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

12 In the Matter of) FPPC No. 13/1125
13)
14) STIPULATION, DECISION and
15) ORDER
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Complainant the Enforcement Division of the Fair Political Practices Commission, and Respondent Robert Behee agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an 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 Robert Behee violated the Political Reform Act by making a
4 series of governmental decisions over a span of four years in which he had a financial interest, in
5 violation of Government Code Section 87100 (4 counts). All counts are described in Exhibit 1, which is
6 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
7 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 him an administrative penalty in the amount
10 of Twelve Thousand Dollars (\$12,000). A cashier's check from Respondent in said amount, made
11 payable to the "General Fund of the State of California," is submitted with this Stipulation as full
12 payment of the administrative penalty, to be held by the State of California until the Commission issues
13 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
14 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
16 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
17 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
18 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
19 shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

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

Dated: _____

Robert Behee,
Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Robert Behee,” FPPC No. 13/1125,
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.

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6 IT IS SO ORDERED.

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8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

1 **EXHIBIT 1**

2 **INTRODUCTION**

3 This case is the result of a referral from the Tuolumne County District Attorney’s Office.
4 Respondent Robert Behee (“Respondent”) served on the Tuolumne Utilities District (“TUD”) Board (the
5 “Board”) from December 9, 2008 to December 3, 2012. From June 9, 2009 to November 27, 2012,
6 Respondent Behee voted thirty nine (39) times to approve claim summaries including approximately
7 \$242,448 in prior payments made to Behee Enterprises, a corporation in which Respondent had a
8 financial interest, in violation of Section 87100 of the Political Reform Act (the “Act”)¹.

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

10
11 **COUNT 1:** In 2009, Respondent Robert Behee, while a member of the Tuolumne Utilities District
12 Board, made a series of governmental decisions in which he had a financial interest by
13 voting to approve six claim summaries, each including payments to his economic interest,
14 Behee Enterprises, in violation of Government Code Section 87100.

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16 **COUNT 2:** In 2010, Respondent Robert Behee, while a member of the Tuolumne Utilities District
17 Board, made a series of governmental decisions in which he had a financial interest by
18 voting to approve twelve claim summaries, each including payments to his source of
19 income, Behee Enterprises, in violation of Government Code Section 87100.

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21 **COUNT 3:** In 2011, Respondent Robert Behee, while a member of the Tuolumne Utilities District
22 Board, made a series of governmental decisions in which he had a financial interest by
23 voting to approve ten claim summaries, each including payments to his source of income,
24 Behee Enterprises, in violation of Government Code Section 87100.

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26 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references
27 are to the Government Code as it was in effect at the time of the violations, unless otherwise indicated. The
28 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 to Title 2, Division 6 of the California Code of Regulations as
in effect at the time of the violations, unless otherwise indicated.

1 COUNT 4 In 2012, Respondent Robert Behee, while a member of the Tuolumne Utilities District
2 Board, made a series of governmental decisions in which he had a financial interest by
3 voting to approve eleven claim summaries, each including payments to his source of
4 income, Behee Enterprises, in violation of Government Code Section 87100.

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6 **SUMMARY OF THE LAW**

7 **Conflicts of Interest**

8 The primary purpose of the conflict of interest provisions of the Act is to ensure that, “public
9 officials, whether elected or appointed, perform their duties in an impartial manner, free from bias
10 caused by their own financial interests or the financial interests of persons who have supported them.”
11 (Section 81001, subd. (b).)

12 In furtherance of this goal, Section 87100 prohibits a public official from making, participating
13 in making, or in any way attempting to use this official position to influence a governmental decision in
14 which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a
15 public official has a financial interest in a decision if it is reasonably foreseeable that the decision will
16 have a material financial effect on an economic interest of the official. For purposes of Section 87100
17 and 87103, there are six analytical steps to consider when determining whether an individual has a
18 conflict of interest in a governmental decision.²

19 **1. Public Official**

20 The individual must be a public official. Section 82048 defines “public official” to include
21 “every member, officer, employee or consultant” of a local government agency.

22 According to Regulation 18701, subdivision (a), "Member" includes all salaried or unsalaried
23 members of boards with decision making authority. Regulation 18701 further states that a board
24 possesses decision making authority whenever: (i) It may make a final governmental decision; (ii) It
25 may compel a governmental decision; or it may prevent a governmental decision either by reason of an
26 exclusive power to initiate the decision or by reason of a veto that may not be overridden; or (iii) It

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28 ² The two additional steps of the analysis – whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required – are not applicable to this case.

1 makes substantive recommendations that are, and over an extended period of time have been, regularly
2 approved without significant amendment or modification by another public official or governmental
3 agency.

4 **2. Decisions:**

5 The official must make, participate in making, or attempt to use his official position to influence
6 a governmental decision. A public official “makes a governmental decision” when the official, acting
7 within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3)
8 Obligates or commits his or her agency to any course of action; (4) Enters into any contractual
9 agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is
10 made because of his or her financial interest. (Reg. 18702.1, subd. (a).)

11 **3. Economic Interests:**

12 The official must have an economic interest, as defined in Section 87103, which may be
13 financially affected by the governmental decision. A public official has an economic interest in any
14 business entity in which the official holds the position of director, partner, or any other management
15 position with the business entity. (Section 87103.1, subd. (b).)

16 **4. Direct or Indirect Financial Effect on Economic Interests:**

17 It must be determined if the economic interest of the official is directly or indirectly involved in
18 the decision. (Reg. 18704.) Regulation 18704.1 provides, in pertinent part, that a person is directly
19 involved in a decision before an official’s agency when that person, either directly or by an agent: (1)
20 initiates the proceeding in which the decision will be made or; (2) is a named party in, or is the subject
21 of, the proceeding concerning the decision before the official or the official’s agency. Regulation
22 18704.1 further provides that a person is the “subject of a proceeding” if a decision involves the
23 issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or
24 contract with, the subject person.

25 **5. Material Financial Effect on Economic Interests:**

26 It must be determined if the governmental decision has a material financial effect on the
27 economic interest. The financial effects of a governmental decision on a business entity which is
28 directly involved in the governmental decision is presumed to be material. (Reg. 18705.1, subd. (b).)

1 **6. Foreseeability:**

2 At the time of the governmental decision, it must have been reasonably foreseeable that the
3 decision would have a material financial effect. (Regulation 18700, subd. (b)(6).) A material financial
4 effect on an economic interest is “reasonably foreseeable” if it is substantially likely that one or more of
5 the materiality standards applicable to the economic interest will be met as a result of the governmental
6 decision. (Reg. 18706, subd. (a).) An effect need not be certain to be considered "reasonably
7 foreseeable," but it must be more than a mere possibility. (In re Thorner (1975) 1 FPPC Ops. 198.)

8 **SUMMARY OF THE FACTS**

9 Respondent Robert Behee (“Respondent”) served on the Tuolumne Utilities District (“TUD”)
10 Board (the “Board”) from approximately December 9, 2008 to December 3, 2012. From May 9, 2009 to
11 November 27, 2012, Respondent voted thirty nine (39) times to approve claim summaries by consent
12 calendar that included approximately \$242,448 in prior payments made to Behee Enterprises.

13 Behee Enterprises (DBA Aqualab) is a water treatment laboratory located in Twain Harte, CA.
14 It is owned and operated by Respondent’s wife, Cathy Behee, and has performed testing for TUD since
15 approximately 1996. At all times relevant to this matter, Behee Enterprises’ corporate filings listed
16 Respondent as one of its three Directors. Respondent reported his financial interest in Behee Enterprises
17 on the three Statements of Economic Interest (SEI) he filed while in office. According to his SEIs,
18 Respondent’s interests in Behee Enterprises included Behee Enterprises itself, rental income provided
19 by Behee Enterprises in excess of \$10,000, and his spouse’s income in excess of \$10,000 from Behee
20 Enterprises. Respondent and former TUD leadership contend that Behee Enterprises is the “single
21 source” for bacteria testing in the area. However, on or about April 16, 2013, TUD issued a request for
22 proposal (“RFP”) for bacteria testing that was responded to by five laboratories and two bids were
23 submitted.

24 During Respondent’s tenure on the Board, TUD Resolution 37-02 governed the approval and
25 processing of TUD claim summaries. According to Resolution 37-02, the Board must approve the claim
26 summary before it can be signed by the general manager or controller. Though in practice, the claim
27 summary approval process consisted of the TUD providing the Board with an agenda request form,
28

1 presumed to have a reasonably foreseeable material financial effect on Behee Enterprises because Behee
2 Enterprises was directly involved.

3 In acting as described above, Respondent Robert Behee committed one violation of Section
4 87100.

5 **Count 2**

6 Between approximately January 12, 2010 and November 26, 2010, Respondent, in his capacity
7 as a member of the TUD Board, voted twelve times to approve TUD claim summaries including prior
8 payments to Behee Enterprises. The payments were for bacteria testing charges totaling approximately
9 \$65,471.

10 Respondent is a member of a county utilities board with decision making authority, and thus is
11 considered a public official for purposes of the Act. Each time Respondent voted to approve claim
12 summaries including prior payments to Behee Enterprises, Respondent was making a governmental
13 decision in which he knew or had reason to know that he had a financial interest. Respondent's
14 financial interest in Behee Enterprises is based on his serving as one of Behee Enterprises' Directors at
15 all times relevant to this matter. Behee Enterprises was directly involved in all twelve of the decisions
16 made by Respondent in 2010 because the decisions were (1) initialized by invoices provided to the TUD
17 by Behee Enterprises, and (2) concerned the approval of payments to Behee Enterprises. The twelve
18 decisions are presumed to have a reasonably foreseeable material financial effect on Behee Enterprises
19 because Behee Enterprises was directly involved.

20 In acting as described above, Respondent Robert Behee committed one violation of Section
21 87100.

22 **Count 3**

23 Between approximately January 11, 2011 and December 13, 2011, Respondent, in his capacity
24 as a member of the TUD Board, voted ten times to approve TUD claim summaries including prior
25 payments to Behee Enterprises. The payments were for bacteria testing charges totaling approximately
26 \$70,031.

27 Respondent is a member of a county utilities board with decision making authority, and thus is
28 considered a public official for purposes of the Act. Each time Respondent voted to approve claim

1 summaries including prior payments to Behee Enterprises, Respondent was making a governmental
2 decision in which he knew or had reason to know that he had a financial interest. Respondent's
3 financial interest in Behee Enterprises is based on his serving as one of Behee Enterprises' Directors at
4 all times relevant to this matter. Behee Enterprises was directly involved in all ten of the decisions made
5 by Respondent in 2011 because the decisions were (1) initialized by invoices provided to the district by
6 Behee Enterprises, and (2) concerned the approval of payments to Behee Enterprises. The ten decisions
7 are presumed to have a reasonably foreseeable material financial effect on Behee Enterprises because
8 Behee Enterprises was directly involved.

9 In acting as described above, Respondent Robert Behee committed one violation of Section
10 87100.

11 **Count 4**

12 Between approximately January 24, 2012 and November 27, 2012, Respondent, in his capacity
13 as a member of the TUD Board, voted eleven times to approve TUD claim summaries including prior
14 payments to Behee Enterprises. The payments were for bacteria testing charges totaling approximately
15 \$67,559.

16 Respondent is a member of a county utilities board with decision making authority, and thus is
17 considered a public official for purposes of the Act. Each time Respondent voted to approve claim
18 summaries including prior payments to Behee Enterprises, Respondent was making a governmental
19 decision in which he knew or had reason to know that he had a financial interest. Respondent's
20 financial interest in Behee Enterprises is based on his serving as one of Behee Enterprises' directors at
21 all times relevant to this matter. Behee Enterprises was directly involved in all eleven of the decisions
22 made by Respondent in 2012 because the decisions were (1) initialized by invoices provided to the
23 district by Behee Enterprises, and (2) concerned the approval of payments to Behee Enterprises. The
24 eleven decisions are presumed to have a reasonably foreseeable material financial effect on Behee
25 Enterprises because Behee Enterprises was directly involved.

26 In acting as described above, Respondent Robert Behee committed one violation of Section
27 87100.

1 **CONCLUSION**

2 This matter consists of four counts, which carry a maximum possible administrative penalty of
3 20,000 Thousand Dollars (\$20,000).

4 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
5 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
6 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
7 considers the facts and circumstances of the violation in context of the factors set forth in Regulation
8 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to
9 deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether
10 the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a
11 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily
12 filed amendments to provide full disclosure. Additionally, liability under the Act is governed in
13 significant part by the provisions of Section 89001, subdivision (c), which requires the Commission to
14 consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of
15 good faith, in applying remedies and sanctions.

16 Making a governmental decision in which an official has a financial interest may create the
17 appearance that the governmental decision was a product of that conflict of interest. Penalties for
18 conflict of interest violations in recent years have ranged from \$3,000 to \$4,500, depending on the
19 circumstances of each case. Recent prior penalties concerning conflict of interest violations include:

- 20 • ***In the Matter of Randy Mark***, FPPC No. 12/101. Randy Mark was the Chief District Operator
21 for the Grizzly Lake Community Services District. Respondent signed or initialed
22 approximately 45 equipment rental contracts worth over \$11,000 over seven months between
23 Respondent’s employer and his wife’s business, which was a source of income for him through
24 her. In mitigation, the District had a business relationship with the vendor that predated
25 respondent’s tenure as Chief District Operator and using another vendor was not practicable as
26 the only alternative was out-of-state. On February 28, 2013, the Commission imposed a fine of
27 \$4,000 for the one count.

- *In the Matter of Theodore Park*, FPPC No. 11/058. Over a period of four months, respondent Park, then Acting Deputy Director of the Real Estate Services Division of the California Department of General Services, made five 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 spouse's total share of income attributable to the client that was directly involved in the governmental decision was \$40,000 over a four year period. In mitigation, 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. On July 12, 2012, the Commission approved a \$3,500 fine for the one count.

In this matter, Respondent made thirty nine governmental decisions in which he knew or should have known he had a financial interest. The decisions were made over nearly four years, during which Respondent had ample opportunity to consult with counsel as to whether there was a conflict. Furthermore, as noted above, Respondent received notice that he may have a conflict, but refused to recuse himself.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,000 per count, for a total of \$12,000, is justified. A higher penalty is not being sought because, while Respondent takes full responsibility for his actions, he asserts that he believed in good faith that his actions were not in violation of the law. Respondent's mistaken, albeit good faith, belief was based in part on incorrect advice provided by TUD leadership. In further mitigation, Respondent was forthright about his interest in Behee Enterprises, disclosing it on all of his SEIs. Additionally, TUD's business relationship with Behee Enterprises began at least ten years before Respondent assumed a position on the Board.

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 Twelve Thousand Dollars (\$12,000) is recommended.

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