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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: TIMOTHY SIMON, Respondent.	FPPC Case No. 15/189 STIPULATION, DECISION AND ORDER

INTRODUCTION

Timothy Simon was appointed to the California Public Utilities Commission by Governor Arnold Schwarzenegger in February 2007. Simon held this position until the end of 2012.

This case involves failure to report gifts/travel payments on a statement of economic interest that Simon filed when he left office, as well as acceptance of an over-the-limit gift during Simon's last year in office—in violation of the Political Reform Act.[1]

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. Most of the violations in this case occurred in 2012 and early 2013. For this reason, all legal references and discussions of law pertain to the Act's provisions as they existed at that time—unless otherwise noted.

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[1] The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.[2] Thus, it was decreed that the Act "should be liberally construed to accomplish its purposes."[3]

One purpose of the Act is to promote transparency and prohibit conflicts of interest by ensuring that public officials disclose their assets and income.[4] Along these lines, the Act includes comprehensive disclosure requirements.[5] Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."[6]

Required Filing of Statements of Economic Interests

Certain public officials, including members of the Public Utilities Commission, must file statements of economic interests on an annual basis.[7] Also, within 30 days after leaving office, such officials must file leaving office statements of economic interest—covering the period of time since the end of the last filing.[8] These types of filings sometimes are referred to as SEI's or Form 700's.

Required Reporting of Gifts and Travel Payments

Among other things, statements of economic interests must disclose certain information about gifts of $50 or more in value, including the following: the name, address, and a general description of the business activity (if any) of each donor; the value of the gift; and the date of receipt.[9] Also, certain travel-related payments from third parties, including advances and reimbursements, must be reported.[10]

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[2] Section 81001, subdivision (h).
[3] Section 81003.
[4] Section 81002, subdivision (c).
[5] Sections 87200, et seq.
[6] Section 81002, subdivision (f).
[7] Sections 87200 and 87203.
[8] Section 87204.
[9] Section 87207, subdivisions (a)(1) and (4).
[10] Section 87207, subdivision (c).

Gift Limits

Certain public officials, including members of the Public Utilities Commission, are prohibited from accepting gifts from any single source in any calendar year with a total value of more than $420.[11]

SUMMARY OF THE FACTS

At the end of 2012, Simon's term of office with the Public Utilities Commission ended. In January 2013, he filed a leaving office SEI for the 2012 calendar year, but the filing disclosed no reportable interests on any schedule.

VIOLATIONS

Count 1

Failure to Report Gifts and Travel Payments on Leaving Office SEI

On Simon's leaving office SEI, he was required to disclose gifts and travel-related payments that he received during the 2012 calendar year from approximately 40 sources—totaling roughly $21,000. However, he failed to do so.

In this way, Simon violated Section 87207, subdivisions (a) and (c).

Count 2

Acceptance of Over-the-Limit Gift

One of the gifts encompassed by Count 1 is an award that Simon accepted from the National Association of Securities Professionals in June 2012. (Investigation revealed that it was called the Pacesetter Award, but it is unclear whether it was a trophy, a plaque, or some other type of award.) The value of the award was approximately $1,600—which exceeded the applicable gift limit of $420 per donor per calendar year by $1,180.

By accepting this over-the-limit gift, Simon violated Section 89503, subdivision (a).

PROPOSED PENALTY

This matter consists of two counts. The maximum penalty that may be imposed is $5,000 per count. Thus, the maximum penalty that may be imposed is $10,000.[12]

[11] Section 89503, subdivisions (a) and (f); Regulation 18940.2.

[12] See Section 83116, subdivision (c).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.[13] Additionally, the Commission considers penalties in prior cases with comparable violations.

Regarding Count 1, the public harm inherent in SEI reporting violations is that the public is deprived of important information about the assets and income of public officials. These types of violations make it harder to detect other violations—such as Count 2, which involves over-the-limit gifting.

Recently, the Commission approved a settlement in a similar type of case. See *In the Matter of Edward C. Vasquez*; FPPC Case No. 14/1103 (approved Feb. 19, 2015), where the Commission approved a settlement involving a member of the Central Basin Municipal Water District who failed to report 28 gifts totaling approximately $4,376 on SEI's for four calendar years. This was charged as a single count—for which a penalty in the amount of $3,000 was imposed. Also, the respondent accepted over-the-limit gifts totaling approximately $4,221 from a single donor in three different calendar years. This was charged as a single count as well—for which a penalty in the amount of $4,000 was imposed. Additionally, the respondent made numerous government decisions involving the donor of the unreported, over-the-limit gifts, and these decisions were charged as seven different conflict of interest counts (for which a penalty in the amount of $3,500 per count was imposed). The SEI reporting violation served to conceal the other violations.

Both *Vasquez* and the current case involve recipients who accepted over-the-limit gifts—without reimbursing the donors to "pay down" the value of these gifts. Also, both cases involve SEI reporting violations that served to conceal acceptance of these over-the-limit gifts. However, there are three

[13] Regulation 18361.5, subdivision (d).

important differences between the *Vasquez* case and the current case, which justify a reduced penalty in the current case.

First, a higher penalty was warranted in *Vasquez* for the SEI non-reporting because the non-reporting served to conceal several conflicts of interest. In the current case, no evidence of a conflict of interest was found.

Second, the SEI non-reporting in *Vasquez* involved a pattern of non-reporting that took place over four years, which were charged as a single count—but the current case only involves non-reporting on a single SEI. Granted, the current case involves more in terms of unreported payments (28 gifts totaling approximately $4,376 in *Vasquez*—compared to gifts and travel payments from approximately 40 sources totaling roughly $21,000 in the current case), but the current case does not involve a pattern of violations on multiple SEI's over several years.

Third, the over-the-limit gifting in *Vasquez* involved a pattern that took place over three years, which were charged as a single count. In contrast, the current case involves one over-the-limit gift that was received in a single calendar year. Also, *Vasquez* involved much greater over-the-limit gifting than the current case. (The value of the gifts in the *Vasquez* case exceeded the applicable limit for the calendar years in question by approximately $2,961. The gift in the current case exceeded the applicable limit by $1,180.)

Under these circumstances, penalties in the amounts of $2,000 for Count 1 and $3,500 for Count 2 are warranted.

Higher penalties are not being sought because Simon fully cooperated with the Enforcement Division and agreed to a tolling agreement with respect to the statute of limitations. Also, he does not have a history of prior violations of the Act. (Additionally, while not necessarily mitigating, Simon maintains he did not realize that the Pacesetter Award was an over-the-limit gift, and with respect to Count 1, Simon's practice throughout his tenure at the PUC had been to rely upon staff to maintain travel and gift records and fill out and attach the necessary disclosure schedules for his SEI filings, and he expected they would do so for his leaving office statement. However, staff did not do this for his leaving office SEI.)

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Lower penalties are not being recommended in this case because Simon was an experienced and sophisticated public official—with ample reason to be familiar with the Political Reform Act. The violations in this case occurred during the last year of Simon's six-year term with the Public Utilities Commission—after he would have filed many other SEI's and received many other gifts as a public official. Prior to this, he served as the Appointments Secretary to Governor Schwarzenegger. Also, at the time of the violations in this case, Simon had been an attorney for 15 years.

For the foregoing reasons, the total penalty that is being recommended in this case is as follows:

Count	Violation	Penalty
1	SEI Non-Reporting	$2,000
2	Acceptance of Over-the-Limit Gift	$3,500
		Total: $5,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Timothy Simon hereby agrees as follows:

1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.

2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent pursuant to Section 83116.

4. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally 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 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

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5. Respondent agrees to the issuance of the decision and order set forth below. Also, Respondent agrees to the Commission imposing against him an administrative penalty in the amount of $5,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding this matter.

6. If the Commission refuses to approve this stipulation—then this stipulation shall become null and void, and within fifteen business days after the Commission meeting at which the stipulation is rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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7. The parties to this agreement may execute their respective signature pages separately. A copy of any party's executed signature page—including a hardcopy of a signature page transmitted via fax or as a PDF email attachment—is as effective and binding as the original.

Dated: ________________________ ____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: ________________________ ____
Timothy Simon, Respondent

The foregoing stipulation of the parties "In the Matter of Timothy Simon," FPPC Case No. 15/189, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: ____________________ ____
Joann Remke, Chair
Fair Political Practices Commission