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10
11 **BEFORE THE**
12 **FAIR POLITICAL PRACTICES COMMISSION OF THE STATE OF CALIFORNIA AND**
13 **THE CITY AND COUNTY OF SAN FRANCISCO ETHICS COMMISSION**
14

15 In the Matter of:

16 ERIC MAR

17 Respondent.

FPPC Case No. 15/2201
SFEC Case No. 1617-125

18
19 **STIPULATION, DECISION, AND ORDER**

20 **INTRODUCTION**

21 Respondent Eric Mar served on the City and County of San Francisco Board of Supervisors
22 (“Board”) from 2009 through 2016. The Political Reform Act (the “Act”)¹ requires public officials to report
23 gifts they receive on an annual statement of economic interests (“SEI”), and prohibits elected officials from
24 participating in a government decision that has a material financial effect on one who gives a gift to the
25 official. The City and County of San Francisco Campaign and Government Conduct Code (“SF C&GCC”)
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27
28 ¹ The Political Reform Act is contained in Government Code Sections 8100 through 81014. The regulations of the
Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of
Regulations.

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1 prohibits a member of the Board from accepting gifts from persons who do business with or seek to do
2 business with the Board.

3 Each year between 2011 and 2015, Mar received gifts of tickets to music festivals from a concert
4 promoter who obtained a permit from the Board to conduct the music festivals on property owned by the
5 City and County of San Francisco (the "City"). Mar did not properly disclose the gifts on annual SEIs.
6 Also, Mar violated the Act's conflict of interest prohibition by sponsoring and voting in favor of extending
7 the City permit of the concert promoter after receiving the gifts.

8 SUMMARY OF THE LAW

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

10 When enacting the Act, the people of the State of California found and declared that previous laws
11 regulating political practices suffered from inadequate enforcement by state and local authorities.² To that
12 end, the Act must be liberally construed to achieve its purposes and vigorously enforced.³

13 Gift Disclosure

14 A "gift" is any payment that confers a personal benefit on the recipient, to the extent that
15 consideration of equal or greater value is not received.⁴ A county supervisor must file an SEI annually
16 by April 1 disclosing income received by the supervisor in the prior calendar year.⁵ Income includes gifts
17 valued at \$50 or more.⁶

18 Tickets to entertainment events provided to a public official by a government agency are not
19 "gifts" under the Act if the agency distributes the tickets in a manner consistent with a valid ticket policy
20 adopted by the agency, and the agency properly reports the distribution of the tickets.⁷ When an agency
21 provides tickets to a department or other unit of the agency, the agency must report how many tickets it
22 distributed to the other department but is not required to identify which individuals within the department
23

24
25 ² Gov. Code § 81001, subd. (h).

26 ³ Gov. Code §§ 81002, subd. (f) and 81003.

27 ⁴ Gov. Code §82028, subd. (a)

28 ⁵ Gov. Code §§87200 and 87203 and Cal. Code Regs., tit. 2, §18723, subd. (b)(2).

⁶ Gov. Code §87207, subd. (a).

⁷ Cal. Code of Regs. tit. 2, §18944.1.

1 ultimately received the tickets.⁸ However, tickets provided to an official pursuant to a ticket policy may
2 only be transferred to an official's immediate family members or no more than one guest to attend the
3 event.⁹

4 **Conflict of Interest**

5 A public official may not make a governmental decision in which he knows, or has reason to
6 know, he has a financial interest.¹⁰ A public official has a financial interest in a decision if it is reasonably
7 foreseeable the decision will have a material financial effect on any person who has given gifts to the
8 official with a value equal to, or in excess of, the gift limit within the previous twelve months.¹¹ If the
9 source of a gift is the subject of a proceeding seeking renewal of a permit before an official's agency, the
10 financial effect on the gift giver is deemed material if it is reasonably foreseeable.¹²

11 **Gift Prohibition**

12 The Act prohibits elected officials from accepting gifts from a single source in a calendar year with
13 a total value that exceeds the gift limit.¹³ The SF C&GCC has a more restrictive limit on gifts to officials
14 in some circumstances. Officials can neither solicit nor accept a gift valued at more than \$25 from a person
15 the official knows or has reason to know is a "restricted source."¹⁴ A "restricted source" means (1) someone
16 who does or seeks to do business with the officer's department or (2) someone who knowingly attempted
17 to influence the official in a legislative or administrative action within the prior twelve months.¹⁵

18 **SUMMARY OF THE FACTS**

19 Another Planet Entertainment, LLC ("Another Planet") puts on the Outside Lands Music Festival
20 ("Outside Lands") every year in Golden Gate Park in August. Another Planet also puts on the Treasure
21 Island Music Festival ("Treasure Island") annually in October on Treasure Island. From 2011 to 2015,
22

23

⁸ Cal. Code of Regs. tit. 2, §18944.1, subd. (f)(3).

24 ⁹ Cal. Code of Regs. tit. 2, §18944.1, subd. (e)(3).

25 ¹⁰ Gov. Code §87100.

26 ¹¹ Gov. Code §87103, subd. (e).

27 ¹² Former Cal. Code Regs., tit. 2, §§18704.1, subd. (a)(2), 18705.4, subd. (a), and 18706.

28 ¹³ Gov. Code §89503, subd. (a).

¹⁴ SF C&GCC § 3.216 subd. (b) (prohibiting gifts from a restricted source); Conflict of Interest Reg. § 3.216(b)-5(a)
(clarifying the de minimis exception).

¹⁵ SF C&GCC § 3.216 subd. (b)(1).

1 Mar received free tickets to both annual music festivals. Some of these tickets came directly from
2 Another Planet. Other tickets came from the City's Recreation and Park Department ("Rec and Park").
3 Another Planet provided Outside Lands tickets to Rec and Park as part of its agreement to hold the event
4 in Golden Gate Park. Rec and Park distributed the tickets to employees of the City as well as others
5 pursuant to its ticket policy. Rec and Park reported the distribution of tickets on a Tickets Provided by
6 Agency Report ("Form 802").

7 In 2011, Mar received four tickets to Treasure Island from Another Planet. The tickets had a total
8 value of \$500. Mar reported receiving the tickets as a gift on a 2011 annual SEI he filed on March 30,
9 2012 but reported the value as \$278. Mar also received four tickets to Outside Lands from Rec and Park.
10 The total value of the tickets was \$740. Mar reported receiving these tickets as a gift on the 2011 annual
11 SEI with a value of \$370. The Rec and Park Form 802 for 2011 indicated Mar received two tickets to
12 Outside Lands valued at \$370. It appears Mar reported the other two tickets not disclosed on the Form
13 802 as gifts from Rec and Park.

14 In 2012, Mar received four tickets to Treasure Island from Another Planet valued at \$518. He did
15 not report this gift on his 2012 annual SEI. He also received four tickets to Outside Lands from Rec and
16 Park valued at \$900. He reported receiving these tickets as a gift from Rec and Park on the 2012 SEI but
17 under-reported the gift's value as \$300. Rec and Park's Form 802 for 2012 indicates the Board of
18 Supervisors office received 8 tickets to Outside Lands, but it does not specify which individuals received
19 the tickets. For the purposes of settlement, Mar admits he accepted two of those tickets as gifts and states
20 the other two were provided pursuant to the Rec and Park's ticket policy for use by him and one guest.

21 In December of 2012, Mar sponsored a resolution before the Board to extend Another Planet's
22 permit with the City to hold Outside Lands in Golden Gate Park for eight additional years. The permit
23 extension increased the number of tickets Another Planet could sell to the festival thereby likely
24 increasing Another Planet's revenue from the event. Mar voted in favor of the permit extension and the
25 item was adopted on a unanimous vote.

26 In 2013, Mar received four tickets to Treasure Island from Another Planet with a total value of
27 \$600. Mar also received four tickets to Outside Lands from Another Planet with a total value of \$998.
28 Mar did not report receiving any of these tickets as gifts on a 2013 annual SEI he filed on April 1, 2014.

1 In 2014, Mar received five tickets to Treasure Island from Another Planet with a total value of
 2 \$800. He did not report this gift on a 2014 annual SEI. Mar also received five tickets to Outside Lands
 3 from Rec and Park with a total value of \$1,375. Mar reported receiving the tickets as a gift on a 2014
 4 annual SEI he filed on April 1, 2015, and reported the value of the gift as \$1,200. Rec and Park's 2014
 5 Form 802 reported its having given six tickets to the Board office but did not specify which individuals
 6 received those tickets. Mar stated he used one of the tickets himself, gave one to his daughter, and gave
 7 the rest to his daughter's friends. For purposes of settlement, it's presumed two of the tickets Mar
 8 received were those tickets listed on the Form 802.

9 In 2015, Mar received five tickets to Treasure Island from Another Planet with a total value of
 10 \$847.50. Mar did not report the gift on a 2015 annual SEI he filed on April 1, 2016. Mar received four
 11 tickets to Outside Lands from Another Planet with a total value of \$1,300. He reported the gift of tickets
 12 on a 2015 annual SEI but under-reported the value of the gift as \$375.

13 The following table summarizes the information above regarding tickets Mar received between
 14 2011 and 2015.

Year	Event	Source	Number of Reportable Tickets	Price per ticket	Total Reportable Amount	Reported on SEI
2011	Outside Lands	Rec and Park	2	\$185	\$370	Gift(s) of \$370
2011	Treasure Island	Another Planet	4	\$125	\$500	Gift(s) of \$278
2012	Outside Lands	Rec and Park	2	\$225	\$450	Gift(s) of \$300
2012	Treasure Island	Another Planet	4	\$129.50	\$518	Not reported
2013	Outside Lands	Another Planet	4	\$249.50	\$998	Not reported
2013	Treasure Island	Another Planet	4	\$150	\$600	Not reported
2014	Outside Lands	Rec and Park	3	\$275	\$825	Gift(s) of \$1,200
2014	Treasure Island	Another Planet	5	\$160	\$800	Not reported
2015	Outside Lands	Another Planet	4	\$325	\$1,300	Gift(s) of \$375
2015	Treasure Island	Another Planet	5	\$169.50	\$847.50	Not reported

1 **VIOLATIONS**

2 **Of the Political Reform Act:**

3 Count 1: Failure to Disclose Gifts on SEI

4 Mar failed to accurately disclose the value of the music festival tickets he received as gifts from
5 Another Planet on a 2011 annual SEI, in violation of sections 87203 and 87207, subd. (a).

6 Count 2: Failure to Disclose Gifts on SEI

7 Mar failed to disclose receiving a gift of music festival tickets from Another Planet valued at \$518
8 and failed to accurately disclose the value of the music festival tickets he received from Rec and Parks on
9 a 2012 annual SEI, in violation of sections 87203 and 87207, subd. (a).

10 Count 3: Failure to Disclose Gifts on SEI

11 Mar failed to disclose receiving gifts of music festival tickets from Another Planet valued at \$1,598
12 on a 2013 annual SEI, in violation of sections 87203 and 87207, subd. (a).

13 Count 4: Failure to Disclose Gifts on SEI

14 Mar failed to disclose receiving a gift of music festival tickets from Another Planet valued at \$800
15 and failed to accurately disclose the value of the music festival tickets he received from Rec and Parks on
16 a 2014 annual SEI, in violation of sections 87203 and 87207, subd. (a).

17 Count 5: Failure to Disclose Gifts on SEI

18 Mar failed to disclose receiving a gifts of music festival tickets from Another Planet valued at
19 \$2,147.50 and failed to accurately disclose the value of the music festival tickets he received from Rec and
20 Parks on a 2015 annual SEI on a 2015 annual SEI, in violation of sections 87203 and 87207, subd. (a).

21 Count 6: Conflict of Interest

22 By sponsoring and voting in favor of a resolution before the Board in 2012 extending Another
23 Planet's permit to hold Outside Lands in Golden Gate Park, Mar made a governmental decision he knew
24 or should have known would have a material financial effect on Another Planet, who had given Mar a gift
25 valued at over \$420 within 12 months of the decision, in violation of section 87100.

26 **Of the San Francisco Campaign & Governmental Conduct Code:**

27 Count 7: Acceptance of gift from a restricted source (2011)

28 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source

1 in excess of \$25 in 2011. Mar accepted gifts from Another Planet Entertainment totaling \$500 in 2011 for
2 the Treasure Island Musical Festival, in violation of SF C&GCC section 3.216, subdivision (b).

3 Count 8: Acceptance of gift from a restricted source (2012)

4 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source
5 in excess of \$25 in 2012. Mar accepted gifts from Another Planet Entertainment totaling \$518 in 2012 for
6 the Treasure Island Musical Festival, in violation of SF C&GCC section 3.216, subdivision (b).

7 Count 9: Acceptance of gift from a restricted source (2013)

8 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source
9 in excess of \$25 in 2013. Mar accepted gifts from Another Planet Entertainment totaling \$998 in 2013 for
10 the Outside Lands Music Festival, in violation of SF C&GCC section 3.216, subdivision (b).

11 Count 10: Acceptance of gift from a restricted source (2013)

12 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source
13 in excess of \$25 in 2013. Mar accepted gifts from Another Planet Entertainment totaling \$600 in 2013 for
14 the Treasure Island Music Festival, in violation of SF C&GCC section 3.216, subdivision (b).

15 Count 11: Acceptance of gift from a restricted source (2014)

16 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source
17 in excess of \$25 in 2014. Mar accepted gifts from Another Planet Entertainment totaling \$800 in 2014 for
18 the Treasure Island Music Festival, in violation of SF C&GCC section 3.216, subdivision (b).

19 Count 12: Acceptance of gift from a restricted source (2015)

20 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source
21 in excess of \$25 in 2015. Mar accepted gifts from Another Planet Entertainment totaling \$1,300 in 2015
22 for the Outside Lands Music Festival, in violation of SF C&GCC section 3.216, subdivision (b).

23 Count 13: Acceptance of gift from a restricted source (2015)

24 As a member of the Board, Mar was prohibited from accepting gifts from a single restricted source
25 in excess of \$25 in 2015. Mar accepted gifts from Another Planet Entertainment totaling \$847.50 in 2015
26 for the Treasure Island Music Festival, in violation of SF C&GCC section 3.216, subdivision (b).

1 **PROPOSED PENALTY**

2 **FPPC Penalty**

3 This matter consists of six counts. The maximum penalty that may be imposed by the Fair Political
4 Practices Commission ("FPPC") is \$5,000 per count.¹⁶

5 In determining the appropriate penalty for a particular violation of the Act, the FPPC considers the
6 facts of the case, the public harm involved, and the purposes of the Act. Also, the FPPC considers factors
7 such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive
8 or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was
9 isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full
10 disclosure; and (f) whether the violator has a prior record of violations.¹⁷ Additionally, the FPPC considers
11 penalties in prior cases with comparable violations.

12 Cases with comparable violations include the following:

13 Counts 1 – 5

- 14 • *In the Matter of John Wuo*, FPPC No. 15/154. In November of 2016 the FPPC imposed a
15 penalty of \$1,000 against the respondent for his failure to report a source of income and a
16 business position on his 2014 Annual SEI and his Leaving Office SEI. Respondent
17 eventually amended his SEI to disclose both interests. Neither interest had business before
18 respondents
- 19 • *In the Matter of Eric Reed*, FPPC No. 15/1174. In May of 2017, the FPPC imposed a penalty
20 of \$2,000 against the respondent for failing to disclose on a 2014 Annual SEI his ownership
21 of stock in AT&T, which had business before his agency.

22 Count 6

- 23 • *In the Matter of Edward C. Vasquez*, FPPC No. 14/1103. In February of 2015, the FPPC
24 imposed a penalty of seven counts at \$3,500 per count for the respondent's conflict of
25 interest violations. On seven occasions the respondent voted in favor of contracting with a
26 company that had given the respondent gifts over the 12-month period prior to each vote.

28 ¹⁶ Section 83116, subd. (c).

¹⁷ Regulation 18361.5, subd. (d).

1 The total values of the gifts in each 12-month period ranged from \$486.85 to \$1,754.44

2 The seriousness of a violation for failure to disclose a financial interest on an SEI varies depending
3 on whether the respondent can use his official position to impact that financial interest. In this case in 2012,
4 Mar used his Supervisor position to impact his financial interest by sponsoring and voting in favor of
5 extending Another Planet's permit to operate Outside Lands in Golden Gate Park. In the other years at
6 issue when Mar received undisclosed gifts from Another Planet, it operated the two music festivals under
7 permits previously approved by the Board, but Mar did not make any decision regarding Another Planet.
8 So a higher penalty is justified for the failure to disclose gifts on the 2012 Annual SEI than in other years.

9 The conduct of making a governmental decision in which an official has a financial interest is a
10 serious violation of the Act as it creates the possibility the official made a governmental decision based on
11 his financial interest rather than the public interest. Here, Mar sponsored a resolution and voted in favor of
12 extending a permit for a party who had given him concert tickets on two occasions over the previous
13 fourteen months with a total value of over a thousand of dollars. The wrongfulness of this violation is
14 aggravated by the City's \$25 limit on gifts from restricted sources, as well as Mar's failure to report
15 receiving the gifts from Another Planet on his SEIs for 2011 and 2012, and in subsequent years.

16 In mitigation, Mr. Mar stated he believed that because Golden Gate Park was in his district, his
17 duties with regard to activities there, including Outside Lands, fell within exceptions to the gift rules for
18 official duties and public purposes. He also filed amended SEIs disclosing the receipt of gifts from Another
19 Planet. Further, he cooperated with the investigation and is no longer in office.

20 The proposed penalties for the violations of the Act are as follows: Counts 1, 3 through 5 - \$1,000
21 per count; Count 2 - \$2,000; and Count 6 - \$3,500.

22 **SF Ethics Commission Penalty**

23 The SF Ethics Commission may impose a penalty of three times the value of any unlawfully
24 received gifts.¹⁸ The gifts from a restricted source in this case totaled \$5,563.50. Subsequently, the total
25 proposed penalty for Counts 7 through 13 is \$16,690.50.

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¹⁸ San Francisco Charter section C3.699-13(c)(i)(3).

1 **CONCLUSION**

2 Complainants, the Enforcement Division of the FPPC and the SF Ethics Commission, and
3 respondent Eric Mar (Respondent) hereby agree as follows:

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

6 2. This stipulation will be submitted for consideration by the FPPC and the SF Ethics
7 Commission at their next regularly scheduled meetings—or as soon thereafter as the matter may be heard.

8 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
9 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
10 liability of Respondent pursuant to Government Code section 83116 or San Francisco Charter C3.699-
11 13(c).

12 4. Respondent has consulted with his attorney, Steve Churchwell of Churchwell White, LLP,
13 and understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in
14 Government Code sections 83115.5, 11503, 11523, California Code of Regulations, title 2, sections
15 18361.1 through 18361.9, San Francisco Charter section C3.699-13, and the SF Ethics Commission's
16 Regulations for Investigations and Enforcement Proceedings. This includes, but is not limited to, the right
17 to appear personally at any administrative hearing held in this matter, to be represented by an attorney at
18 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
19 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the
20 hearing as a hearing officer, and to have the matter judicially reviewed.

21 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
22 Respondent agrees to the FPPC imposing against it an administrative penalty in the amount of \$9,500 and
23 the SF Ethics Commission imposing an administrative penalty in the amount of \$16,690.50. Cashier's
24 checks or money orders totaling said amounts—to be paid to the General Fund of the State of California
25 and the City and County of San Francisco, respectively—are submitted with this stipulation as full payment
26 of the administrative penalties described above, and same shall be held by the State of California until the
27 FPPC issues this decision and order, and by the City and County of San Francisco until the SF Ethics
28 Commission issues this decision and order.

1 6. If the FPPC or the SF Ethics Commission refuses to approve this stipulation then this
2 stipulation shall become null and void as to those violations of the law which the agency disapproving the
3 stipulation is empowered to enforce, and within fifteen business days after the meeting at which the
4 stipulation is rejected, all payments tendered by Respondent to the agency that refused to approve the
5 stipulation in connection with this stipulation shall be reimbursed to Respondent. Refusal to approve this
6 stipulation by one agency will not render this stipulation null and void as to the other agency if the other
7 agency approves the stipulation. In the event either the FPPC or SF Ethics Commission refuses to approve
8 this stipulation, the other agency reserves the right to bring a subsequent action against Respondent for the
9 conduct charged herein by the agency that refused to approve this stipulation so long as the subsequent
10 action does not result in Respondent being penalized multiple times for a single wrongful act. If this
11 stipulation is not approved by the FPPC or the SF Ethics Commission, and if a full evidentiary hearing
12 before the FPPC or the SF Ethics Commission becomes necessary, neither any member of the FPPC or the
13 SF Ethics Commission, nor any staff of either agency, shall be disqualified because of prior consideration
14 of this Stipulation.

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

18
19 Dated: 20NOV17

20 _____
21 Galena West
22 Chief of Enforcement
23 Fair Political Practices Commission

24 Dated: 10/13/2017

25 _____
26 LeeAnn Pelham
27 Executive Director
28 San Francisco Ethics Commission


 Dated: 9-14-17

 Eric Mar

1 The foregoing stipulation of the parties "In the Matter of Eric Mar," FPPC No. 15/2201 and SFEC No.
2 1617-125, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the FPPC Chair, and of the SF Ethics Commission effective upon
4 execution below by the SF Ethics Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: 11/20/17


Joann Remke, Chair
Fair Political Practices Commission

9
10 Dated: 10/27/17


Peter Keane, Chair
San Francisco Ethics Commission