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

10  
11 In the Matter of ) FPPC No. 12/768  
12 )  
13 )  
13 SHAUN COYNE, ) **DEFAULT DECISION AND ORDER**  
14 )  
15 )  
15 Respondent. ) (Gov. Code §11503)  
16 )

17 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and  
18 Order for consideration at its next regularly-scheduled meeting.

19 Respondent Shaun Coyne has been provided advice by an attorney of his choosing as to his  
20 rights to a probable cause conference and an administrative hearing under the Political Reform Act,  
21 Administrative Procedure Act, and all other relevant laws. Respondent has chosen to waive all such  
22 rights to a probable cause conference and administrative hearing and to allow this matter to proceed to a  
23 default decision.

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1 In this case, Respondent Shaun Coyne violated the Political Reform Act as described in Exhibit  
2 1, which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a  
3 true and accurate summary of the law and evidence in this matter. This Default Decision and Order is  
4 submitted to the Commission to obtain a final disposition of this matter.

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6  
7 Dated: \_\_\_\_\_

\_\_\_\_\_  
8 Gary S. Winuk, Chief of Enforcement  
9 Fair Political Practices Commission

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11 **DECISION AND ORDER**

12 The Commission issues this Default Decision and Order and imposes an administrative penalty  
13 of Seven Thousand Dollars (\$7,000) upon Respondent Shaun Coyne, payable to the “General Fund of  
14 the State of California.”

15 IT IS SO ORDERED, effective upon execution below by the Vice Chair of the Fair Political  
16 Practices Commission at Sacramento, California.

17  
18 Dated: \_\_\_\_\_

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

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Shaun Coyne (“Respondent”) held the position of Chief Information Officer (“CIO”) for the State Compensation Insurance Fund (“State Fund”) from September of 2009 through August of 2012. As a designated employee of State Fund, Respondent was required to file an annual Statement of Economic Interests (“SEI”) disclosing all income, including gifts, received as required by the Political Reform Act (the “Act”).<sup>1</sup> As a designated employee he also was prohibited from receiving gifts in excess of the applicable gift limit. The Act also prohibited Respondent from making, or participating in the making, decisions in which he knew or had a reason to know he had a financial interest. Respondent violated the Act by failing to timely disclose gifts received from Tibco Software, Inc. (“Tibco”), receiving gifts over the gift limit from Tibco, and approving agreements between Tibco and State Fund subsequent to receiving the gifts.

For the purposes of this Default Decision, Respondent’s violations of the Act are as follows:

**COUNT 1:** Respondent failed to timely report on his 2011 SEI gifts of \$50 or more from Tibco in violation of Section 87300.

**COUNT 2:** Respondent received gifts from Tibco in 2011 that exceeded the gift limit in violation of Section 89503, subdivision (c) and Regulation 18940.2.

**COUNT 3:** Respondent participated in making governmental decisions, namely approving change orders and statements of work related to a contract between State Fund and Tibco, in which Respondent knew, or had reason to know, he had a financial interest as a result of receiving gifts from Tibco in the previous twelve months in violation of Government Code section 87100.

### **WAIVER OF RIGHTS**

Respondent has been informed of the charges set forth herein and his rights to a probable cause hearing and an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. Respondent has agreed to waive these rights, and Respondent is aware that by doing so, the Enforcement Division will proceed with this Default recommendation to the Commission, which, if approved by the Commission, will result in Respondent being held liable for the penalty amount of \$7,000.

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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.

A copy of Respondent's written waiver in this regard is submitted herewith as Exhibit A and incorporated herein by reference as if set forth herein.

In this situation, where the Respondent has waived his rights to a probable cause conference and an administrative hearing, the Commission may take action based upon the Respondent's express admissions (if any) or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subdivision (a).)

## **SUMMARY OF THE LAW**

### **Disclosure of Gifts on 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.)

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 designated employees file an annual statement of economic interest ("SEI") 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. (Section 82030, subd. (a).)

Under State Fund's Conflict of Interest Code, the CIO is in Disclosure Category 1, which requires that person to disclose all "interests in real property in California as well as investments, business positions in business entities, and source of income, including gifts, loans and travel payments." Like other designated positions, the CIO is required to file an annual Statement of Economic Interest each year no later than April 1<sup>st</sup>.

### **Gift Limits**

Section 89503, subdivision (c), of the Act states that "[n]o 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 2009 through 2012, the applicable gift limit from a single source was \$420. (Regulation 18940.2.)

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.” A give is not considered “received” if the official reimburses the donor for the amount of the gift within 30 days of receiving the gift. (Regulation 18941, subd. (c).)

### **Conflict of Interest**

Section 87100 prohibits state and local 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 eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps seven and eight of the analysis are exceptions to the Act and the respondent has the responsibility to provide facts and evidence that support the use of these exceptions. (Regulation 18707, 18708.) Those exceptions do not apply in this case so they are not discussed below.

The six steps of the analysis that the Fair Political Practices Commission (“Commission”) must prove are as follows:

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include members of a state or local governmental agency.

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 obligates or commits his or her agency to any course of action, enters into any contractual agreement on behalf of the agency, negotiates a contract on behalf of the agency, or advises or makes recommendations to decision makers. (Regulation 18702.1, subd. (a)(3) and (4), and Regulation 18702.2, subd. (a) and (b).)

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 a gift in excess of the gift limit within the twelve months prior to the time of the decision. (Regulation 18703.4.) Under the Act, “person” includes individuals, corporations, limited liability companies, and various other entities. (Section 82047.)

Fourth, it must be determine whether the economic interest of the official was directly or indirectly involved in the decision. A person who is a source of a gift is directly involved in a decision before an official’s agency when the person is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. The person that is

the source of a gift is the subject of a proceeding if a decision involves the approval or denial of a contract between the agency and that person. (Regulation 18704.1, subd. (a)(2).)

Fifth, the economic interest must be material. The standard applied to determine if an interest is material depends on the type of interest. A financial effect on a person who is a source of a gift to a public official and who is directly involved in a decision before the official's agency is deemed material if there is any reasonably foreseeable financial effect on the person. (Regulation 18705.4, subd. (a).)

Sixth, the material financial effect on the economic interest of the official must have been reasonably foreseeable at the time the official made, participated in, or attempted to influence the governmental decision. 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 that economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent's economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency. (Regulation 18706, subd. (b).)

## **SUMMARY OF THE FACTS**

Respondent held the position of CIO with State Fund from September of 2009 through August of 2012. As CIO, he had authority to approve contracts that concerned matters related to his division.

In January of 2009, State Fund and Tibco entered into a master agreement whereby Tibco agreed to provide software and related services to State Fund. The master agreement was structured so that over time the two parties would agree on future statements of work ("SOW") as needed by State Fund. Each SOW would call for Tibco to provide additional services and State Fund to make additional payments, subject to the general terms of the master agreement. The parties also could agree to modify an existing SOW by agreeing to a change order for the SOW.

Respondent attended a conference in Las Vegas held on September 26-28, 2011. Originally Respondent was invited to speak at the conference. However, because of some dissatisfaction with Tibco's performance on behalf of the State Fund Respondent later declined the invitation to speak, instead choosing to attend and use the opportunity to meet with Tibco executives concerning Respondent's concerns. The conference was called TUCON and it was put on by Tibco. Tibco paid for Respondent's airfare, hotel room, and admittance to TUCON. The airfare cost \$468.70. The hotel room cost \$338.

Respondent did not report the airfare and hotel room paid for by Tibco as gifts on his 2011 Statement of Economic Interest (“SEI”) filed on June 7, 2012 despite a legal obligation to do so.

In May, June and July of 2012, Respondent, in his official capacity as the CIO for State Fund, approved new SOWs and various change orders to existing SOWs related to the master agreement with Tibco. These contract modifications approved by Respondent consisted of the following:

<b>Date of Action</b>	<b>Description of Contract Change</b>	<b>Amount of Item</b>
May 17, 2012	Change Order #3 to SOW #4	\$685,980.00
May 17, 2012	Change Order #3 to SOW #5	\$540,816.00
May 17, 2012	Change Order #4 to SOW #6	\$763,714.00
May 21, 2012	SOW #10	\$810,190.00
June 8, 2012	SOW #9	\$2,167,445.00
July 23, 2012	Change Order #5 to SOW #6	\$844,019.00

None of the change orders were for new work, but instead extensions of work that had been agreed to by State Fund prior to Respondent’s employment. Respondent left his position with State Fund on August 31, 2012. On October 3, 2012, Respondent filed an amendment to his 2011 SEI in which he disclosed receiving a gift of \$3,001.70 from Tibco for “airfare, meals, lodging for vendor conference.” Respondent also paid back Tibco for the cost of the airfare, hotel accommodations and conference by way of a check dated September 26, 2012 in the amount of \$3,001.70.<sup>2</sup>

## **VIOLATIONS**

### **Count 1**

#### **Failure to timely disclose gifts on a Statement of Economic Interests**

Respondent failed to timely report gifts from Tibco totaling \$806.70 on his annual SEI for 2011 in violation of Section 87300.

### **Count 2**

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

Respondent accepted gifts in 2011 in excess of the gift limit from Tibco in violation of Section 89503, subdivision (c).

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<sup>2</sup> While Respondent did report on his amended 2011 SEI the value of admittance to TUCON in the amount of \$2,195 as a gift, Respondent was not required to do so since such an event does not have to be reported as a gift because it is considered information material, which is exempt from disclosure under the Act. (See Section 82028, subdivision (b)(1) and Regulation 18942.1, subd. (a).) Even though Respondent was also not required to repay the value of admittance he in fact repaid that admission cost as well.

### Count 3

#### **Making a Governmental Decision in which Official had a Financial Interest**

Respondent, while employed as CIO for State Fund, received gifts from Tibco in the form of airfare and hotel accommodations valued at \$806.70. Within 12 months of receiving those gifts, Respondent approved six changes and/or additions to a contractual agreement between Tibco and State Fund. These contract changes resulted in State Fund paying Tibco additional amounts for additional goods and/or services Tibco provided State Fund.

By approving the contract modifications with Tibco after receiving the gifts, Respondent made a governmental decision in which he knew, or had reason to know, that he had a financial interest as a result of receiving the gifts from Tibco, and it was reasonably foreseeable that those decisions to approve modifications to the contract with Tibco would have a material financial effect on Tibco, in violation of Section 87100.

### **CONCLUSION**

This matter consists of three counts, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) each for a total potential penalty of Fifteen Thousand Dollars (\$15,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission 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.

The Commission approved two stipulated decisions at the May, 2013 Commission meeting that concerned circumstances similar to Respondent's case. *In re Richard Hovden*, FPPC No. 13/239 ("*Hovden*") and *In re Marc Richardson*, FPPC No. 12/029 ("*Richardson*") both involved officials with the Recreation and Parks Department of the City of Santa Rosa who received gifts in the form of free golf rounds and related items from the company that operated a city-owned golf course. The two officials received free golf from 2008 through 2012. In total, the respondents in *Hovden* and *Richardson* received gifts from the golf course operator valued at \$4,479 and \$3,057.98, respectively. Neither reported the gifts on their SEIs, and in both cases the amount of the gifts exceeded the gift limit in some of those years. Further, in the *Richardson* case, the respondent negotiated a contract extension with the golf course company in 2009. Also, in 2012 he negotiated an amendment to that contract extension. Both of these actions constituted conflict of interest violations. In both cases, the respondents said they did not realize accepting free golf at the city-owned course was a violation and they paid back the gifts upon



learning that they had violated the Act. In *Hovden*, the respondent stipulated to one count for failure to disclose gifts on his SEIs for which he paid a penalty of \$1,000, and one count for receiving gifts over the limit for which he paid a penalty of \$2,000. In *Richardson*, the respondent stipulated to one count for failing to disclose the gifts on his SEIs for which he paid a penalty of \$1,000, one count for receiving gifts over the limit for which he paid a penalty of \$2,000, and two counts for participating in making governmental decisions in which he had a financial interest for which he paid a penalty a \$3,000 per count.

Another comparable case is *In the Matter of Antoinette Renwick* (FPPC No. 10/567), in which the Commission approved a stipulated decision on April 25, 2013. In that case, the respondent, the Inspector Services Manager for the City of Oakland, reviewed and approved contract bids on six separate occasions from a company owned by her former brother-in-law. The respondent had received a loan from her former brother-in-law on which she still owed him money at the times she approved the bids made by his company. The bids approved by the respondent resulted in contracts with the city for her former brother-in-law's company totaling \$118,545. Respondent did not disclose the loan from her former brother-in-law on her SEI. In resolving the case, the respondent stipulated to one count for failure to disclose the loan on her SEI for which she paid a penalty of \$3,000, and one count for making governmental decisions in which she had financial interest for which she paid a penalty of \$3,500.

In the present case, the value of the gifts Respondent received from Tibco, \$806.70, was not as high as in comparable cases. However, the gifts did come from Tibco, with whom Respondent's agency had an ongoing business relationship. Further, after receiving the gifts, Respondent approved work agreements with Tibco that committed State Fund to pay Tibco additional funds for additional goods and services. To Respondent's credit, he reimbursed Tibco for the value of the gifts, and voluntarily reimbursed Tibco for the cost of admission, and filed an amended SEI disclosing his receipt of the gifts prior to being contacted by the Commission regarding his violations.

### **PROPOSED PENALTY**

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,000 for Count 1, \$2,000 for Count 2, and \$4,000 for Count 3, for a total penalty of \$7,000, is recommended.

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# **EXHIBIT A**

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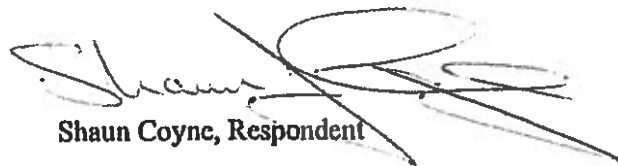


**FAIR POLITICAL PRACTICES COMMISSION  
ENFORCEMENT DIVISION**

**WAIVER OF RIGHT TO PROBABLE CAUSE CONFERENCE AND  
ADMINISTRATIVE HEARING**

1. I, the undersigned, am the Respondent in FPPC Case No. 12/768.
2. I acknowledge that I understand my rights to a probable cause conference and administrative hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws. I have been provided and understand advice by legal counsel as to my rights to a probable cause conference and administrative hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws.
3. I hereby waive my rights to a probable cause conference and administrative hearing and understand and agree that my case will proceed to a default recommendation by the Enforcement Division to the Fair Political Practices Commission at the Commission's next regularly-scheduled hearing.
4. This Waiver of Rights is not an admission that I have violated the Political Reform Act in FPPC Case No. 12/768

Dated: 2/4/2014

  
Shaun Coyne, Respondent

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