEIs. In addition, Respondent  
10 received gifts exceeding the applicable gift limit from one source in 2010, 2011, and 2012.

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

12 COUNT 1: Respondent Steven T. Nichols, a designated employee of the City of Redding, failed to  
13 report eighteen gifts from five different sources, in the amount of fifty dollars or more on  
14 his annual Statements of Economic Interests, in violation of Sections 87300 and 87302 of  
15 the Government Code.

16 Exceeded the Gift Limit

17 COUNT 2: On or around March 2, 2010, Respondent Steven T. Nichols, a designated employee of  
18 the City of Redding, accepted approximately \$450.00 in gifts, which exceeded the \$420  
19 gift limit, from Iberdrola Renewables, LLC, in violation of Section 89503, subdivision (c)  
20 of the Government Code.

21 COUNT 3: On or around September 20, 2011, Respondent Steven T. Nichols, a designated employee  
22 of the City of Redding, accepted approximately \$453.15 in gifts, which exceeded the  
23 \$420 gift limit, from Duncan, Weinberg, Genzer and Pembroke, P.C., in violation of  
24 Section 89503, subdivision (c) of the Government Code.

25 COUNT 4: On or about March 14, 2012, Respondent Steven T. Nichols, a designated employee of  
26 the City of Redding, accepted approximately \$547.00 in gifts, which exceeded the \$420  
27 gift limit, from Iberdrola Renewables, LLC, in violation of Section 89503, subdivision (c)  
28 of the Government Code.

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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.

1 **SUMMARY OF THE LAW**

2 **Duty to File Annual Statement of Economic Interests**

3 An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the  
4 assets and income of public officials, that may be materially affected by their official actions, be  
5 disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300  
6 requires every agency to adopt and promulgate a Conflict of Interest Code. A Conflict of Interest Code  
7 shall have the force of law and any violation of a Conflict of Interest Code by a designated employee  
8 shall be deemed a violation of this chapter. (Section 87300.)

8 **Disclosure Provisions**

9 Section 82019, subdivision (a), defines “designated employee” to include any member of any  
10 agency whose position is “designated in a Conflict of Interest Code because the position entails the  
11 making or participation in the making of decisions which may foreseeably have a material effect on any  
12 financial interest.” Each Conflict of Interest Code shall require that each designated employee file  
13 annual statements, disclosing reportable investments, business positions, interests in real property and  
14 sources of income. (Section 87302.) “Income” is defined, in part, as a payment received, including but  
15 not limited to any salary, wage, or gift. (Section 82030, subd. (a).)

16 Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code and  
17 that Code shall have the force of law. In addition, any violation of that Code by a designated employee  
18 shall be a violation of the Act. Section 87302, subdivision (b), provides that an agency’s Conflict of  
19 Interest Code must require each designated employee of the agency to file annual statements of  
20 economic interests at a time specified in the agency’s conflict of interest code, disclosing investments,  
21 income, business positions, and interests in real property, held or received at anytime during the  
22 previous calendar year and that the information required to be disclosed describing these interests is the  
23 same as that required by Sections 87206 and 87207. An agency’s Conflict of Interest Code may  
24 incorporate Regulation 18730, which contains a model conflict of interest code, by reference.

25 The City of Redding’s Conflict of Interest Code (the “Redding Code”) lists the position of  
26 “Assistant Director-Electric Utility/Resource Planning” as a designated position required to comply with  
27 disclosure categories 2, 3, and 4. The Redding Code states that Disclosure Categories 2, 3, and 4 require  
28 that the designated employee complete all schedules of his annual SEI to disclose:

“2. Investments and business positions in business entities, and sources of income from  
entities providing supplies, services, equipment, or machinery of the type used by the designated  
employee’s unit.

3. Investments and business positions in business entities, and income from sources  
engaged in construction, building, or material supply.

4. Investments and business positions in, and income from sources engaged in, the  
construction of public works projects.”

1 **Disclosure of Gifts**

2 Section 89503, subdivision (c), of the Act states that “No member of a state board or commission  
3 or designated employee of a state or local government agency shall accept gifts from any single source  
4 in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee  
5 would be required to report the receipt of income or gifts from that source on his or his statement of  
6 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 2010 - 2012, the applicable gift  
limit from a single source was \$420.

7 Section 82028, subdivision (a), provides that a “gift” means any payment that confers a personal  
8 benefit on the recipient, to the extent that consideration of equal or greater value is not received.  
9 Regulation 18941 states that “...a gift is ‘received’ or ‘accepted’ when the recipient knows that he or she  
10 has either actual possession of the gift or takes any action exercising direction or control over the gift.”  
11 Regulation 18944 states that a gift confers a personal benefit on the official when the official enjoys a  
12 direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over  
13 who will use the gift or how to dispose of the gift.<sup>2</sup> In addition, Regulation 18945, subdivision (a),  
14 states that a person is the source of a gift if the person either gives the gift directly to the official or the  
15 “person makes a payment to a third party and in fact directs and controls the use of the payment to make  
16 a gift to one or more clearly identified officials.” Regulation 18945, subdivision (b), states that official  
17 may presume that the person delivering or offering the gift is the source of the gift. Regulation 18946  
18 states that the value of the gift is the fair market value as of the date of receipt or promise of the gift.

15 **SUMMARY OF THE FACTS**

16 This case arose from a sworn complaint filed by the Assistant City Clerk for the City of Redding.  
17 Respondent Steven T. Nichols (“Respondent”) was employed by the City of Redding, Resource  
18 Planning Department as Assistant Electric Director at all times relevant to this matter.

19 Upon Respondent’s retirement in August 2012, Respondent filed his Leaving Office Statement  
20 of Economic Interests (“SEI”) and amendments to his 2010 and 2011 SEIs. The amended SEIs revealed  
21 that Respondent had failed to disclose numerous gifts from business entities, some of which did business  
22 with the City of Redding. As displayed below, these business entities provided Respondent with gifts  
23 that included meals, greens fees, lodging, and a retirement watch exceeding the \$50 reporting threshold.  
24 In addition, Respondent received gifts in excess of the \$420 gift limit threshold from Iberdrola  
Renewables, LLC in 2010 and 2012, and from the law firm of Duncan, Weinberg, Genzer and  
Pembroke, P.C. in 2011. Iberdrola Renewables, LLC and Duncan, Weinberg, Genzer and Pembroke,  
P.C. both had contracts with Respondent’s governmental unit when the gifts were received.

25 Respondent maintains that he was not aware of his obligation to report gifts over \$50 until  
26 August 2012, when Electric Utility Director, Barry Tippin, informed him of his reporting obligations.  
27 On September 27, 2012 the Respondent filed SEI amendment forms with the city. While completing  
28 and filing the SEI amendments Respondent became aware of three gifts that exceeded the \$420 gift limit  
at which time the Respondent repaid the amount of the gifts over the limit and returned one gift. The

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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.”

Respondent has further stated that to his knowledge the city did not provide any formal employee training on its gift policy or completion the SEI forms. However, the City of Redding Personnel Department confirmed that in each year Respondent received gifts over the limit or failed to report gifts, the Redding City Clerk provided him with a link to the Form 700 Statement of Economic Interest Reference Pamphlet, which explains all relevant disclosure requirements.

**COUNT 1**

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

Respondent Nichols was the Assistant Electric Director for the City of Redding at all times relevant to this matter. As a designated employee, Respondent was required to disclose all income and gifts received, as specified in the Redding Code, on his annual Statements of Economic Interests. During Respondent’s tenure with the City of Redding, he timely filed all required Statements of Economic Interests, but failed to disclose eighteen gifts that were reportable under his disclosure category in the Redding Code. The chart below identifies the reportable gifts Respondent Nichols received and did not disclose:

<b>Date</b>	<b>Source</b>	<b>Value</b>	<b>Description</b>
3/9/10	Iberdrola Renewables LLC	\$450.00	Group Conference Activities
3/22/10	Navigant Consulting	\$71.43	Client Group Dinner
3/23/10	Duncan, Weinberg, Genzer and Pembroke, P.C.	\$34.00	Meal
3/24/10	Shell Energy	\$70.00	Customer Group Dinner
3/25/10	Shell Energy	\$125.00	Customer Group Golf
5/5/10	Shell Energy	\$70.00	Conf Group Lunch/Golf
5/22/10	Duncan, Weinberg, Genzer and Pembroke, P.C.	\$87.00	Meal
7/8/10	Navigant Consulting	\$140	Client Group Golf and Dinner
3/9/11	Iberdrola Renewables LLC	\$250	Group Conf Activities
3/21/11	Iberdrola Renewables LLC	\$60	Customer Group Dinner
3/29/11	Duncan, Weinberg, Genzer, and Pembroke PC	\$120	Client Group Dinner
3/30/11	Shell Energy	\$140	Customer Group Dinner
9/13/11	KBT Consulting	\$65.00	Client Group Golf



9/13/11	KBT Consulting	\$84.00	Client Group Dinner
9/20/11	Duncan, Weinberg, Genzer, and Pembroke PC	\$108	Client Group Dinner
9/20/11	Duncan, Weinberg, Genzer, and Pembroke PC	\$453.15	Retirement Watch Returned (Watch Returned on 8/30/12)
9/20/11	Navigant Consulting	\$54	Client Group Golf
9/21/11	Shell Energy	\$70	Customer Group Dinner

By failing to disclose eighteen reportable gifts totaling \$2451.58 received from five different sources on his annual Statements of Economic Interests, Respondent violated Sections 87300 and 87302 of the Government Code.

**COUNT 2**

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

Respondent Nichols was the Assistant Electric Director for the City of Redding 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 2010. As shown in the chart from Count 1 (page 7), Respondent received gifts totaling approximately \$450 in 2010 from Iberdrola Renewables, LLC, \$30 over the gift limit.

By accepting gifts over the annual gift limit in 2010, Respondent violated Section 89503, subdivision (c), of the Government Code.

**COUNT 3**

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

Respondent Nichols was the Assistant Electric Director for the City of Redding 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 2011. As shown in the chart from Count 1 (page 7), Respondent received combined gifts valued at approximately \$681.15 in 2011 from Duncan, Weinberg, Genzer, and Pembroke PC, \$ 261.15 over the gift limit.

By accepting a gift valued over the annual gift limit in 2011, Respondent violated Section 89503, subdivision (c), of the Government Code.

**COUNT 4**

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

1 Respondent Nichols was the Assistant Electric Director for the City of Redding at all times  
2 relevant to this matter. As a designated employee, Respondent was prohibited from accepting gifts from  
3 a single source in excess of the \$420 annual gift limit for 2012. As shown in the chart below,  
4 Respondent received gifts totaling approximately \$567.00 in 2012 from Iberdrola Renewables, LLC,  
5 \$147.00 over the gift limit.

Date	Source	Value	Description
3/14/12	Iberdrola Renewables LLC	\$567.00	Group Conf Activities (Reimbursed \$147.00 on 9/26/12)

6 By accepting gifts over the annual gift limit in 2012, Respondent violated Section 89503,  
7 subdivision (c), of the Government Code.

### 8 CONCLUSION

9 This matter consists of four counts, which carry a maximum possible administrative penalty of  
10 Twenty Thousand Dollars (\$20,000).

11 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
12 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an  
13 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
14 considers the facts and circumstances of the violation in context of the factors set forth in Regulation  
15 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to  
16 deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether  
17 the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a  
18 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily  
19 filed amendments to provide full disclosure.

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

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

- 28 • ***In the Matter of Curtis Cannon***, FPPC No. 12/034 (Approved August 16, 2012). Respondent  
Curtis Cannon, Community Development Director for the City of Oxnard, received gifts  
exceeding the reporting threshold of \$50 in each of the years 2007 through 2010, and failed to  
report these gifts on his annual Statements of Economic Interests for each applicable reporting

1 period in violation of Government Code Sections 87300 and 87302. Cannon was fined \$4,000  
2 for four counts of SEI non-disclosure (\$1,000 per count).

- 3 • *In the Matter of Matthew G. Winegar*, FPPC No. 12/309 (Approved December 13, 2012).  
4 Respondent Matthew G. Winegar, Development Services Director for the City of Oxnard,  
5 received a gift exceeding the reporting threshold of \$50 in the year 2007, and failed to report this  
6 gift on his annual Statement of Economic Interests for reporting period, January 1, 2007, through  
7 December 31, 2007, due April 1, 2008, in violation of Government Code Sections 87300 and  
8 87302. Winegar was fined \$1,000 for one count of SEI non-disclosure.

9 In this matter, Respondent failed to disclose eighteen gifts received from several private entities,  
10 some of which had contracts with Respondent's governmental unit. Although the City of Redding does  
11 not provide any formal employee training on its gift policy or the completion of SEIs, Respondent was  
12 sent a link to the Form 700 Statement of Economic Interest Reference Pamphlet in each of the years he  
13 failed to disclose gifts. The reference pamphlet included instructions as to what gifts must be disclosed  
14 on a Form 700. Lastly, based on our investigation of the matter, the Enforcement Division contends that  
15 the violation here was not inadvertent. Though Respondent strongly objects to that contention, he has  
16 agreed to settle this matter according to the terms of this stipulation.

17 Based on the above prior cases and the circumstances present in this case, imposition of a \$1,000  
18 penalty for the one count is recommended. A higher total penalty is not being sought for this violation  
19 because Respondent has no prior history of violating the Act and filed his SEI amendments and Leaving  
20 Office SEI before being contacted by the Enforcement Division.

21 **Over-the-limits Gift:** Penalties for gifts received over the applicable limits violations in the last  
22 couple of years range between \$1,500 for gifts of low amounts with little possibility of causing a conflict  
23 of interest to \$2,500 depending on the circumstances of each case. Recent prior penalties concerning  
24 gifts received over the applicable limits violations include:

- 25 • *In re James Cameron*, FPPC No. 12/027 (Approved April 25, 2013). James Cameron, as the  
26 Chief Financial Officer of Oxnard, failed to disclose gifts received from a developer who does  
27 business in the city on annual SEIs and failed to disclose gifts received from a municipal bond  
28 underwriter who does business with the city. The gifts received were \$496.81 over the applicable  
gift limit. The Commission approved a \$2,000 penalty for exceeding the applicable gift limit.
- *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 Commission approved a stipulated settlement for \$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 this matter, Respondent received three gifts over the limits from two private entities that had  
contracts with his governmental unit. In mitigation, Respondent has paid down the gifts received from  
Iberdrola Renewables, LLC to the amount of the applicable gift limit, and returned the watch he  
received from Duncan, Weinberg, Genzer, and Pembroke PC, which had resulted in him exceeding the

1 gift limit. Also, Respondent does not have a prior history of violating the Act and made the above  
2 reimbursements and amendments to his SEIs before he received any contact from the Enforcement  
3 Division.

4 However, a \$4,500 fine for the three counts is recommended based on the following aggravating  
5 circumstances. First, although there were no conflicts of interest resulting from any of the gifts  
6 received, taking gifts from entities doing business with one's governmental unit creates a high  
7 possibility for a conflict of interest. Secondly, as discussed above, the FPPC contends that the violations  
8 here were not inadvertent. Though Respondent strongly objects to that contention, he has agreed to  
9 settle this matter according to the terms of this stipulation.

### 10 **PROPOSED PENALTY**

11 After consideration of the factors of Regulation 18361.5, including whether the behavior in  
12 question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as  
13 consideration of penalties in prior enforcement actions, the imposition of a penalty of Five Thousand  
14 Five Hundred Dollars (\$5,500) is recommended.  
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