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7  
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of:

12 KATHRIN SEARS,

13 Respondent.

FPPC Case No. 17/453

STIPULATION, DECISION AND ORDER

14  
15 **INTRODUCTION**

16 Kathrin Sears is currently a Marin County Supervisor and has been since 2011. Additionally,  
17 Sears is the Chair of the MCE Clean Energy Board. Sears was appointed to the MCE Clean Energy  
18 Board (“Board”) by Marin County.

19 This case involves a violation of the conflict of interest provisions of the Political Reform Act.<sup>1</sup>

20 **SUMMARY OF THE LAW**

21 The Act and its regulations are amended from time to time. For this reason, all legal references  
22 and discussions of law pertain to the Act’s provisions as they existed at that time—unless otherwise  
23 noted.

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27 <sup>1</sup> 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  
28 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references  
are to this source.



1 concerning the decision before the official or the official's agency.<sup>12</sup> The reasonably foreseeable financial  
2 effect of a governmental decision on a business entity in which an official has a financial interest is  
3 presumed material if the financial interest is the subject of the governmental decision.<sup>13</sup>

#### 4 **SUMMARY OF THE FACTS**

5 Sears has been a member of the Marin County Board of Supervisors since 2011. Marin County  
6 appointed Sears to the Board. Sears is the Chair of the Board, a designated position in the agency's  
7 conflict of interest code. As Chair of the Board, Sears was authorized to execute short term power  
8 purchase agreements for energy. In this capacity, on November 14, 2014, Sears signed a contract with  
9 Shell Energy North America for a term of 3 years, from January 1, 2015, though December 31, 2017,  
10 with a maximum annual amount of approximately \$5 million for hydroelectric power.

11 At the time of signing this contract with Shell Energy North America, she owned stock in Royal  
12 Dutch Shell, the parent company to Shell Energy North America, of approximately \$27,750. Sears  
13 disclosed her interest in the Royal Dutch Shell stock on her 2014 Annual Statements of Economic  
14 Interests. Sears inherited the stock from her parents after her mother's death. She contends that she did  
15 not actively trade the stock and did not recall that she owned the stock at the time she participated in the  
16 decision.

17 This case was opened as the result of a formal complaint alleging a conflict of interest under the  
18 Act and a Government Code Section 1090 violation. After review of the evidence, the Enforcement  
19 Division did not charge the Government Code Section 1090 based on the non-interest exemption in  
20 Section 1091.5, subdivision (a)(1), which states that an official has a non-interest in a business  
21 corporation, in which they own less than 3% of its shares, as long as the official's total annual income  
22 from dividends and stock dividends from the corporation amounts to less than 5% of his or her total  
23 annual income and any other income received from the corporation also amounts to less than 5% of his  
24 or her total annual income.

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28 <sup>12</sup> Former Section 18704.1, (a)(2).

<sup>13</sup> Former Regulations 18704.1, subdivision (a)(2); 18705.1, subdivision (b)(1) and 18706.

1 **VIOLATIONS**

2 **Count 1**

3 *Conflict of Interest*

4 Sears, who owned Royal Dutch Shell stock, the parent company to Shell Energy North America,  
5 valued at over \$2,000, reviewed and signed the contract with Shell Energy North America as the Chair of  
6 the Board. This decision had a reasonably foreseeable material financial effect on Shell Energy North  
7 America because it resulted in Shell Energy North America receiving a contract to provide energy with a  
8 maximum annual amount of approximately \$5 million.

9 In this way, Sears violated Section 87100.

10 **PROPOSED PENALTY**

11 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per  
12 count.<sup>14</sup>

13 In determining the appropriate penalty for a particular violation of the Act, the Commission  
14 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
15 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
16 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
17 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
18 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
19 record of violations.<sup>15</sup> Additionally, the Commission considers penalties in prior cases with comparable  
20 violations.

21 Applying the factors to this case, a conflict of interest violation is a serious violation under the  
22 Act. However, the evidence suggests that there was no intent to conceal, deceive or mislead, as the stock  
23 was timely disclosed on her SEIs. She contends she did not realize she had a conflict of interest when she  
24 participated in making the decision, and made no attempt to conceal her action or financial interest.  
25 Furthermore, after learning of her mistake, Sears contends she divested the stock on May 15, 2017, in  
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<sup>14</sup> See Section 83116, subdivision (c).

28 <sup>15</sup> Regulation 18361.5, subdivision (d).

1 order to eliminate the potential for future conflicts related to Shell Energy North America and this  
2 incident was isolated and not part of a pattern.

3 The Commission approved a settlement in a similar type of case. *In the Matter of Gregory Cox,*  
4 *FPPC No. 16/292*, in April 2016, the Commission approved a settlement involving the Coastal  
5 Commissioner Gregory Cox, who voted on a matter involving SeaWorld while he and his wife owned  
6 approximately \$8,679 in SeaWorld stock. In mitigation, Cox contended that he did not realize his wife  
7 purchased the SeaWorld stock and he self-reported this conflict of interest. A penalty of \$3,000 was  
8 imposed for this violation.

9 *In the Matter of Simon Lee, FPPC No. 16/677*, in September 2017, the Commission approved a  
10 settlement involving an alternate member of the City of San Marino Planning Commission and a member  
11 of the City of San Marino Design Review Committee Simon Lee, an architect who owned Simon Lee &  
12 Associates. Lee, in his capacity as a member of the Design Review Committee, voted to approve two  
13 separate applications for clients to his firm, of which he received income of \$500 or more within the prior  
14 12 months. In aggravation, Lee received income of \$50,000 from each client whose projects he approved  
15 while on the Design Review Committee and failed to disclose the income on the relevant Statement of  
16 Economic Interest. A penalty of \$3,500 was imposed for each conflict of interest violation.

17 In this matter, Sears fully cooperated with the Enforcement Division and agreed to settle early in  
18 this case. Further, she does not have a history of prior violations of the Act. While an exception to the  
19 presumption of materiality existed at the time of this violation where a public official's investment in a  
20 business entity listed in the Fortune 500 is \$25,000 or less would cause the application of the standards  
21 for indirectly involved business entities to be applied instead, this exception does not apply in this case  
22 since Sears' interest was over the threshold.<sup>16</sup>

23 For the foregoing reasons, the total penalty that is being recommended in this case is \$3,000.

## 24 CONCLUSION

25 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
26 Respondent Kathrin Sears hereby agrees as follows:

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28 <sup>16</sup> Former Regulation 18705.1, subdivision (b)(2).

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

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

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

8           4.       Respondent has consulted with her attorney, James Harrison of Remcho, Johansen &  
9 Purcell, LLP, and understands, and hereby knowingly and voluntarily waives, all procedural rights set  
10 forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is  
11 not limited to the right to appear personally at any administrative hearing held in this matter, to be  
12 represented by an attorney at Respondent’s own expense, to confront and cross-examine all witnesses  
13 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
14 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
15 reviewed.

16           5.       Respondent agrees to the issuance of the decision and order set forth below. Also,  
17 Respondent agrees to the Commission imposing against her an administrative penalty in the amount of  
18 \$3,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
19 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
20 administrative penalty described above, and same shall be held by the State of California until the  
21 Commission issues its decision and order regarding this matter.

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

28           7.       The parties to this agreement may execute their respective signature pages separately. A

1 copy of any party’s executed signature page—including a hardcopy of a signature page transmitted via  
2 fax or as a PDF email attachment—is as effective and binding as the original.

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5 Dated: \_\_\_\_\_  
6 Galena West, Chief of Enforcement  
7 Fair Political Practices Commission

8 Dated: \_\_\_\_\_  
9 Kathrin Sears, Respondent

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13 The foregoing stipulation of the parties “In the Matter of Kathrin Sears,” FPPC Case No. 17/453,  
14 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective  
15 upon execution below by the Chair.

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17 IT IS SO ORDERED.

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19 Dated: \_\_\_\_\_  
20 Joann Remke, Chair  
21 Fair Political Practices Commission