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8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11
12 In the Matter of:

FPPC Case No. 17/1313

13 KARSON KLAUER,

STIPULATION, DECISION AND ORDER

14
15 Respondent.
16

17 **INTRODUCTION**

18 Karson Klauer (“Klauer”) was a City Councilmember and Vice-Mayor for the City of Hollister
19 from 2014 to 2018.

20 The conflict of interest provisions of the Political Reform Act (the “Act”)¹ prohibit a public
21 official from making, participating in making, or attempting to use his official position to influence a
22 governmental decision in which the official knows or has reason to know he has a financial interest.
23 Klauer violated the Act by voting on an item before the Hollister City Council in which he had a
24 financial interest. Further, Klauer violated the Act by failing to timely disclose a source of income
25 interest, related to the conflicted decision, on his Assuming Office, 2015 Annual, and 2016 Annual
26 Statements of Economic Interests (“SEI”).

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28 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 **SUMMARY OF THE LAW**

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

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

5 When enacting the Act, the people of California found and declared that previous laws regulating
6 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
7 the Act is to be construed liberally to accomplish its purposes.³

8 There are many purposes of the Act. One purpose is to ensure that the assets and income of public
9 officials which may be materially affected by their official actions be disclosed, so that conflicts of
10 interest may be avoided.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be
11 “vigorously enforced.”⁵ In furtherance of this purpose, the Act requires members of city councils to
12 periodically disclose their investments, real property interests, and income.⁶

13 Statements of Economic Interests

14 After a city councilmember is elected, they must file an Assuming Office SEI within 30 days
15 which discloses their reportable economic interests for the past 12 months.⁷ Each year after assuming
16 office, a city councilmember must file Annual SEIs disclosing their reportable economic interests from
17 the previous calendar year.⁸

18 Filers must disclose sources of income to a business entity if the filer’s pro rata share of the gross
19 income from a single reportable source was \$10,000 or more during a calendar year.⁹

20 Conflicts of Interest

21 A public official may not make, participate in making, or attempt to use his official position to
22 influence a governmental decision in which he knows, or has reason to know, he has a financial
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24 _____
25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (c).

28 ⁵ Section 81002, subd. (f).

⁶ Section 87200.

⁷ Sections 87200 and 87202.

⁸ Section 87200 and 87203.

⁹ Section 87207.

1 interest.¹⁰ 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, distinguishable from its effect on the public generally, on
3 any source of income aggregating \$500 or more in value provided or promised to, received by, the public
4 official within 12 months prior to the time when the decision is made.¹¹

5 Income includes “commission income,” defined as gross payments received by a public official
6 as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar
7 transaction.¹² The sources of commission income for a specific sale or similar transaction include, for a
8 real estate agent, the broker and brokerage business entity under whose auspices the broker works.¹³

9 A financial effect is reasonably foreseeable when the financial interest is explicitly involved in
10 the governmental decision, such as being the named party or is the subject of a governmental decision
11 before the official or the official’s agency.¹⁴ A financial interest is the subject of a proceeding if the
12 decision involves the issuance, renewal, approval, denial or revocation or any license, permit, or other
13 entitlement, or contract with, the financial interest.¹⁵ When the official receives income in exchange for
14 the sale of goods or services, the financial effect is material if the source is a claimant, applicant,
15 respondent, contracting party, or is otherwise named or identified as the subject of the proceeding.¹⁶

16 If the financial interest is not explicitly involved in the governmental decision, then a financial
17 effect need not be likely to be considered reasonably foreseeable.¹⁷ In general, if the financial effect can
18 be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably
19 foreseeable.¹⁸ If the financial result cannot be expected absent extraordinary circumstances not subject to
20 the public official's control, it is not reasonably foreseeable.¹⁹ In determining whether a governmental
21 decision will have a reasonably foreseeable financial effect on a financial interest that is not explicitly
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23 ¹⁰ Section 87100.

24 ¹¹ Section 87103, subd. (c).

25 ¹² Regulation 18700.1(c)(1).

26 ¹³ Regulation 18700.1(c)(2).

27 ¹⁴ Regulation 18701, subd. (a).

28 ¹⁵ *Id.*

¹⁶ Regulation 18702.3, subd. (a)(1).

¹⁷ Regulation 18701, subd. (b).

¹⁸ *Id.*

¹⁹ *Id.*

1 involved in the governmental decision, the following factors should be considered: (1) The extent to
2 which the occurrence of the financial effect is contingent upon intervening events, not including future
3 governmental decisions by the official's agency, or any other agency appointed by or subject to the
4 budgetary control of the official's agency; (2) Whether the public official should anticipate a financial
5 effect on his or her financial interest as a potential outcome under normal circumstances when using
6 appropriate due diligence and care; (3) Whether the public official has a financial interest that is of the
7 type that would typically be affected by the terms of the governmental decision or whether the
8 governmental decision is of the type that would be expected to have a financial effect on businesses and
9 individuals similarly situated to those businesses and individuals in which the public official has a
10 financial interest; (4) Whether a reasonable inference can be made that the financial effects of the
11 governmental decision on the public official's financial interest might compromise a public official's
12 ability to act in a manner consistent with his or her duty to act in the best interests of the public;
13 (5) Whether the governmental decision will provide or deny an opportunity, or create an advantage or
14 disadvantage for one of the official's financial interests, including whether the financial interest may be
15 entitled to compete or be eligible for a benefit resulting from the decision; (6) Whether the public official
16 has the type of financial interest that would cause a similarly situated person to weigh the advantages and
17 disadvantages of the governmental decision on his or her financial interest in formulating a position.²⁰

18 When the financial interest is a source of income from services provided in the ordinary course of
19 business that is a business entity, materiality is found where a prudent person with sufficient information
20 would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in
21 the value of the business.²¹

22 SUMMARY OF THE FACTS

23 Klauer was elected to the Hollister City Council in the November 4, 2014 General Election. His
24 term expired in December 2018, and he did not seek re-election.

25 **Failure to Timely Report Economic Interest on SEIs**

26 As a City Councilmember, Klauer was subject to full disclosure requirements on his SEIs.
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28 ²⁰ Regulation 18701, subd. (b).

²¹ Regulations 18702.1 and 18702.3.

1 Therefore, he was required to disclose his income on his SEIs. Klauer timely filed his original Assuming
2 Office, 2015 Annual, and 2016 Annual SEIs. However, Klauer failed to timely report a certain economic
3 interest on each of those SEIs. In particular, Klauer failed to report a source of income interest in Nino
4 Real Estate (“Nino”), a real estate brokerage under which he served as an independent contractor.
5 Specifically, Nino was a “pass through” source of income to “Karson Klauer,” the business under which
6 Klauer operates as a licensed real estate agent.

7 On April 26, 2017, the Legal Division issued an advice letter (No. I-17-036) to Hollister City
8 Attorney Bradley W. Sullivan, on behalf of Klauer. Sullivan sought advice regarding whether Klauer had
9 a disqualifying conflict of interest in conjunction with certain votes unrelated to the facts of this case.
10 However, in the letter, the Legal Division clarified that “Nino Real Estate, Inc., the individual buyers that
11 Councilmember Klauer assists in the resale of the homes or lots, and any other referral source of the
12 transaction to Nino Real Estate or him constitute sources of commission income.”

13 On October 11, 2017, in FPPC Case No. 16/20104, the Enforcement Division issued an advisory
14 letter to Klauer relating to his participation in a 2015 governmental decision. Similar to the
15 aforementioned advice letter, the advisory letter described the different sources of commission income to
16 Klauer, including “any brokerage business entity through which the broker conducts business” and “the
17 broker and brokerage business entity under whose auspices the agent works.”

18 On November 8, 2017, after this case was opened, Klauer filed amendments to his Assuming
19 Office, 2015 Annual, and 2016 Annual SEIs that disclosed Nino as a source of income interest.

20 **Conflict of Interest**

21 As provided above, Klauer held a “pass-through” source of income financial interest in Nino.
22 Further, Klauer received well above the \$500 threshold necessary for a conflict of interest violation as an
23 agent working under the auspices of Nino between September 5, 2016 and September 5, 2017.

24 In 2017, as a member of the City Council, Klauer participated in a governmental decision
25 indirectly involving Nino. On September 5, 2017, the City Council voted whether to approve a cannabis
26 use permit for “Traditional Roots” to operate a medical cannabis cultivation and manufacturing facility at
27 1091 San Felipe Road. The council voted 4-1 to approve the permit, with Klauer participating and voting
28 in the affirmative.

1 Following approval of the cannabis permit, the property at 1091 San Felipe Road was sold on
2 September 25, 2017 for \$2.05 million. The buyer was T&T Development Enterprises, LLC, and the
3 seller was Baron Porteur, Marl Porteur, and Renon Porteur. The agent for both the seller and buyer was
4 Jason Noble working under the auspices of Nino. Nino received commission of \$9,675 for the sale of the
5 property.²² The seller had previously entered into a listing agreement with Nino on December 1, 2016,
6 and the buyer made an initial \$20,000 deposit on December 7, 2016, months prior to the subject decision.

7 The September 5, 2017 vote had a reasonably foreseeable financial effect on Nino, given that,
8 prior to the subject vote, Nino was already in contract as the listing brokerage and the sale was headed
9 for closing; the vote provided Nino with the lucrative opportunity to close the sale of the subject
10 property, deemed suitable for cannabis operations by the City Council; and the closing of the property
11 was not contingent on any intervening events occurring after the subject vote took place. Further, the
12 reasonably foreseeable financial effect was material since the subject decision's financial effect would
13 contribute to a change in the value of Nino, as a business. In particular, the increased ability to close the
14 lucrative sale of the subject property, following the vote, would result in direct revenue to Nino, as both
15 the seller's and buyer's brokerage, and thereby increase the value of the business.

16 VIOLATIONS

17 Count 1: Failure to Timely Disclose Source of Income Interest on Statements of Economic 18 Interests

19 Klauer failed to timely disclose a source of income interest on his 2015 Annual and 2016 Annual
20 Statements of Economic Interests, in violation of Sections 87200 and 87207.

21 Count 2: Conflict of Interest – Made Governmental Decision in Which Public Official Had 22 Financial Interest

23 By voting to approve a cannabis use permit for 1091 San Felipe Road, property on which Nino
24 Real Estate, a source of income to Klauer, had contracted as the buyer's and seller's brokerage, on
25 September 5, 2017, Klauer, a public official, made a governmental decision in which he knew or had reason
26 to know he had a financial interest, in violation of Section 87100.

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²² Jason Noble received commission of \$82,575, operating under the auspices of Nino, as a result of the property sale.

1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed is \$10,000.²³

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.²⁴

11 In this case, although the Commission considers the violations serious in nature, the Enforcement
12 Division found no evidence that Respondent intended to conceal, deceive, or mislead the public.
13 However, the violations were negligent in nature, since Klauer had prior notice that he had a financial
14 interest in Nino, following two letters issued by the Commission (see above). Further, corrective
15 amendments were filed by Klauer, although not until after contact from the Enforcement Division.
16 Finally, Respondent does not have a prior history of violations.

17 The Commission also considers penalties in prior cases involving similar violations. Recent
18 similar cases involving a failure to timely report interests on SEIs and/or conflict of interest violations
19 include the following:

20 • *In the Matter of Joshua Mitchell*; FPPC No. 14/1333. Respondent, a mayor, failed to timely
21 disclose a source of income interest on his 2012 and 2013 Annual SEIs, in violation of Section 87207;
22 and voted twice on items that had a reasonably foreseeable material financial effect on a subdivision,
23 which served as a source of income to the respondent via two landscaping businesses, thereby resulting
24 in prohibited conflicts of interest, in violation of Section 87100. In June 2019, the Commission approved
25 penalties of \$2,000 on one SEI non-reporter count, and \$4,000 on one conflict of interest count.

26 As to Count 1, a penalty similar to that approved in the *Mitchell* case is warranted given the
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28 ²³ Section 83116, subd. (c).

²⁴ Regulation 18361.5, subd. (d).

1 similar nature of the violations.

2 As to Count 2, a penalty lower than that imposed in the *Mitchell* case is warranted since the
3 respondent in *Mitchell* made two conflicted decisions, while this case involves a single decision.

4 In mitigation, Klauer was fully cooperative during the investigation. Further, Klauer successfully
5 recused himself from voting on a different cannabis permit in 2017.

6 Based on the foregoing, the following penalties are recommended:

7 Count	Violation	Proposed Penalty
8 1	Failure to Timely Disclose Source of Income Interest on Statements 9 of Economic Interests	\$2,000
10 2	Conflict of Interest – Made Governmental Decision in Which 11 Public Official Had Financial Interest	\$3,500
12 TOTAL:		\$5,500

13 **CONCLUSION**

14 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
15 Respondent, Karson Klauer, hereby agree as follows:

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

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

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

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

1 reviewed.

2 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
3 Respondent agrees to the Commission imposing against him an administrative penalty in the amount of
4 \$5,500. One or more payments totaling this amount, to be paid to the General Fund of the State of
5 California, is/are submitted with this stipulation as full payment of the administrative penalty described
6 above, and they will be held by the State of California until the Commission issues its decision and order
7 regarding this matter.

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

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

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18 Dated: _____
19 Angela J. Brereton, Chief of Enforcement
20 Fair Political Practices Commission

21 Dated: _____
22 Karson Klauer

1 The foregoing stipulation of the parties “In the Matter of Karson Klauer,” FPPC Case No. 17/1313 is
2 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____
8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
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