GALENA WEST
Chief of Enforcement
NEAL BUCKNELL
Senior Commission Counsel
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
Telephone: (916) 323-6424
Facsimile: (916) 322-1932
Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: CHRISTOPHER LEWIS, Respondent.	FPPC Case No. 16/74 STIPULATION, DECISION AND ORDER

INTRODUCTION

This case arose from an audit performed by the California State Auditor.

In December 2014, Christopher Lewis separated from employment with the Department of Health Care Services, Substance Use Disorder Compliance Division—after serving as the Chief of the Licensing and Certification Section for almost four years. In the year that followed, Lewis began representing members of the regulated community with respect to his former employer's licensing and certification process. During this time, he frequently contacted DHCS for the purpose of attempting to influence/expedite decisions on behalf of his paying clients—in violation of the post-employment ethics restrictions of the Political Reform Act.[1]

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[1] The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. The violations in this case occurred in 2015. All legal references and discussions of law pertain to the Act's provisions as they existed at that time.

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

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.[2] Thus, it was decreed that the Act "should be liberally construed to accomplish its purposes."[3]

One purpose of the Act is to impose restrictions on post-government employment to curtail activities that involve—or may appear to involve—the unfair use of a person's prior government employment.[4] Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."[5]

The One-Year Ban on Communications with Former Agency

Public officials who leave state service are subject to certain restrictions, which are sometimes referred to as the Act's revolving door provisions. One of these restrictions is known as the one-year ban. This ban applies to various officials, including any employee of a state administrative agency who holds a position that is designated in the agency's conflict-of-interest code. For a period of one year after leaving state service, such individuals may not act as agent or attorney for, or otherwise represent, any other person—for compensation—by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which the individual worked during the 12 months before leaving state service. This ban only applies if the appearance or communication is made for certain purposes, including the purpose of influencing administrative or legislative action—or influencing any action or proceeding involving the issuance,

[2] Section 81001, subdivision (h).

[3] Section 81003.

[4] Sections 87400, et seq.

[5] Section 81002, subdivision (f).

amendment, awarding, or revocation of a permit or license.[6] "State administrative agency" means every state office, department, division, bureau, board, and commission (except the Legislature, the courts, or any agency in the judicial branch of government).[7]

SUMMARY OF THE FACTS

In December 2014, Christopher Lewis separated from employment with the Department of Health Care Services (DHCS), Substance Use Disorder Compliance Division (SUD)—after serving as Chief of Licensing and Certification for almost four years. (Including other positions that he held, Lewis worked for SUD for more than 10 years.)

As chief, Lewis supervised roughly 26 staff, and he was designated as an employee who was required to file statements of economic interests. Also, he created all the forms, applications, and checklists that were used by applicants for the licensing/certification process.

After leaving DHCS in December 2014, Lewis started his own consulting business, SUD Compliance & Consulting, LLC, through which he helped the regulated community navigate his former employer's application process.

Lewis advertised to his potential clients that he might be able to get them licensed or certified faster than his competitors. He indicated that he could get the license faster because the application would not be returned for missing information. He knew exactly what was required. If a client wanted him to review an application that already was filled out, Lewis would charge approximately $3,500. Also, he conducted site visits—looking for any deficiencies DHCS might note—and he would help his clients fix any deficiencies prior to official DHCS inspections.

During the 12 months following his separation from employment with DHCS, Lewis frequently contacted DHCS for the purpose of attempting to influence/expedite decisions on behalf of roughly 21 paying clients.

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[6] See Section 87406, subdivision (d)(1); and Regulations 18746.1, et seq.

[7] Section 87400, subdivision (a).

As noted in the State Auditor's report, between December 2014 and December 2015, covering the period when the one-year ban was in effect:[8]

> [T]he former section chief repeatedly violated the [Political] Reform Act. Specifically, we reviewed 39 application files at Health Care Services as well as the email accounts of the former section chief's most frequent contacts at Health Care Services. We found that from December 2014 through December 2015—the period when the one-year ban was in effect—the former section chief made at least 164 oral or written contacts with staff at Health Care Services on behalf of his clients. Further, because we did not perform an exhaustive search of all section employees' email accounts, he may have made additional contacts that we did not identify in our review. We also found that he visited Health Care Services as a representative of a client on one occasion during the one-year period.
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> Although the communications we found varied in content, the former section chief's actions generally focused on attempting to influence Health Care Services to process his clients' applications as quickly as possible. For example, the former section chief contacted his former subordinate employees on several occasions to ask them to expedite their processing of applications. The former section chief was explicit in letting Health Care Services' employees know that he was contacting them on behalf of his clients: in many contacts, he clearly stated that he had been hired by a specific client and that he was permitted to act on its behalf. Additionally, his email signature block often reflected his role as an employee or consultant for a specific client. All of these communications violated the [Political] Reform Act because as a compensated agent, he contacted his former employer in an attempt to influence decisions during the 12 months after he left state employment.
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> When we spoke to Health Care Services' management regarding the former section chief's contacts after he separated from state employment, the upper-level managers we interviewed all stated that they had received many complaints from staff members asserting that the former section chief was very aggressive and bombarded staff with calls asking for information for his clients that the staff would not normally share with those outside of Health Care Services. As a result of the former section chief's improper communications, the chief deputy director at Health Care Services placed him on a list prohibiting his entry into any of its facilities as of January 2016 [which was shortly after the end of the one-year ban].
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> When we interviewed the former section chief, he confirmed that he regularly took the mandated ethics training that informed him of the post-employment restrictions for designated employees. He also stated that he

[8] The audit report may be found online via the following link: https://www.auditor.ca.gov/pdfs/reports/I2016-2.pdf. The quoted passage is from pages 15 and 16 of the report.

was aware of the one-year ban but did not think it applied to him because he was not the ultimate decision maker on certain issues and because he saw many high-profile examples in the news of other state employees who left state service to work for entities they previously regulated. When we clarified that the one-year ban does not necessarily prohibit state employees from working for entities that they previously regulated but does restrict former state employees' ability to have certain types of contacts with their former state employers, the former section chief acknowledged that he had made those types of contacts during the one-year period after he left Health Care Services.

VIOLATIONS

Counts 1 – 3: One-Year Ban on Communications with Former Agency

In contacting DHCS as described above, Lewis violated Section 87406, subdivision (d)(1). For settlement purposes, three counts are being charged for this conduct.

PROPOSED PENALTY

This matter consists of three counts. The maximum penalty that may be imposed is $5,000 per count. Thus, the maximum penalty that may be imposed is $15,000.[9]

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

The most recent stipulation involving violation of the one-year ban was approved by the Commission in 2002. *In the Matter of Douglas Ferrarelli* (FPPC Case No. 98/615), the Commission imposed a penalty in the amount of $3,500 against a former engineer for the Office of Statewide Health

[9] See Section 83116, subdivision (c).

[10] Regulation 18361.5, subdivision (d).

Planning and Development (in the Facility Development Division) who signed and submitted building permit applications and forms to his former agency on behalf of a new employer—in violation of the Act's one-year ban. The violations—which occurred over a period of time spanning roughly four to six months—involved building projects at three different hospitals/medical centers. One count was charged for each of the three project sites. At the time, the maximum penalty that could be charged was $2,000 per count. Thus, the maximum penalty that could have been imposed was $6,000, and the fine of $3,500 was in the mid-range.

In mitigation, it was noted that Ferrarelli's actions did not produce a direct financial gain for him or his new employer—although his new employer did benefit by obtaining the permits requested. In further mitigation, Ferrarelli maintained that he was not aware of the one-year ban—but it also was noted that agency counsel testified that Ferrarelli was counseled about the Act's restrictions concerning former state employees. Other mitigation included a finding that Ferrarelli did not attempt or intend to influence his former agency in any manner other than to sign building permit applications and forms; he had no communication with his former agency other than through these signatures. Additionally, it was noted that Ferrarelli cooperated with the Enforcement Division's investigation, and he did not have a history of prior, similar violations of the Act.

There are some similarities between *Ferrarelli* and the current case. Both cases involve a respondent who claims not to have known about or understood the one-year ban—despite agency-provided counseling/training that would have covered the subject. Also, in the current case, Lewis cooperated with the Enforcement Division—similar to the cooperation noted in *Ferrarelli*. Additionally, both cases involve respondents who did/do not have any history of prior, similar violations.

However, in other respects, the current case is very different, and a higher penalty is warranted.

In *Ferrarelli*, one count was charged for each building project site (even though each site involved the signing and submitting of multiple applications/forms). A similar number of counts in the current case would be one count for each of the 21 clients on behalf of whom Lewis communicated with his former agency.

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In *Ferrarelli*, the average penalty per count was $1,167. However, at the time, the maximum penalty per count was much lower; currently, the maximum penalty per count is 2.5 times higher ($2,000 vs. $5,000). An equivalent penalty today would be a little bit less than $3,000 per count.

However, whereas *Ferrarelli* involved violations that occurred over four to six months, the current case involves violations that occurred over a period of time spanning close to one year.

Whereas Ferrarelli's actions did not produce a direct financial gain for him or his new employer—the same is not true with respect to Lewis. Most of his communications were in the furtherance of his own consulting business on behalf of his paying clients.

Also, whereas Ferrarelli had no communication with his former agency (other than through his signatures appearing on submitted applications/forms) the current case involves hundreds of oral/written communications with Lewis' former agency—and one in-person visit.

Under these circumstances, a penalty in the amount of $4,000 per count is recommended. However, for settlement purposes, it is not necessary to charge every count. As has been done in other cases (such as stipulations involving personal use of campaign funds), the number of counts may be reduced to ensure that the penalty fits the wrongdoing in any stipulation.

In this case, if the agency had notified Lewis that he was violating the one-year ban, Lewis maintains that his violations would have ceased; he would have sought other employment for the duration of the one-year ban. For this reason—and for settlement purposes only—it is respectfully submitted that the following agreed upon penalty should be imposed: three counts at $4,000 per count—for a total penalty in the amount of $12,000.

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Christopher Lewis hereby agree as follows:

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

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

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

4. Respondent has consulted with his attorney, Michelle J. Berner—with the law firm of Kroesche Schindler LLP. Respondent understands and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5. Respondent agrees to the issuance of the decision and order set forth below. Also, Respondent agrees to the Commission imposing against him an administrative penalty in the amount of $12,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding this matter.

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

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

Dated: _____

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Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

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Christopher Lewis, Respondent

The foregoing stipulation of the parties "In the Matter of Christopher Lewis," FPPC Case No. 16/74, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

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Alice T. Germond, Chair
Fair Political Practices Commission