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

10
11 In the Matter of:

12 JOSHUA MITCHELL,

13 Respondent.

FPPC Case No. 14/1333

14 STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent Joshua Mitchell was the Mayor of the City of Sanger from 2012 through August
17 2015 when he left office. Mitchell assumed office in 2010 as a member of the Sanger City Council. At all
18 relevant times, Mitchell was a public official under the Political Reform Act (the “Act”),¹ and therefore
19 he was prohibited from making, participating in making, or attempting to use his official position to
20 influence a governmental decision in which he knew, or had reason to know, that he had a financial
21 interest.² Mitchell violated the Act by voting twice, as the Mayor of Sanger, regarding governmental
22 decisions in which he had a financial interest and failing to report a source of income of \$10,000 or more
23 to his business, Western Landscape Development (“WLD”), on his Annual Statement of Economic
24 Interests (“SEI”) for the 2012 and 2013 years.

25
26
27 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair
Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of
Regulations.

28 ² Sections 82048 and 87100.

1 **SUMMARY OF THE LAW**

2 All statutory references and discussions of law pertain to the Act’s provisions as they existed at
3 the time of the violations in question.

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

5 When the Political Reform Act was enacted, the people of the state of California found and
6 declared that previous laws regulating political practices suffered from inadequate enforcement by state
7 and local authorities.³ To that end, the Act must be liberally construed to achieve its purposes.⁴

8 One of the purposes of the Act is to prevent conflicts of interest by public officials.⁵ Another
9 purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously
10 enforced.”⁶

11 **Duty to File Annual Statement of Economic Interests**

12 An express purpose of the Act, is to ensure that assets and income of public officials, which may
13 be materially affected by their official actions, should be disclosed in order that conflicts of interest may
14 be avoided.

15 Under the Act, every person who holds an office specified in Section 87200, which includes
16 mayors and members of city councils, shall, each year at a time specified by Commission regulations, file
17 an SEI disclosing his investments, his interests in real property and his income, including the name of
18 every person from whom the business entity received payments if the filer’s pro rata share of gross
19 receipts from that person was equal to or greater than \$10,000 during a calendar year.⁷

20 **Conflicts of Interests**

21 To prevent conflicts of interest in governmental decision making, the Act prohibits state and local
22 public officials from making, participating in making, or attempting to use their official positions to
23 influence a governmental decision in which they know, or have reason to know, that they have a financial
24

25
26 _____
³ Section 81001, subd. (h).

27 ⁴ Section 81003.

28 ⁵ Section 81002, subd. (c).

⁶ Section 81002, subd. (f).

⁷ Section 87207, subd. (b)(2).

1 interest.⁸ A public official has a financial interest in a decision if it is reasonably foreseeable that the
2 decision will have a material financial effect on a recognized economic interest of the official.⁹ The six
3 relevant steps of the analysis follow below.

4 First, the individual must be a public official as defined by the Act. A “public official” includes
5 members of a state or local governmental agency.¹⁰

6 Second, the official must make, participate in making, or attempt to use his or her official position
7 to influence a governmental decision. A public official “makes a governmental decision” when the
8 official votes on a matter.¹¹

9 Third, the official must have an economic interest that may be financially affected by the
10 governmental decision. An economic interest of a public official includes any source of income of \$500
11 or more within 12 months prior to the time when the relevant governmental decision is made.¹² This
12 includes a pro-rata share of any income of any business entity or trust in which the official or spouse
13 owns at least ten percent interest.¹³

14 Fourth, it must be determined if the economic interest of the official is directly or indirectly
15 involved in the decision.¹⁴ A person, including business entities and sources of income, are directly
16 involved in a decision before an official’s agency when that person, either directly or by an agent: (1)
17 Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or
18 similar request, or; (2) is a named party in, or is the subject of the proceeding concerning the decision
19 before the official or the official’s agency.¹⁵

20 For a source of income that is a business entity and is indirectly involved, the financial effect of a
21 governmental decision on a business entity that has a net income of less than \$750,000 is material if it is
22 reasonably foreseeable that: (a) that governmental decision will result in an increase or decrease in the
23

24 ⁸ Section 87100.

25 ⁹ Section 87103.

26 ¹⁰ Section 82048.

27 ¹¹ Regulation 18702.1, subd. (a) (1).

28 ¹² Section 87103, subd. (c).

¹³ Section 82030, subd. (a).

¹⁴ Regulation 18704.2, subd. (a)(1), effective 09/09/04-5/30/14.

¹⁵ Regulation 18704.1, subd. (a).

1 business entities gross revenues for a fiscal year in the amount of \$20,000 or more; (b) the governmental
2 decision will result in the business entity incurring or avoiding additional expenses or reducing or
3 eliminating existing expenses for a fiscal year in the amount of \$5,000 or more; or, (c) the governmental
4 decision will result in an increase or decrease in the value of the business entity's assets or liabilities of
5 \$20,000 or more.¹⁶

6 Fifth, it must be determined what materiality standard will apply to the economic interest of the
7 public official. Any reasonably foreseeable the financial effect on a person who is a source of income to
8 the public official, and who is directly involved in a decision before the official's agency, is deemed
9 material.¹⁷ Some of the factors to consider in determining whether a financial effect is reasonably
10 foreseeable include the extent to which the official or the official's source of income has engaged, is
11 engaged, or plans on engaging in the business activity in the jurisdiction, the extent to which the official
12 or the official's source of income has competition for business in the jurisdiction, the scope of the
13 governmental decision in question and the extent to which the occurrence of the material financial effect
14 is contingent upon intervening events.¹⁸

15 Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made,
16 that the decision would have a material financial effect on the economic interest of the official. A
17 material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not
18 just a mere possibility, that one or more of the materiality standards applicable to that economic interest
19 will be met as a result of the governmental decision.¹⁹

20 VIOLATIONS

21 Mitchell was the Mayor of Sanger from 2012 through August 2015. Mitchell assumed office in
22 2010 as a member of the Sanger City Council.

23 In 2012 and the first half of 2013, in his private capacity, Mitchell was the owner of a landscaping
24 business named WLD located in Sanger, CA. In addition, in 2013 and 2014, Mitchell received income
25

26 ¹⁶ Regulation 18705.1, subd. (c).

27 ¹⁷ Regulation 18705.3, subd. (a).

28 ¹⁸ Regulation 18705.3, subd. (b).

¹⁹ Regulation 18706.

1 from a landscaping business named JDM Enterprises.

2 In 2011, the Sanger City Council approved a Residential Impact Fee Waiver Program (the
3 “Program”), reducing residential impact fees for home builders that purchase 30% or more of the
4 supplies and services to build homes from businesses in the City of Sanger. The City of Sanger had
5 identified a list of “blighted neighborhoods,” which were subdivisions that were left partially completed.
6 For these specific blighted neighborhoods, the impact fees were reduced to zero for residential builders if
7 they purchased 30% or more of the supplies and services from businesses in the City of Sanger. The
8 Royal Woods subdivision was listed as an existing blighted neighborhood.

9 Evergreen Communities, Inc. (“Evergreen”) is the developer of the Royal Woods subdivision.
10 According to the President of Evergreen, since 30% or more of the supplies and services had to be
11 purchased in the City of Sanger, he asked Mitchell if he could recommend anyone for landscaping.
12 According to Mitchell, after a bid, WLD was offered the landscaping contract.

13 In 2012 and 2013, WLD received more than \$10,000 per year from Evergreen for landscaping
14 services at the Royal Woods subdivision. Mitchell did not report Evergreen as a source of income to
15 WLD of over \$10,000 on his Annual 2012 or 2013 SEIs.

16 JDM Enterprises was initially created by Mitchell and then transferred to his friend. According to
17 Mitchell, his friend was always the owner of JDM Enterprises. The investigation could not determine the
18 date the business transferred from Mitchell or when it became his friend’s business. However, Mitchell
19 did receive income totaling at least \$10,000 from JDM Enterprises in 2013 and 2014. Mitchell reported
20 this income for consulting work for JDM Enterprises. From April 2013 to December 2013, JDM
21 Enterprises received about \$25,600 from Evergreen for landscaping services provided at the Royal
22 Woods subdivision. In 2014, JDM Enterprises received over \$24,000 for landscaping services provided
23 at the Royal Woods subdivision.

24 The Sanger City Council initially approved the Program on September 1, 2011. The Sanger City
25 Council extended the Program until December 31, 2013. On January 2, 2014, the Sanger City Council
26 voted 3-2 to extend the Program. Mitchell was the swing vote in favor of extending the Program.

27 In addition, on May 15, 2014, the Sanger City Council voted 3-2 to approve a development
28 agreement for the Royal Woods subdivision, a development of Evergreen. Mitchell was the swing vote in

1 favor of approving the development agreement.

2 Accordingly, Mitchell committed two violations of the Act, as follows:

3 **Count 1**

4 **Making Governmental Decisions in Which the Public Official Had a Financial Interest**

5 On January 2, 2014, as the Mayor of Sanger, Mitchell was the swing vote in favor of extending
6 the Program, which specifically listed Royal Woods subdivision to receive zero impact fees from this
7 Program. The waived impact fees are estimated at a \$384,000 savings for Evergreen, a source of income
8 of \$500 or more within the preceding 12 months to Mitchell.

9 Further, on May 15, 2014, Mitchell was the swing vote in favor of approving a development
10 agreement for the Royal Woods subdivision, a development of Evergreen, which had a reasonably
11 foreseeable material financial effect on a source of income to Mitchell.

12 As such, Mitchell violated Section 87100, which prohibits conflicts of interest by public officials.

13 **Count 2**

14 **Failure to Properly Disclose a Source of Income of \$10,000 or More on Statements of Economic**
15 **Interests**

16 On his 2012 and 2013 SEI, Mitchell was required to and failed to disclose Evergreen as a source
17 of income over \$10,000 to his business, WLD, in violation of Section 87207.

18 **CONCLUSION**

19 This matter consists of two counts of violating the Act, carrying a maximum administrative
20 penalty of \$5,000 per count for a total administrative penalty of \$10,000.

21 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
22 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
23 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
24 considers the facts and circumstances of the violation in context of the factors set forth in Regulation
25 18361.5, subdivision (d)(1)-(6):

- 26 1. The seriousness of the violations;
- 27 2. The presence or lack of intent to deceive the voting public;
- 28 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, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Making a governmental decision in which an official has a financial interest is a serious violation of the Act as it may create the appearance that a governmental decision was made on the basis of an official's financial interest. A recent prior enforcement action approved by the Commission involving similar violations as in this Stipulation follows:

In the Matter of Miguel Pulido; FPPC No. 14/131. Pulido, as the Mayor of Santa Ana, made a governmental decision in January 2011 in which he had a financial interest. Pulido voted to renew a contract with Orange County Auto Parts, although the store owner was a source of income to Pulido, in violation of Government Code Section 87100 (1 Count). Further, Pulido failed to disclose information pertaining to the real estate transaction on multiple Statements of Economic Interests, in violation of Sections 87206, 87207 and 87300 (5 Counts). In May 2015, the Commission approved a penalty of \$3,000 for the conflict of interest and \$2,000 per Count for the failures to disclose on Statements of Economic Interests.

In this matter, Mitchell made two governmental decisions in which he had a financial interest by voting to waive impact fees that substantially benefitted a source of income to him and voting to approve a development agreement for the subdivision for that same developer who was a source of income to him through JDM Enterprises, who received a service contract at the subdivision at issue. In aggravation, Mitchell failed to disclose that Evergreen was a source of income to his business, depriving the public of important information. Further, Mitchell had recused himself in 2012 from a vote to extend the Program citing a potential conflict of interest. Thus, Mitchell knew or should have known that he had a conflict of interest in this regard.

Although Mitchell has two prior Enforcement cases, neither included conflict of interest violations. In April 2013, in Joshua Mitchell, FPPC Case No. 12/863, the Commission approved a streamline stipulation for receiving a gift over the limit, for a fine amount of \$200. In June 2014, in Joshua Mitchell and Joshua Mitchell for Mayor 2012, FPPC Case No. 13/138, the Commission approved

1 a settlement agreement in the amount of \$7,000 for failing to deposit 11 personal contributions into the
2 Committee's bank account and failing to timely report 39 contributions in 2012.

3 In mitigation, Mitchell resigned from public office in 2015.

4 As a result, a penalty of \$4,000 per count for Count 1 and a penalty of \$2,000 for Count 2 is
5 recommended, for a total administrative penalty of \$6,000.

6 **PROPOSED PENALTY**

7 The facts of this case, including the aggravating and mitigating factors above, justify imposition
8 of the agreed upon penalty of \$6,000.

9 **CONCLUSION**

10 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
11 Respondent Joshua Mitchell hereby agree as follows:

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

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

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

19 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all
20 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
21 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
22 matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine all
23 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
24 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
25 reviewed.

26 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
27 Respondent agrees to the Commission imposing against him an administrative penalty in the amount of
28 \$6,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General

1 Fund of the State of California—is/are submitted with this stipulation as full payment of the
2 administrative penalty described above, and same shall be held by the State of California until the
3 Commission issues its decision and order regarding this matter.

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

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

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15 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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19 Dated: _____

Joshua Mitchell, Respondent

1 The foregoing stipulation of the parties “In the Matter of Joshua Mitchell,” FPPC Case No.
2 14/1333 is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the Chair.

4
5 IT IS SO ORDERED.

6
7 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission