



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, and Commissioners Cardenas, Hatch, and Hayward

From: Loressa Hon, Acting Executive Director
Galena West, Chief of Enforcement
Bridgette Castillo, Senior Commission Counsel

Date: September 10, 2018

RE: Assignment of Hearing to Administrative Law Judge

Case Name: In the Matter of Joshua Mitchell, FPPC No. 14/1333

I. INTRODUCTION

Respondent Joshua Mitchell assumed office in 2010 as a member of the Sanger City Council and was the Mayor of the City of Sanger from 2012 through his resignation in August 2015.

The Act requires public officials to disclose assets and income that may be materially affected by their official actions, so that conflicts of interests may be avoided. The disclosure of assets and income is a public document so that the public can identify possible conflicts of interests. For example, a public official cannot vote to approve projects for a company that is a source of income to him.

In this case, Mitchell violated the Act by voting three times to approve projects for a developer from whom he received income through his landscaping businesses. Further, Mitchell failed to disclose the income received from the developer and orchestrated a scheme to place one of his landscaping businesses in the name of a friend to avoid proper disclosure, as detailed in the Accusation attached to this memo. Mitchell filed a notice of defense in response to the Accusation and requested an administrative hearing.

II. COMMISSION ACTION ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING

The Acting Executive Director and the Chief of Enforcement are recommending an administrative law judge (“ALJ”) conducted the hearing pursuant to Government Code section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then make the final determination on the case.

This memorandum is submitted to each member of the Commission pursuant to California Code of Regulation section 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission action is required if the Commission approves the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission if so desired.

III. PROCEDURAL HISTORY

The Enforcement Division initiated this administrative action against Mitchell by serving him with a Report in Support of a Finding of Probable Cause (“PC Report”), through his attorney, on or about August 7, 2017. In response to the PC Report, Mitchell requested discovery pursuant to Regulation §18361.4, subd. (c)(2). The Enforcement Division provided documents to Mitchell in response to his discovery request by certified mail received by Mitchell on or about September 20, 2017.

After the Enforcement Division received no request for a Probable Cause Conference after the service of discovery, the Enforcement Division submitted the matter to the Hearing Officer for a determination of probable cause by means of an Ex Parte Request for Finding of Probable Cause and an Order that an Accusation Be Prepared and Served, dated October 23, 2017.

On or about October 26, 2017, the Hearing Officer issued an order finding that there was probable cause to believe Mitchell violated the Act and directed the Enforcement Division to issue an accusation against Mitchell in accordance with the finding.

On August 1, 2018, the Commission’s Chief of Enforcement Galena West, issued an Accusation against Mitchell. Mitchell, through his attorney, submitted a signed notice of defense dated August 15, 2018 requesting an administrative hearing on this matter.

IV. HEARING OPTIONS

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ.¹

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ hears a case, he or she shall exercise all powers relating to the

¹ See Gov’t Code § 11512, subd. (a).

conduct of the hearing. A rule of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ's proposed decision in the proceeding.²

V. SUMMARY OF THE ACCUSATION

The Accusation alleges Mitchell violated the Political Reform Act as follows:

Count 1: Conflict of Interest

On January 2, 2014, Mitchell, as the Mayor of Sanger, made a governmental decision when he was the swing vote in favor of extending the Residential Impact Fee Waiver Program ("Program"), which waived the residential impact fee for home builders who built in existing blighted neighborhoods and purchased 30% or more of the supplies and services to build those homes from businesses in the City of Sanger. Royal Woods subdivision, a property owned and developed by Evergreen, was specifically listed as eligible to participate in the Program and be charged zero impact fees as a result, saving Evergreen approximately \$384,000. This decision would have had a reasonably foreseeable material financial effect on Evergreen, which was a source of income of \$500 or more within the preceding 12 months to Mitchell through Western Landscape Development ("WLD") and JDM Enterprises.

As such, Mitchell made a governmental decision in which he had a financial interest, violating Government Code section 87100.

Count 2: Conflict of Interest

On May 15, 2014, Mitchell, as the Mayor of Sanger, made a governmental decision when he was the swing vote in favor of approving a development agreement for the Royal Woods subdivision, a development of Evergreen. This decision would have had a reasonably foreseeable material financial effect on Evergreen, which was a source of income of \$500 or more within the preceding 12 months to Mitchell through JDM Enterprises.

As such, Mitchell made a governmental decision in which he had a financial interest, violating Government Code section 87100.

Count 3: Conflict of Interest

On October 16, 2014, Mitchell, as the Mayor of Sanger, made a governmental decision when he was the swing vote in favor of approving an Amendment to the Agreement for Development of Tract 5383—Royal Woods allowing Evergreen to purchase Security for each phase of development in the Royal Woods subdivision before construction began in that phase. This decision would have had a reasonably foreseeable material financial effect on Evergreen, which was a source of income of \$500 or more within the preceding 12 months to Mitchell through JDM Enterprises.

² See Gov't Code § 11512, subd. (b).

As such, Mitchell made a governmental decision in which he had a financial interest, violating Government Code section 87100.

Count 4: Failure to Disclose Income on 2012 Annual SEI

Mitchell filed his 2012 Annual SEI on April 4, 2013. Mitchell inaccurately reported that he disposed of WLD on January 1, 2012, and Mitchell was required, and failed, to disclose sources of income of \$10,000 or more to WLD.

As such, Mitchell violated Section 87207.

Count 5: Failure to Disclose Income on 2013 Annual SEI

Mitchell filed his 2013 Annual SEI on April 1, 2014. Mitchell was required, and failed, to disclose his ownership interest in WLD, his ownership interest in JDM Enterprises and all single sources of income of \$10,000 or more, to each of these entities.

As such, Mitchell violated Section 87207.

Count 6: Failure to Disclose Income on 2014 Annual SEI

Mitchell filed his 2014 Annual SEI on March 25, 2015. Mitchell was required, and failed, to disclose his ownership interest in JDM Enterprises and all single sources of income of \$10,000 or more to JDM Enterprises.

As such, Mitchell violated Section 87207.

VI. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available.³ Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

³ Reg. § 18361.5, subd. (b).

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8

9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11 In the Matter of) FPPC No. 14/1333
12)
13)
14 JOSHUA MITCHELL,) **ACCUSATION**
15)
16 Respondent.) (Gov. Code §11503)
17)

18
19 Complainant, the Enforcement Division of the Fair Political Practices Commission, after a finding
20 of probable cause pursuant to Government Code section 83115.5, alleges the following:

21 **JURISDICTION**

- 22 1. Complainant is the Enforcement Division of the Fair Political Practices Commission (the
23 “Commission”) and makes this Accusation in its official capacity and in the public interest.
- 24 2. The authority to bring this action is derived from Title 2, California Code of Regulations,
25 Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of California, specifically
26 including, but not limited to, Government Code Sections 83111, 83116, and 91000.5, which assign to the
27 Enforcement Division the duty to administer, implement, and enforce the provisions of the Political
28 Reform Act, found at Government Code Sections 81000 through 91014.

APPLICABLE LAW

13. All applicable law in this Accusation is the law as it existed during the relevant time for the violations alleged.

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

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

B. Duty to Disclose Financial Information on Statements of Economic Interests

15. An express purpose of the Act is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed, so that conflicts of interests may be avoided.⁶ In furtherance of this purpose, the Act requires every person who holds an office specified in Section 87200 to file annual Statements of Economic Interests (“SEI”), disclosing the person’s reportable economic interests including investments, interests in real property, and sources of income.⁷ Mayors and “members of city councils” are included.⁸ Income required to be disclosed includes the name of every person from whom the business entity received payments if the filer’s pro rata share of gross receipts from that person was equal to or greater than \$10,000 during a calendar year.⁹

C. Conflicts of Interests

16. One of the purposes of the Act is to prevent conflicts of interest by public officials.¹⁰ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”¹¹ To prevent conflicts of interest in governmental decision making, the Act prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest.¹² A public official has a financial interest in a decision if it is reasonably

⁴ Section 81001, subd. (h).

⁵ Section 81003.

⁶ Section 81002, subd. (c).

⁷ Section 87203.

⁸ Section 87200.

⁹ Section 87207, subd. (b)(2).

¹⁰ Section 81002, subd. (c).

¹¹ Section 81002, subd. (f).

¹² Section 87100.

1 foreseeable that the decision will have a material financial effect on an economic interest of the official.¹³

2 The six relevant steps of the analysis follow below.

3 17. First, the individual must be a public official as defined by the Act. A “public official”
4 includes members of a state or local governmental agency.¹⁴

5 18. Second, the official must make, participate in making, or attempt to use his or her official
6 position to influence a governmental decision. A public official “makes a governmental decision” when
7 the official votes on a matter.¹⁵

8 19. Third, the official must have an economic interest that may be financially affected by the
9 governmental decision. An economic interest of a public official includes any source of income of \$500
10 or more within 12 months prior to the time when the relevant governmental decision is made.¹⁶ This
11 includes a pro-rata share of any income of any business entity or trust in which the official or his or her
12 spouse owns at least a ten percent interest.¹⁷ Further, a public official’s income includes income which
13 has been promised to the public official but not yet received by him, if he has a legally enforceable right
14 to the promised income.¹⁸ In addition to having an economic interest in any business entity from which
15 the official has received income of \$500 or more within 12 months prior to the relevant governmental
16 decision, the official has a source-of-income economic interest in any individual, regardless of the extent
17 of the individual’s ownership interest in that entity, who has the power to direct or cause the direction of
18 the management and policies of the business entity.¹⁹

19 20. Fourth, it must be determined if the economic interest of the official is directly or indirectly
20 involved in the decision. A person, including a business entity and a source of income, is directly involved
21 in a decision before an official’s agency when that person, either directly or by an agent: (1) Initiates the
22 proceeding in which the decision will be made by filing an application, claim, appeal, or similar request,
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25 ¹³ Section 87103.

26 ¹⁴ Section 82048.

27 ¹⁵ Regulation 18702.1, subd. (a) (1).

28 ¹⁶ Section 87103, subd. (c).

¹⁷ Section 82030, subd. (a).

¹⁸ Regulation 18703.3, subd. (a)(1).

¹⁹ Regulation 18703.3, subd. (a)(3).

1 or; (2) is a named party in, or is the subject of the proceeding concerning the decision before the official
2 or the official's agency.²⁰

3 21. Fifth, it must be determined what materiality standard will apply to the economic interest
4 of the public official. Any reasonably foreseeable financial effect on a person who is a source of income
5 to the public official, and who is directly involved in a decision before the official's agency, is deemed
6 material.²¹

7 22. Sixth, it must have been reasonably foreseeable, at the time the governmental decision was
8 made, that the decision would have a material financial effect on the economic interest of the official. A
9 material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not
10 just a mere possibility, that one or more of the materiality standards applicable to that economic interest
11 will be met as a result of the governmental decision.²² On May 31, 2014, the language of this regulation
12 changed to define that an economic interest is explicitly involved and a financial effect on an economic
13 interest is presumed to be reasonably foreseeable if the economic interest is a named party in or the subject
14 of the governmental decision before the official's agency.²³

15 **D. Commencement of Administrative Action**

16 23. "Service of the probable cause hearing notice, as required by Section 83115.5, upon the
17 person alleged to have violated this title shall constitute the commencement of the administrative action."²⁴

18 24. A finding of probable cause is prohibited unless the person alleged to have violated the Act
19 is: 1) notified of the violation by service of process or registered mail with return receipt requested; 2)
20 provided with a summary of the evidence; and 3) informed of his right to be present in person and
21 represented by counsel at any proceeding of the Fair Political Practices Commission held for the purpose
22 of considering whether probable cause exists for believing the person violated the Act.²⁵ The required
23 notice to the alleged violator shall be deemed made on the date of service, the date the registered mail
24 receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.²⁶

25 ²⁰ Regulation 18704.1, subd. (a).

26 ²¹ Regulation 18705.3, subd. (a).

27 ²² Regulation 18706, effective until 5/30/14.

28 ²³ Regulation 18706, effective 5/31/14.

²⁴ Section 91000.5, subd. (a).

²⁵ Section 83115.5.

²⁶ Section 83115.5.

1 25. Administrative action alleging a violation of the Act must be commenced within five years
2 after the date on which the violation occurred.²⁷

3 **E. Factors to be Considered by the Fair Political Practices Commission**

4 26. In framing a proposed order following a finding of a violation pursuant to Section 83116,
5 the Commission and the administrative law judge shall consider all the surrounding circumstances
6 including but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any
7 intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or inadvertent;
8 (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other
9 government agency in a manner not constituting a complete defense under Section 83114(b); (5) Whether
10 the violation was isolated or part of a pattern and whether the violator has a prior record of violations of
11 the Act or similar laws; and (6) Whether the violator, upon learning of a reporting violation, voluntarily
12 filed amendments to provide full disclosure.²⁸

13 **GENERAL FACTS**

14 27. Mitchell's full legal name is Joshua David Mitchell. Mitchell assumed office in 2010 as a
15 member of the Sanger City Council. Mitchell was the Mayor of Sanger from 2012 through August 2015.

16 **A. City of Sanger Residential Impact Fee Waiver Program and Evergreen's Royal Woods**
17 **Development**

18 28. During the downturn in the economy, the City of Sanger experienced decreased
19 development, so partially developed areas were left incomplete. The Sanger City Council sought ways to
20 bring development back into the city.

21 29. On September 1, 2011, while Mitchell was a Sanger City Councilmember, the Sanger City
22 Council approved an 18-month Residential Impact Fee Waiver Program (Program). The Program waived
23 residential impact fees for home builders who built in existing blighted neighborhoods and purchased 30%
24 or more of the supplies and services to build those homes from businesses in the City of Sanger. Mitchell
25 voted to approve the Program.

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28 ²⁷ Section 91000.5.

²⁸ Regulation 18361.5, subd. (d).

1 30. On September 15, 2011, the Sanger City Council approved a list of blighted neighborhoods
2 that would qualify for the Program. Included was a subdivision referred to as Tract No. 5383—Royal
3 Woods. Mitchell voted to approve this list in a unanimous vote.

4 31. Evergreen Communities, Inc. (Evergreen) is a residential home builder and developer
5 doing business in Sanger, CA. According to the President of Evergreen, Mike Stettner, Evergreen
6 purchased the property that became Royal Woods in 2010. In 2012, Evergreen decided to build houses on
7 the Royal Woods property.

8 32. Evergreen approached the City of Sanger and initially met with Mitchell, the Community
9 Development Director, the City Engineer and the Planning Director. This is when Stettner learned of the
10 Program which required Evergreen to hire a minimum of 30% local contractors, vendors or suppliers in
11 order to have the development impact fees waived for the Royal Woods development – a savings of about
12 \$9,800 per home. Stettner stated that the waived impact fees were estimated to save Evergreen \$384,000.

13 33. On December 6, 2012, the Sanger City Council voted to modify the Program to include
14 any residual construction project that received a building permit prior to the Program expiration with the
15 Final Inspection within 6 months of the date of the building permit, and extend the Program to December
16 31, 2013. Mitchell recused himself from this vote based on a potential conflict of interest and left the dais.

17 34. On January 2, 2014, Mitchell, as Mayor of Sanger, was the swing vote in favor of extending
18 the Program to June 30, 2014.

19 35. On May 15, 2014, Mitchell, as Mayor of Sanger, was the swing vote in favor of approving
20 a development agreement for the Royal Woods subdivision, a development of Evergreen Communities,
21 Inc. (Evergreen), a residential home builder and developer doing business in Sanger, CA.

22 36. On October 16, 2014, Mitchell, as Mayor of Sanger, was the swing vote in favor of
23 approving an Amendment to the Agreement for the Development of Tract 5383 Royal Woods, allowing
24 Evergreen to purchase Security for each phase of development prior to construction in that subdivision.

25 **B. Mitchell's Income from Evergreen**

26 37. The evidence shows that at different times in 2012, 2013 and 2014, Mitchell owned and
27 operated two landscaping businesses in Sanger, CA – Western Landscape Development (WLD) and JDM
28 Enterprises – and Evergreen paid these businesses for landscaping services.

1 38. The evidence also shows that, at all relevant times, Mitchell received income from
2 Evergreen through WLD and JDM Enterprises.

3 39. In 2012 and 2013, Mitchell and his wife, Bethany Mitchell, owned and operated WLD.

4 40. When Stettner, Evergreen's president, first met with Mitchell and Spears, the Sanger
5 Community Development Director, he asked if they could recommend anyone for home construction and
6 landscaping for the Royal Woods development. Mitchell recommended his own business, WLD, and as a
7 result, Evergreen contracted with WLD in 2012 for the Royal Woods development, the off-site
8 improvements along Church Avenue, a project site on Regan and for work on individual homes. Evergreen
9 provided front yard landscaping as part of a one-year warranty for all new homes which included general
10 maintenance. WLD provided the landscaping work mentioned above along with landscaping at the Royal
11 Woods model homes.

12 41. WLD began providing these landscaping services to Evergreen in early 2012, and
13 Evergreen first paid WLD in March 2012. Evergreen's last payment to WLD was in the form of three
14 checks dated February 22, 2013, as follows:

Check#	Date Cashed/Deposited	Invoice No.	Amount
5172	February 28, 2013	12-539	\$10,000
5173	February 28, 2013	12-572/ 12-592/ 13-124	\$1,320
5174	February 28, 2013	12-564/ 12-579/ 12-593	\$3,744
TOTAL			\$15,064

18 42. In December 2013, WLD filed for bankruptcy.

19 43. But the evidence shows that in early 2013, before WLD's bankruptcy proceedings,
20 Mitchell began billing his landscaping services to Evergreen under a new business name, JDM
21 Enterprises, whose name used Mitchell's initials.

22 44. Evergreen first paid JDM Enterprises in the form of two checks dated April 5, 2013, as
23 follows:

Check#	Date Cashed/Deposited	Invoice No.	Amount
5208	May 2, 2013	13-303	\$1,984.86
5213	May 2, 2013	13-314/ 13-326	\$880
TOTAL			\$2,864.86

27 45. These Evergreen checks included payment for an outstanding WLD invoice (Invoice No.
28 13-303). These Evergreen checks were made payable to JDM Enterprises and endorsed by Mitchell. The

1 checks were then cashed at Choice Market, with the phone number of Jose Martinez, an associate of
2 Mitchell's, listed below Mitchell's signature.

3 46. Thereafter, all other checks from Evergreen to JDM Enterprises were endorsed using a
4 stamp and deposited into the JDM Enterprises bank account. Payments from Evergreen to JDM
5 Enterprises within 12 months of decisions made by the Sanger City Council relating to Evergreen also
6 include the following:

Check Date	Check#	Date Cashed/Deposited	Invoice(s)	Amount
05.31.2013	5432	August 9, 2013	Invoice 13-377	\$10,725.81
06.14.2013	5317	June 19, 2013	Invoice 13-357	\$440.00
07.05.2013	5360	July 12, 2013	Invoice 13-378	\$310.00
07.15.2013	5384	July 18, 2013	Invoice 13-402	\$500.00
09.12.2013	5504	September 16, 2013	Invoice 13-422	\$1,270.00
09.24.2013	5528	September 30, 2013	Invoices 13-403 13-542	\$7,407.92
10.29.2013	5586	November 1, 2013	Invoice 13-755	\$470.00

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12.03.2013	5671	December 10, 2013	Invoices 13-852 13-851 13-855 13-859	\$1,676.00
01.09.2014	5747	March 18, 2014	Invoices 13-1029 13-1028	\$1,872.00
04.08.2014	5937	April 14, 2014	Invoices 13-1177 14-115 14-114 14-225	\$2,214.00
04.30.2014	5987	May 5, 2014	Invoice 13-1083	\$4,112.00
05.27.2014	6061	May 30, 2014	Invoice 14/226	\$1,520.00
07.01.2014	6160	July 8, 2014	Invoices 14-544 14-545	\$1,974.67
07.23.2014	6190	August 5, 2014	Invoices 14-329 14-330 14-664 14-665	\$3,805.18
08.20.2014	6269	August 25, 2014	Invoice 14-777	\$1,310.00

			Invoices	
09.17.2014	6308	September 22, 2014	14-776	\$7,755.47
			14-810	
			14-801	
			14-829	

47. Notably, the address for JDM Enterprises on all of the Evergreen checks to JDM Enterprises was Mitchell’s home address located at 2808 Cherry Ave. in Sanger California, which was the same address Mitchell used for WLD.

C. Mitchell Owned JDM Enterprises

48. The evidence shows that Mitchell owned JDM Enterprises and that he attempted to conceal his ownership of JDM Enterprises.

a. Karina Corona-Valencia and Jose Martinez

49. Mitchell established JDM Enterprises in the name of Karina Corona-Valencia, but the evidence shows that she did not own or operate JDM Enterprises.

50. In an interview with Enforcement Division staff, Corona-Valencia stated that JDM Enterprises was her long-time boyfriend’s business.

51. Corona-Valencia’s boyfriend was known primarily as Jose Martinez (Martinez). According to the DMV record, Martinez’s legal name is Jose Luis Martinez Caballero, but he has also been known as David Salgado and David Torres.

52. Both Corona-Valencia and Martinez speak Spanish as their first language, with limited English speaking, reading and writing skills. Both Corona-Valencia and Martinez were interviewed through a translator.

53. According to Corona-Valencia, JDM Enterprises was put into her name because Martinez did not have an Individual Taxpayer Identification Number (ITIN). She opened the JDM Enterprises bank account and signed the Fictitious Business Name Statement for JDM Enterprises in June 2013.

54. But the evidence shows that Corona-Valencia also signed a Fictitious Business Name Statement for a different business Martinez owned and operated – Western Tree Service – which worked closely with Mitchell’s landscaping businesses. Western Tree Service shared the same commercial location as WLD and JDM Enterprises – 1849 Industrial Way in Sanger, CA – and Western Tree Service was advertised at times as WLD’s sister business. Further, Martinez’s business card for Western Tree

1 Service reflected Mitchell's contractor's license number – Martinez did not have his own contractor's
2 license.

3 55. On or about March 15, 2016, in the phone interview of Martinez, he stated that he did work
4 for JDM Enterprises and he will do work for JDM Enterprises again. He explained that when Mitchell
5 does not want to do certain work, he contacts Martinez to perform the work.

6 56. However, on or about May 18, 2016, according to an interview, Martinez claimed that he
7 let the name "Western Tree Service" go because he wanted to use his initials, JDM, in the business name.
8 But the Enforcement Division found only two documented instances where Martinez used the name "Jose
9 David Martinez": 1) a lease agreement with Mitchell dated November 26, 2012 (further details below),
10 and 2) a contract dated January 20, 2014, with Definitive Staffing Solutions, for which Martinez could not
11 recognize or confirm his signature to Enforcement Division staff.

12 57. According to Martinez, when Mitchell did not want to do certain work, he would refer
13 work to Martinez to complete. Martinez said he got most of his work from Mitchell. In the interview,
14 Martinez referred to Mitchell as his boss and as the person who gives him work. During the interview with
15 the Enforcement Division, Martinez wore a t-shirt with the name of Mitchell's current business – JDM
16 Landscape.

17 **b. Mitchell's Ownership and Control of JDM Enterprises**

18 58. WLD was located at 1849 Industrial Way in Sanger, CA. According to JDM Enterprises
19 records, Mitchell and his wife sub-leased 1849 Industrial Way, Suite 103 for an office, shop and yard to
20 Martinez and Corona-Valencia for \$1,200 per month, which was signed on November 26, 2012. Mitchell
21 and Martinez both denied there was a rental agreement, and though Martinez did not remember signing
22 the lease, he identified his signature.

23 59. The evidence shows that beginning April 1, 2013, Mitchell invoiced JDM Enterprises for
24 rent in the amount of \$1,200. According to bank records, Mitchell signed JDM Enterprises checks payable
25 to himself, each totaling \$1,200, for 5 months in 2013 and continuing in 2014. During this time, Mitchell
26 also signed JDM Enterprises checks for rent payments of \$1,165 to Claude Jessen, the landlord of 1849
27 Industrial Way.

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1 60. Martinez did not know why JDM Enterprises paid \$1,200 per month additionally for rent
2 he already paid to Mitchell in cash. Martinez stated that he occupied half of the space at 1849 Industrial
3 Way and Mitchell occupied the other half with his landscaping company. According to Martinez, the
4 entire time Martinez rented space, Mitchell's landscaping business was there as well.

5 61. Martinez stated that he did not write checks for his business, and he worked largely in cash.
6 He cashed checks he received at small stores in the area.

7 62. Further, Martinez stated that he only used pre-printed invoice forms on which he handwrote
8 the type of work done and amount owed.

9 63. Notably, the only invoices obtained by subpoena from JDM Enterprises were computer
10 generated – no pre-printed invoice forms were provided. Martinez did not know who prepared the JDM
11 Enterprises invoices shown to him, and that his invoices did not look like the JDM Enterprises invoices.

12 64. The WLD and JDM Enterprises invoices were almost identical. The November 2012 WLD
13 invoice to Evergreen and the February 2013 JDM Enterprises invoice to Evergreen both included identical
14 logos and information: the same insignia of a tree; Mitchell's home address; Mitchell's contractor license
15 number; and the contact phone number.

16 65. Witnesses, bank records and other documentary evidence confirm that Mitchell and/or his
17 businesses informed clients and business associates that he was changing his business's name to JDM
18 Enterprises.

19 66. According to Manuel Chavez, the manager of La Hacienda Mexican Market, a local market
20 that provides check cashing services, Martinez cashes check at his store and was authorized by Mitchell
21 to cash WLD checks, even if he was not accompanied by Mitchell. Chavez stated that Martinez does work
22 for Mitchell. Although Chavez stated he has known Mitchell and Martinez for many years, in an interview
23 on June 17 2016, Mitchell stated that he did not know Chavez and had never been to La Hacienda Market.

24 67. According to Steve Uremura, the property manager for 1849 Industrial Way in Sanger, CA,
25 this space was rented to Mitchell from July 2011 through August 2015. Uremura stated that in July 2013
26 Mitchell told him he had changed the name of his business from WLD to JDM Enterprises and to start
27 billing for rent to JDM Enterprises. Rent for the space at 1849 Industrial Way was \$1,165 and was paid to
28

1 the owner, Claude Jessen. The checks for rent were made from the JDM Enterprises bank account after
2 July 2013 in the same amounts as WLD had been paying.

3 68. JDM Enterprises applications for insurance acknowledged Mitchell's and his wife's
4 ownership and control over JDM Enterprises. On May 24, 2013, JDM Enterprises filed a Commercial
5 Insurance Application with United Valley Insurance. This application listed JDM Enterprises as a
6 partnership located at "1849 Industrial Ave, Ste. 103, Sanger CA 93657". Bethany Mitchell is named as
7 the inspection contact, and signed the application on May 15, 2013. The Policyholder Disclosure Notice
8 of Terrorism Insurance Coverage form, rejecting this insurance, was signed by Bethany Mitchell, dated
9 on May 15, 2013, with JDM Enterprises handwritten as the named insured.

10 69. According to bank records, WLD, not JDM Enterprises, paid United Valley Insurance with
11 a check dated May 23, 2013, and the memo portion of the check stated "down payment-general liability
12 insurance". According to United Valley Insurance, the payment from WLD in 2013 was the down payment
13 for the JDM Enterprises 2013/2014 policy. One year later, JDM Enterprises wrote a check to United
14 Valley Insurance with the memo section indicating "General Liability down payment". Two trenchers that
15 are listed in the WLD bankruptcy are also listed in this policy. According to Martinez, he did not have any
16 equipment insured.

17 70. JDM Enterprises, Mitchell, his wife, and another individual, David Hutchason, entered into
18 a premium finance agreement with Premium Assignment Corporation on May 29, 2013, which was
19 renewed on May 27, 2014. The agreement renewing this policy was signed by Bethany Mitchell on May
20 21, 2014, with "partner" handwritten next to her name.

21 71. The IRS assigned JDM Enterprises an Employer Identification Number on December 4,
22 2013. The W-9 was signed on December 13, 2013.

23 72. WLD sent an email to Evergreen on February 14, 2013, requesting the payment of
24 outstanding invoices, stating in part:

25 The owners (Joshua and his wife) have made the decision to separate out "Large
26 Commercial" and "Prevailing Wage" projects into one company with one set of workers
27 that make an unusually higher pay rate, from "Smaller Projects" and "Maintenance Work."
28 All the work that we have been under contract to do with your firm has been acknowledged
as being smaller in scope; and for such, they have decided to start the billing effective
immediately as JDM Enterprises. This will be for general labor, P.O. based work and
regular maintenance work.

1 You will find this change in our attached billing for Invoice #13-303. This will be the case
2 for all future billings as well. Also, if the attached billing can be considered in this week's
draw, we would really appreciate it.

3 You will also find our W-9 attached.

4 With regards to the past billings, if the checks could be divided up between Maintenance
5 Work (invoices #12-572, #13-124), Streetscape Work (invoice #12-539) and Water
Meter/Misc. Work (invoices #12-564, #12-579, #13-303).

6 Any effort that you could give would be greatly appreciated..."

7 Regards,
8 Wanda Sepulveda
9 Office Manager
10 Office: [REDACTED]
11 Fax: [REDACTED]
12 Cell: [REDACTED]

13 73. The "past billings" identified in the email were invoices from WLD to Evergreen for
14 services WLD provided and totaled approximately \$17,048.86. Evergreen processed the payments into
15 three different checks, as specifically stated in the last paragraph of WLD's February 14, 2013 email.

16 74. Mitchell denied that WLD wrote this email. But the evidence, detailed below, supports that
17 Mitchell's wife, Bethany, sent this email.

18 75. Sepulveda did not work for WLD at the time the email was sent. Sepulveda told
19 Enforcement Division staff that she was employed as WLD's Office Manager until January 2011, when
20 she was laid off due to the economy. Her duties included handling the accounts payable and receivable,
21 preparing checks, preparing invoices for clients at Mitchell's direction, and administering payroll.
22 Sepulveda also stated that Bethany Mitchell was the main controller of the business, handling bank
reconciliation and bank statements, and she understood that Bethany Mitchell took over the office manager
duties when she left.

23 76. Sepulveda stated that she did not write the email.

24 77. Sepulveda recalled that Bethany Mitchell signed her emails with "Regards."

25 78. And according to records obtained, the cell phone number identified in the email as
26 Sepulveda's was Bethany Mitchell's cell phone number. This same phone number was identified in the
27 Fictitious Business Statement Bethany Mitchell filed in 2015 for JDM Landscape, Mitchell's current
28 landscaping business. Notably, JDM Landscape uses the same logo that JDM Enterprises used.

1 79. The Evergreen Community Product Developer, Shannon Marr, received WLD's February
2 14, 2013 email. Marr recalled WLD was Mitchell's business, and that Mitchell was the Mayor of Sanger.
3 Marr understood that Sepulveda worked for WLD and remembered her name from emails.

4 80. Marr remembered receiving an email from Sepulveda notifying Evergreen that WLD was
5 changing its name with the same ownership. She acknowledged this email had a different format than
6 previous emails from Sepulveda, specifically that it included more information.

7 81. Marr stated that Stettner along with other Evergreen staff held conference calls weekly to
8 get updates on projects. Marr stated that it was on one of these calls in which Mitchell himself stated he
9 was changing the name of his business to JDM Enterprises. Marr also remembered that Stettner informed
10 people in the office of the change in the name of Mitchell's company from WLD to JDM Enterprises for
11 invoicing purposes.

12 82. Even though she had been laid off in 2011, a letter from "Sepulveda" was sent to Evergreen
13 in December 2013, on JDM Enterprises letterhead, regarding the incorrect Employment Identification
14 Number (EIN) for the landscape company, stating in part: "Please advise that JDM Enterprises consists
15 of three companies: tree service, landscape installation, and landscape maintenance; all with different
16 names and separate employment identification numbers..." Attached to the letter was a W-9 for JDM
17 Enterprises. The JDM Enterprises logo in the letterhead matched the logo of a JDM Enterprises contract
18 template produced by Mitchell.

19 83. Bank records show that the JDM Enterprises bank account was opened in the name of
20 Corona-Valencia with Mitchell as a signor on the account. The evidence shows that Mitchell controlled
21 the JDM Enterprises bank account, transferred and/or deposited money from WLD to JDM Enterprises,
22 and deposited payments made to WLD into the JDM Enterprises account.

23 84. From the date the JDM Enterprises bank account was opened on June 19, 2013 through
24 December 31, 2014, Mitchell signed every check made from the JDM Enterprises bank account, including
25 JDM Enterprises checks to Martinez for landscaping work Martinez completed. The WLD bank account
26 was not closed until July 24, 2013.

27 85. Corona-Valencia and Martinez stated that they were generally unaware of transactions in
28 the JDM Enterprises bank account.

1 86. Mitchell paid personal expenses using funds from the JDM Enterprises bank account.

2 Mitchell's payments for personal expenses include:

3 Payee	4 Details of JDM checks signed by Mitchell
5 Verizon	6 Mitchell's land lines and cell phone in both 2013 and 2014
7 Fresno Superior Court	8 Mitchell's personal traffic citation for speeding on August 31, 2013 and traffic school fee, paid in December 2013
9 David Jenkins, Bankruptcy Attorney	10 According to bankruptcy documents, payment to the attorney who represented WLD in its bankruptcy and Bethany Mitchell in her personal bankruptcy
11 DMV	12 Seven payments to DMV for five vehicles registered to Mitchell and/or Bethany Mitchell and/or WLD. Two of these vehicles were listed in the WLD bankruptcy documents and one is listed in Bethany Mitchell's personal bankruptcy.
13 Fresno Superior Court	14 Mitchell's personal traffic citation was paid in October 2014

15 87. Corona-Valencia and Martinez were unaware that Mitchell wrote and signed checks from the JDM Enterprises bank account to pay personal expenses.

16 88. The evidence shows that JDM Enterprises absorbed WLD financial obligations, including:

17 WLD Obligations Taken Over by JDM Enterprises	18 Details
19 TITC Finance	20 Car loan for Kia Sedona registered to Bethany Mitchell, previously paid by WLD. The DMV Renewal of this vehicle was also paid by JDM Enterprises.
21 Two Golden One Loans	22 Initially paid for by WLD then assumed by JDM Enterprises.
23 Claude Jessen, Landlord	24 JDM Enterprises took over the rent payments previously made monthly by WLD. Mitchell informed Jessen that he was changing his business name to JDM Enterprises.
25 Ford Credit	26 JDM Enterprises paid in August 2013, October 2013, February 2014, and twice in April 2014, which was previously paid by WLD.
27 Douglas M. Smith, Accountant	28 JDM Enterprises paid in August 2013, September 2013, November 2013, January and February 2014. This is the same accountant listed as keeping WLD's accounts and records.

29 89. Additional bank records indicating Mitchell controlled and operated JDM Enterprises include:

30 Bank Activity for JDM Enterprises Business	31 Details
32 Check dated 6/10/13 from a WLD longtime Client ADCO	33 Made payable to "1090, Joshua Mitchell DBA: JDM Ent" at Cherry address
34 Check dated 7/15/13	35 First check for rent in the amount of \$1,200 from JDM Enterprises to Mitchell, in a check signed by Mitchell. These checks continued monthly, with Mitchell signing the rent checks.
36 Check dated 7/29/13	37 In a check made payable to WLD for \$1,000, this check was deposited into the JDM Enterprises bank account.
38 Check dated 8/5/13	39 In a check from Mitchell's personal account, made payable to JDM Enterprises for \$6,000, signed by Bethany Mitchell.
40 Deposit dated 8/9/13	41 A check dated 5/31/13 from Evergreen made payable to JDM Enterprises was deposited into the JDM Enterprises bank account. This check was dated prior to opening a JDM Enterprises bank account.

1 Between 7/7/14 and 12/29/14	Bethany Mitchell receives over \$11,000 in checks from JDM Enterprises, signed by Mitchell.
2 Between 7/11/14 and 12/31/14	Martinez received \$8,750 in checks from JDM Enterprises, signed by Mitchell. In the check dated 7/11/14, the Memo states: Jose Luis Martinez DBA Western Tree Service 3650 N. Delano Fresno, CA 93705.
3 In 2014	Corona-Valencia, a signor on the bank account, receives \$3,100 in checks from JDM Enterprises, signed by Joshua Mitchell.

4
5 **D. Statement of Economic Interest Disclosure**

6 90. Mitchell filed his 2012 Annual SEI on April 4, 2013. Mitchell reported receiving income
7 between \$10,001 and \$100,000 from WLD and reported he disposed of WLD on January 1, 2012. He
8 identified WLD as being located at his home address, that the market value was between \$100,000 and
9 \$1,000,000 and that it was a “recently sold off interest.” According to records obtained, WLD continued
10 operating and did not file for bankruptcy until December 2013. Further, Mitchell was required to disclose
11 sources of income of \$10,000 or more from a single source and failed to disclose that his pro rata share of
12 income from Evergreen through WLD was over \$10,000 in 2012.

13 91. Mitchell filed his 2013 Annual SEI on April 1, 2014. Mitchell reported WLD was disposed
14 of on October 3, 2012. According to records obtained, WLD received approximately \$15,000 from
15 Evergreen in 2013. Mitchell failed to report any income from WLD on his 2013 SEI.

16 92. Also in his 2013 Annual SEI, Mitchell reported receiving rental income from JDM
17 Enterprises, Julio Pinstriping and Western Tree Service. Lastly, Mitchell disclosed receiving income
18 between \$1,001 to \$10,000 for consulting fees from JDM Enterprises and Western Tree Service.

19 93. In the interview with Mitchell, he stated that he did not consult for JDM Enterprises or
20 Western Tree Services, but instead sold them some equipment and received rental income.

21 94. But, as previously discussed, the evidence shows that Mitchell owned JDM Enterprises,
22 and he should have disclosed his ownership interest in his 2013 Annual SEI. And JDM Enterprises
23 received approximately \$25,664 from Evergreen in 2013, which Mitchell also should have disclosed.
24 Further, JDM Enterprises received over \$10,000 from the following, which Mitchell should have disclosed
25 in his 2013 Annual SEI: ADCO; Ban Vinai, LLC; Campos Land Company; Dinuba Properties, LLC;
26 Jones Language Lasalle Americas, Inc.; Performance Property Management, Inc.; and Y-Op Co, LLC.

27 95. Mitchell filed his 2014 Annual SEI on March 25, 2015. Mitchell reported himself as a
28 consultant. He reported he received between \$10,001 and \$100,000 from several sources, including JDK

1 Enterprises, JDM Enterprises, and Western Tree Service for consulting. Further, he disclosed that he
2 received rental income from David Martinez/Karina Corona dba JDM Enterprises and Western Tree
3 Service.

4 96. In the interview with Mitchell, he stated that he did not consult for JDM Enterprises or
5 Western Tree Services, but instead sold them some equipment and received rental income.

6 97. But, as previously discussed, the evidence shows that Mitchell owned JDM Enterprises.
7 JDM Enterprises received approximately \$24,563 from Evergreen in 2014, which Mitchell also should
8 have disclosed. Further, JDM Enterprises received over \$10,000 from the following, which Mitchell
9 should have disclosed in his 2014 Annual SEI: ADCO; Jones Language Lasalle Americas, Inc.;
10 Performance Property Management, Inc.; and Y-Op Co, LLC.

11 PROCEDURAL HISTORY

12 98. The Enforcement Division initiated an administrative action against Mitchell in this matter
13 by serving him, through his attorney Justin Harris, with a packet containing a cover letter, a Report in
14 Support of a Finding of Probable Cause (“PC Report”), a fact sheet regarding probable cause proceedings,
15 selected sections of the Government Code regarding probable cause proceedings for the Commission, and
16 selected regulations of the Commission regarding probable cause proceedings. Service of a PC Report
17 upon the person alleged to have violated the Act tolls the statute of limitations and initiates the
18 administrative action.²⁹

19 99. Mitchell was served with the PC Report by certified mail, return receipt requested, on
20 August 7, 2017. The information contained in the PC Report packet advised that Mitchell had 21 days in
21 which to request a probable cause conference and/or to file a written response to the PC Report.

22 100. On August 25, 2017, Mitchell, through his attorney, requested discovery in this matter.

23 101. On September 20, 2017, Mitchell, through his attorney, was served with discovery in this
24 case.

25 102. After the Enforcement Division received no response to discovery, the Enforcement
26 Division submitted the matter to the Hearing Officer for a determination of probable cause by means of
27

28 ²⁹ Sections 83115.5, and 91000.5, subd. (a).

1 an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation Be Prepared and
2 Served (“Ex Parte Request”), dated October 23, 2017.

3 103. On or about October 26, 2017, the Hearing Officer issued an order finding, based on the
4 Ex Parte Request and the PC Report, that there was probable cause to believe Mitchell violated the Act
5 and directed the Enforcement Division to issue an accusation against Mitchell in accordance with the
6 finding.

7 104. On or about November 3, 2017, the Enforcement Division was informed that Mr. Harris
8 was no longer representing Mitchell.

9 105. On or about November 9, 2017, the Enforcement Division was informed that Mitchell’s
10 new legal counsel was John Garland.

11 **VIOLATIONS**

12 106. Mitchell committed 6 violations of the Act as follows:

13 **Count 1**

14 **Conflict of Interest**

15 107. Complainant incorporates paragraphs 1 – 106 of this Accusation, as though completely set
16 forth here.

17 108. On January 2, 2014, Mitchell, as the Mayor of Sanger, made a governmental decision when
18 he was the swing vote in favor of extending the Program, which specifically listed the Royal Woods
19 subdivision, a property owned and developed by Evergreen, to be eligible to participate in the Program
20 and be charged zero impact fees as a result, saving Evergreen approximately \$384,000. This decision
21 would have had a reasonably foreseeable material financial effect on Evergreen, which was a source of
22 income of \$500 or more within the preceding 12 months to Mitchell through WLD and JDM Enterprises.

23 109. As such, Mitchell made a governmental decision in which he had a financial interest,
24 violating Government Code section 87100.

25 **Count 2**

26 **Conflict of Interest**

27 110. Complainant incorporates paragraphs 1 – 109 of this Accusation, as though completely set
28 forth here.

1 **Count 5**

2 **Failure to Disclose Income on 2013 Annual SEI**

3 120. Complainant incorporates paragraphs 1 – 119 of this Accusation, as though completely set
4 forth here.

5 121. Mitchell filed his 2013 Annual SEI on April 1, 2014.

6 122. Mitchell was required, and failed, to disclose his ownership interest in WLD, his ownership
7 interest in JDM Enterprises and all single sources of income of \$10,000 or more, to each of these entities.

8 123. As such, Mitchell violated Section 87207.

9 **Count 6**

10 **Failure to Disclose Income on 2014 Annual SEI**

11 124. Complainant incorporates paragraphs 1 – 123 of this Accusation, as though completely set
12 forth here.

13 125. Mitchell filed his 2014 Annual SEI on March 25, 2015.

14 126. Mitchell was required, and failed, to disclose his ownership interest in JDM Enterprises
15 and all single sources of income of \$10,000 or more to JDM Enterprises.

16 127. As such, Mitchell violated Section 87207.

17 **MITIGATING OR EXCULPATORY FACTORS**

18 128. Complainant incorporates paragraphs 1 – 127 of this Accusation, as though completely set
19 forth here.

20 129. Mitchell resigned from public office in August 2015, prior to the end of his elected term.

21 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

22 130. Complainant incorporates paragraphs 1 – 129 of this Accusation, as though completely set
23 forth here.

24 131. Mitchell was the Mayor of Sanger and on the Sanger City Council for approximately 5
25 years, with experience regarding his requirements under the Act.

26 132. Mitchell has had prior cases with the Enforcement Division.

1 conceal, deceive or mislead; (3) whether the violation was deliberate, negligent or inadvertent; (4) whether
2 the violator demonstrated good faith by consulting the Commission staff or any other government agency
3 in a manner not constituting a complete defense under Section 83114, subdivision (b); (5) whether the
4 violation was isolated or part of a pattern and whether the violator has a prior record of violations of the
5 Act or similar laws; and (6) whether the violator, upon learning of a reporting violation, voluntarily filed
6 amendments to provide full disclosure.

7 9. That the Fair Political Practices Commission grant such other and further relief as it deems
8 just and proper.

9
10 Dated: 1 Aug 18


11 Galena West
12 Chief of Enforcement
13 Fair Political Practices Commission
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