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

11 In the Matter of:

12 WYN HOLMES,

13 Respondent.
14

FPPC Case No. 16/589

STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Wyn Holmes (“Holmes”) is a real estate developer in Southern California.
17 Northwoods-Palm Springs, LLC.; Northwoods Cathedral City, L.P.; Cedar Creek, L.P.; Redlands Towne
18 Square, LLC; and NU-156 (collectively “Holmes Entities”) are entities Holmes has an ownership interest
19 in. The Fair Political Practices Commission is authorized pursuant to the Political Reform Act (the
20 “Act”)¹ to be the civil prosecutor for violations of the County of San Bernardino Campaign Finance
21 Ordinance (hereinafter referred to as the “San Bernardino Ordinance”).² The Commission is authorized
22 to bring administrative actions for violations of the San Bernardino Ordinance pursuant the Act.³ In 2015
23 and 2016, the San Bernardino Ordinance prohibited a person from contributing to a candidate more than
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26 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
27 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
28 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.

² Section 83123.5.

³ Section 83123.5, subdivision (a)(2).

1 \$4,200 per election. Furthermore, the Act requires a person that contributes \$10,000 or more in a
2 calendar year to file a major donor report. Holmes and the Holmes Entities violated the San Bernardino
3 Ordinance by making two contributions over the limit. Holmes also violated the Act by failing to file two
4 consecutive major donor campaign statements and by failing to file a late contribution report.

5 **SUMMARY OF THE LAW**

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

7 When enacting the Political Reform Act, the people of California found and declared that
8 previous laws regulating political practices suffered from inadequate enforcement by state and local
9 authorities.⁴ For this reason, the Act is to be construed liberally to accomplish its purposes.⁵

10 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
12 practices are inhibited.⁶ Along these lines, the Act includes a comprehensive campaign reporting
13 system—and the true sources of campaign contributions may not be concealed.⁷ Another purpose of the
14 Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁸

15 **Contribution Limits**

16 The San Bernardino Ordinance has adopted the contribution limits set forth in the Act for
17 candidates running for state office. The law states, “A person may not make to a candidate or the
18 candidate’s controlled committee, and a candidate or the candidate’s controlled committee may not
19 accept from a person, any contribution totaling more than per election amount permitted in Government
20 Code section 85301(a), as adjusted by the Fair Political Practices Commission pursuant to California
21 Code of Regulations title 2, section 18544...Each primary, general, special, and recall election is a
22 separate election for the purposes of this chapter.”⁹ In 2015 and 2016, the contribution limit was \$4,200,
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25 ⁴ Section 81001, subdivision (h).

26 ⁵ Section 81003.

27 ⁶ Section 81002, subdivision (a).

28 ⁷ Sections 84200, *et seq.* and 84301.

⁸ Section 81002, subdivision (f).

⁹ San Bernardino Ordinance Section 12.4305 (a).

1 meaning that an individual could contribute to a single candidate \$4,200 for the primary election and
2 \$4,200 for the general election, totaling \$8,400.¹⁰

3 The San Bernardino Ordinance has determined for the purposes of the contribution limits and
4 reporting requirements, certain contributions from individuals and entities must be aggregated. The
5 following contributions must be aggregated, "... (1) The contributions of an entity whose contributions
6 are directed and controlled by an individual shall also be treated as the contributions of the individual. (2)
7 The contributions of an entity whose contributions are directed and controlled by two or more individuals
8 shall also be treated as the contributions, on a pro rata basis, of the individuals..."¹¹

9 **Major Donor Campaign Statement**

10 Under the Act, a committee is defined as "...any person or combination of persons who directly
11 or indirectly does any of the following: ... makes contributions totaling ten thousand dollars (\$10,000) or
12 more in a calendar year to or at the behest of candidates or committees."¹² An individual who qualifies as
13 a committee under subdivision (c) "shall file campaign statements each year no later than July 31 for the
14 period ending June 30, and no later than January 31 for the period ending December 31, if they have
15 made contributions or independent expenditures during the six-month period before the closing date of
16 the statements."¹³

17 **Late Contribution Report**

18 The Act defines a late contribution as "A contribution, including a loan, that totals in the
19 aggregate one thousand dollars (\$1,000) or more and is made to or received by a candidate, a controlled
20 committee, or a committee formed or existing primarily to support or oppose a candidate or measure
21 during the 90-day period preceding the date of the election, or on the date of the election..."¹⁴ If a
22 candidate or committee makes a late contribution they "...shall report the late contribution...within 24
23 hours of the time it is made in the case of the candidate or committee that makes the contribution..."¹⁵

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¹⁰ Section 85301 and Regulation 18544.

26 ¹¹ San Bernardino Ordinance Section 12.4307, subdivisions (a) and (b)(1) and (2).

27 ¹² Section 82013, subdivision (c).

28 ¹³ Section 84200, subdivision (b).

¹⁴ Section 82036, subdivision (a).

¹⁵ Section 84203, subdivisions (a) and (b).

1 **SUMMARY OF THE FACTS**

2 In the June 7, 2016, Primary Election, Bill Holland (“Holland”) and Paul Russ (“Russ”) were
3 unsuccessful candidates for the San Bernardino County Board of Supervisors District 1 Election.

4 Contributions to Holland

5 On October 21, 2015, the Holmes Entities contributed a total of \$16,000 to Holland. Holmes and
6 his business partner, Randall Friend (“Friend”), jointly directed and controlled \$12,000 of the \$16,000 in
7 contributions made to Holland through these entities. The remaining \$4,000 was directed and controlled
8 solely by Holmes.

9 As a result of aggregating the contributions made by the Holmes Entities, Holmes contributed a
10 total of \$10,000 to Holland, which exceeded contribution limit by \$1,600. The following chart details the
11 over-the-limit contributions Holmes made to Holland:

Date	Contributing Entity	Total Contribution	Holmes Pro Rata Contribution
Oct. 21, 2015	Northwoods-Cathedral City, LP	\$4,000	\$2,000
Oct. 21, 2015	Cedar Creek, LP	\$4,000	\$2,000
Oct. 21, 2015	Redlands Towne Square, LLC	\$4,000	\$2,000
Oct. 21, 2015	NU-156	\$4,000	\$4,000
	Total:	\$16,000	\$10,000

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20 Contributions to Russ

21 The Holmes Entities contributed a total of \$19,000 to Russ. Holmes and Friend jointly directed
22 and controlled \$15,000 of the \$19,000 in contributions made to Russ through these entities. The
23 remaining \$4,000 was directed and controlled solely by Holmes.

24 As a result of aggregating the contributions made by the Holmes Entities, Holmes contributed a
25 total of \$11,500 to Russ, which exceeded contribution limit by \$3,100. The following chart details the
26 over-the-limit contributions Holmes made to Russ:

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Date	Contributing Entity	Total Contribution	Holmes Pro Rata Contribution
March 1, 2015	Northwoods-Palm Springs, LLC	\$500	\$250
April 23, 2015	Northwoods-Palm Springs, LLC	\$2,500	\$1,250
Mar. 11, 2016	Northwoods-Cathedral City, LP	\$4,000	\$2,000
Mar. 11, 2016	Cedar Creek, LP	\$4,000	\$2,000
Mar. 11, 2016	Redlands Towne Square, LLC	\$4,000	\$2,000
Mar. 11, 2016	NU-156	\$4,000	\$4,000
	Total:	\$19,000	\$11,500

Major Donor Campaign Statements

In 2015, the Holmes entities made a total of \$26,500 in contributions to various candidates and committees. Holmes' pro rata share of this amount was \$16,750 because he either jointly directed and controlled the contributions or was solely responsible for directing and controlling the contributions. Holmes met the qualifications for a major donor on October 21, 2015 after he directed and controlled \$10,000 in contributions to Holland for Supervisor. Therefore, Holmes should have filed a major donor campaign statement covering all the contributions he made in 2015 by January 31, 2016. The following charts details the contributions Holmes should have used a major donor campaign statement to disclose in 2015:

Date:	To	Contributing Entity	Total Contribution	Holmes Pro Rata Share
March 1, 2015	Russ Supervisor	Northwoods-Palm Springs, LLC	\$500.00	\$250.00
April 23, 2015	Russ Supervisor	Northwoods-Palm Springs, LLC	\$2,500.00	\$1,250
May 20, 2015	Russ Blewett - HCC	Eagle Colton 55, LP	\$500.00	\$250.00
May 20, 2015	Kelly No Recall	Northwoods-Palm Springs, LLC	\$2,000.00	\$1,000.00
May 20, 2015	Kelly No Recall	Admar Management Corp.	\$1,000.00	\$1,000.00
May 20, 2015	Kelly No Recall	NU-156 Apartments, LLC	\$1,000.00	\$1,000.00

May 20, 2015	Kelly No Recall	Northwoods Construction Co., Inc.	\$1,000.00	\$1,000.00
May 20, 2015	Kelly No Recall	Eagle Colton 55, LP	\$2,000.00	\$1,000.00
October 21, 2015	Holland for Supervisor	Canyon Vista Apartments (Cathedral city)	\$4,000.00	\$2,000.00
October 21, 2015	Holland for Supervisor	Cedar Creek Apartments	\$4,000.00	\$2,000.00
October 21, 2015	Holland for Supervisor	Concord Square Apartments (NU-156)	\$4,000.00	\$4,000.00
October 21, 2015	Holland for Supervisor	Redlands Tower Square Apartments	\$4,000.00	\$2,000.00
TOTALS			\$26,500	\$16,750

In 2016, Holmes Entities made total of \$16,000 in contributions to Russ for Supervisor. Holmes' pro rata share of this amount was \$10,000 because he either jointly directed and controlled the contributions or was solely responsible for directing and controlling the contributions. Holms met the qualifications for a major donor on March 11, 2016 after he directed \$10,000 in contributions to Russ for Supervisor. Therefore, Holmes was required to file a major donor statement by July 31, 2016. The following charts details the contributions Holmes should have used a major campaign statement to disclose:

Date:	To:	Contributing Entity	Total Contribution	Holmes Pro Rata Share
3/11/2016	Russ for Supervisor	Canyon Vista Apartments (Cathedral city)	\$4,000.00	\$2,000.00
3/11/2016	Russ for Supervisor	Cedar Creek Apartments	\$4,000.00	\$2,000.00
3/11/2016	Russ for Supervisor	Concord Square Apartments (NU-156)	\$4,000.00	\$2,000.00
3/11/2016	Russ for Supervisor	Redlands Tower Square Apartments	\$4,000.00	\$4,000.00
TOTALS			\$16,000	\$10,000

Holmes has filed his missing statements in conjunction with settlement.

Late Contribution Report

In 2016, Holmes qualified as a committee after he contributed \$10,000 Russ for Supervisor on March 11, 2016. Because Holmes qualified as a committee and made the contributions within 90 days of the election he was required to disclose them on a late contribution report due March 12, 2016.

1 **VIOLATIONS**

2 Count 1: Making Contributions Over the Limit

3 Holmes directed and controlled contributions from Northwoods Cathedral City, L.P.; Cedar
4 Creek, L.P.; Redlands Towne Square, LLC; and NU-156 to Holland in 2015 that when aggregated totaled
5 \$10,000 and exceeded the individual contribution limit of \$8,400, in violation of San Bernardino
6 Ordinance 12.4305, subdivision (a).

7 Count 2: Making Contributions Over the Limit

8 Holmes directed and controlled contributions from Northwoods-Palm Springs, LLC, Northwoods
9 Cathedral City, L.P.; Cedar Creek, L.P.; Redlands Towne Square, LLC; and NU-156 to Russ in 2015 and
10 2016 that when aggregated totaled \$11,500 and exceeded the contribution limit of \$8,400, in violation of
11 San Bernardino Ordinance 12.4305, subdivision (a).

12 Count 3: Failure to File a Major Donor Campaign Statements

13 Holmes failed to timely file Major Donor campaign statements in 2015 and 2016 in violation of
14 Government Code 84200, subdivision (b).

15 Count 4: Failure to File a Late Contribution Report

16 Holmes failed to file a late contribution report within 24-hours after making a contribution of
17 \$10,000 to Russ for Supervisor on March 11, 2016, due by March 12, 2016, in violation of Government
18 Code section 84203.

19 **PROPOSED PENALTY**

20 This matter consists of 4 counts. The maximum penalty that may be imposed is \$5,000 per count.
21 Thus, the maximum penalty that may be imposed is \$20,000.¹⁶

22 In determining the appropriate penalty for a particular violation of the Act, the Commission
23 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
24 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
25 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
26 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
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28 ¹⁶ See Section 83116, subdivision (c).

1 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
2 record of violations.¹⁷ Additionally, the Commission considers penalties in prior cases with comparable
3 violations.

4 The Enforcement Division did not find evidence of intentional concealment. Holmes cooperated
5 with Enforcement Division's investigation in this matter. Holmes' actions were negligent in calculating
6 his contributions totaled when aggregated, which resulted in making over-the-limit contributions and not
7 filing the appropriate campaign statements. Holmes does not have a prior history of violating the Act.

8 The most recent penalty approved by the Commission that addresses the issue of an individual
9 violating the contribution limits by directing and controlling the contributions of multiple entities is *In*
10 *the Matter of Daniel Stephenson, et. al.*; FPPC Case No. 15/1545 (approved Dec. 17, 2015). In the
11 *Stephenson* matter, the Commission approved a one count – \$3,500 penalty against *Stephenson* for
12 directing and controlling the contributions of multiple entities that totaled \$16,008.58 of monetary and
13 non-monetary contributions, which exceeded the contribution limit by \$7,600. Because *Stephenson*
14 directed and controlled these contributions the Act requires these contributions to be aggregated as the
15 contributions of the individual.

16 Regarding Counts 1 and 2, the current matter is similar to *Stephenson* in that both involve
17 individuals directing and controlling the contributions of multiple business entities where the
18 contributions of the entities should have been aggregated. The cumulative contribution Holmes made to
19 Holland exceeded the contribution limit by \$1,600 and the cumulative contribution to Russ exceeded the
20 limit by \$3,100 which are significantly less than in the *Stephenson* case. Based on the differences from
21 the comparable case, a penalty of \$3,000 is recommended for Count 1 and Count 2.

22 The most recent penalty approved by the Commission addressing the failure to file major donor
23 reports and the failure of a major donor to file a 24-hour report is *In the Matter of Gregory Kelly*
24 *Meagher*; FPPC Case No. 16/236 (approved September 21, 2017). In the *Meagher* matter, the
25 Commission approved a penalty of \$2,500 against Meagher for failure to file a major donor campaign
26 statement to disclose contributions and expenditures for the year, which totaled \$19,500 and \$8,811,
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28 ¹⁷ Regulation 18361.5, subdivision (d).

1 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
2 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
3 reviewed.

4 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
5 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
6 \$10,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General
7 Fund of the State of California—is/are submitted with this stipulation as full payment of the
8 administrative penalty described above, and same shall be held by the State of California until the
9 Commission issues its decision and order regarding this matter.

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

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

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21 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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25 Dated: _____

Wyn Holmes

