



San Francisco Ethics Commission

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December 4, 2023

To: Members of the Ethics Commission

From: Patrick Ford, Director of Enforcement

Subject: **AGENDA ITEM 12: Proposed Stipulation, Decision and Order *In the Matter of Christian Kitchin* (SFEC Complaint No. 2223-527).**

Summary

This memorandum provides information regarding the Proposed Stipulation appearing in this agenda item and what the Commission may do next regarding this Proposed Stipulation.

Action Requested

The Commission may approve the Proposed Stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Regulatory Background

Pursuant to the Commission's Enforcement Regulations, the Executive Director may enter negotiations with a respondent at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (*i.e.* a negotiated settlement). Enf. Reg. § 12(A). The Regulations require that the stipulated order set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13. *Id.*

Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director must inform the Commission of the proposed stipulation. Enf. Reg. § 12(E). Thereafter, any member of the Commission may request that the stipulated order be reviewed in public session by the full panel of the Commission during its next meeting. *Id.*

As of today, no Commissioner had requested review of the attached stipulated order in public session by the full panel of the Commission. It therefore appears on the Consent Calendar. The Commission may approve the stipulation by majority vote, or it may provide guidance to Commission Staff regarding the Proposed Stipulation. Enf. Reg. § 12(F).

Members of the public may comment on the Proposed Stipulation, noting that the Commission receives public comment once for all consent items collectively.

Gayathri Thaikkendiyil
Acting Executive Director
Patrick Ford
Director of Enforcement

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100

BEFORE THE SAN FRANCISCO

ETHICS COMMISSION

In the Matter of)	SFEC Case No. 2223-527
)	
Christian Kitchin,)	
)	
Respondent.)	STIPULATION, DECISION, AND ORDER
)	
)	
_____)	

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and between Christian Kitchin (hereinafter "Respondent") and the San Francisco Ethics Commission (the Commission).

2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Respondent represents that Respondent has accurately furnished to the Commission all information and documents that are relevant to the conduct described in Exhibit A. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondent

regarding the violations of law described in Exhibit A, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to such violations. Respondent understands and knowingly and voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty as set forth in Exhibit A. Respondent agrees that the administrative penalty set forth in Exhibit A is a reasonable administrative penalty.

4. Within ten business days of the Commission's approval of this Stipulation, Respondent shall either pay the penalty through the City's online payment portal or otherwise deliver to the following address the sum as set forth in Exhibit A in the form of a check or money order made payable to the "City and County of San Francisco":

San Francisco Ethics Commission
Attn: Enforcement & Legal Affairs Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

5. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondents under Section C3.699-13 of the San Francisco Charter for any available relief.

6. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are 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 expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating with or assisting any other government agency in its prosecution of Respondent for any allegations set forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

8. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9, which shall survive.

9. In the event the Commission rejects this Stipulation, and further administrative proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to the participation of any member of the Commission or its staff in any necessary administrative proceeding for reasons stemming from his or her prior consideration of this Stipulation.

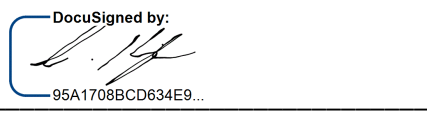
10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement between the parties hereto and supersedes any and all prior negotiations, understandings, and agreements with respect to the transactions contemplated herein. This Stipulation may not be amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties and approved by the Commission at a regular or special meeting.

11. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable.

12. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document.

Dated: 11-08-2023 | 11:56:12 PST  B248CC9EC96449D...

GAYATHRI THAIKKENDIYIL, ACTING EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 11-03-2023 | 19:00:19 PDT  95A1708BCD634E9...

CHRISTIAN KITCHIN

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of “Christian Kitchin, SFEC Case No. 2223-527,” including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

YVONNE LEE, CHAIRPERSON

SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Christian Kitchin (Respondent) is the Nursing Director at the Department of Public Health (“DPH”) Jail Health Services. In addition to being employed by DPH, Respondent has also been employed by St. Mary’s Medical Center since 2008. From the time Respondent became the Nursing Director in 2018, Respondent was required to report certain income from secondary employment on the Form 700 but failed to do so in violation of City and State ethics laws.

II. Applicable Law

Financial Disclosures (Form 700)

SF C&GCC section 3.1-102(a)(1) requires City officers and many City employees to file a Form 700 Statement of Economic Interests. Such officials must file within 30 days of assuming or leaving office and must also file annually by April 1st to report financial interests during the previous calendar year. SF C&GCC section 3.1-102(a); 2 CCR 18730.

DPH staff in Disclosure Category 2, including the position of Nursing Director (Nurse Manager), must disclose all income from, among other sources, clinics, hospitals, outpatient care facilities, and related practices. *Id.* § 3.1-362. Instructions for Form 700 Schedule C (Income, Loans, & Business Positions) state, “[r]eport the source and amount of gross income of \$500 or more you received during the reporting period.” The instructions note that commonly reportable incomes include salary or wages provided by an employer.

III. Material Facts and Analysis

Financial Disclosures (Form 700)

Respondent has served in various nursing positions with DPH since 1996. Respondent became a Nursing Director with DPH in 2018 after serving as an acting Nursing Director for two years. Respondent also holds the position of a per diem patient care nurse in the St. Mary’s Medical Center emergency room. Respondent has held this position since 2008. There is no indication that Respondent’s secondary employment violated DPH’s Statement of Incompatible Activities, which prohibits officers and employees from engaging in outside activities that materially impair their ability to perform the duties of their City position; that have excessive time demands; or that are subject to the control, inspection, review, audit or enforcement of DPH.

Each year since Respondent became a Nursing Director with DPH in 2018, Respondent filed a Form 700, including an assuming office Form 700 filed in 2018 and annual disclosures covering calendar years 2019 to 2022. In each of these filings, even though Respondent was required to disclose income from his secondary employment with St. Mary’s Medical Center because his position with DPH falls under Disclosure Category 2, Respondent failed to disclose the income he received from his secondary

employment as required under the law. In each of the five years, Respondent earned approximately \$300,000 from his position at St. Mary's Medical Center.

Respondent acknowledged that he was aware of the requirement to disclose his non-City income in the Form 700 filings but chose not to disclose it because of a negative past experience he had that involved disclosure of his income. Respondent explained that around 2007, he was asked by the then Director of Jail Health Services to perform two separate jobs in the jail system. Taking on the additional job duties resulted in Respondent working about 80 hours per week and becoming the highest paid City employee at the time. Respondent stated that he was publicly ridiculed and shamed for earning so much while the City was facing budget cuts and believes that he was treated and portrayed unfairly by the City. Respondent also added that he was barred from working more than 20 hours overtime with the City. Shortly afterwards, Respondent began the secondary employment with Saint Mary's Medical Center. Respondent stated that because of the incident with the City and how he believes he was treated, he decided that he would not disclose any secondary income received.

After being contacted by the Enforcement Division, Respondent initially resisted having to comply with the disclosure requirement. Respondent, through his representative, initially questioned the reason why persons under Respondent's job category are required to make the required disclosures. Respondent also delayed scheduling an interview until Investigators contacted DPH leadership to get involved. Nevertheless, after Respondent eventually met with investigators and explained his reason for failing to disclose, Respondent took responsibility for the failure to comply and amended his Form 700s for his assuming office filed in 2018 and for calendar years 2019 to 2022. In the filed amendments, Respondent disclosed the additional annual income of \$100,000 or more he received from his secondary employment as required. In total, Respondent failed to make this disclosure in five separate filings.

IV. Violations of Law

Count 1

Failure to disclose reportable sources of income on Statements of Economic Interests (Form 700) in violation of SF C&GCC Section 3.1-102(a)

On five separate Form 700s Respondent filed for assuming office in 2018 and calendar years 2019, 2020, 2021, and 2022, Respondent failed to disclose reportable income in violation of SF C&GCC § 3.1-102(a). These omissions represent five violations of the C&GC Code.

V. Penalty Assessment

This matter consists of five violations of the San Francisco Campaign and Governmental Conduct Code included in one count above. The San Francisco Charter authorizes the Commission to assess a maximum administrative penalty of \$5,000 per violation. SF Charter § C3.699-13(c). Alternatively, the Ethics Commission may impose a penalty of "three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received." SF Charter § C3.699-13(c)(i)(3).

Per Commission Regulations section 9(D), when determining penalties, the Ethics Commission

considers all of the relevant circumstances surrounding the case, including but not limited to: (a) the severity 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 an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

It is the purpose and intent of the law that City officers and designated employees disclose certain personal financial interests in order to assist them in avoiding conflicts of interest, aid in the detection of conflicts when they occur, and protect public confidence in governmental processes. Regarding the severity of the violation, Respondent's failure to publicly disclose a source of income of \$100,000 or more for his assuming office Form 700 filed in 2018 and for calendar years 2019, 2020, 2021, and 2022 prevented the effective monitoring of his financial interests. In particular, Respondent's secondary income is from an organization in the healthcare industry, which is the same industry in which his City Department operates. Although there is no evidence of a conflict of interest in this matter, the purpose of disclosure category 2 within DPH is to ensure that income from healthcare related entities is tracked because of the heightened risk for a conflict. Additionally, Respondent's failure to disclose his secondary income was not inadvertent. Respondent admitted that he deliberately decided not to disclose the required information because of his experience with the City regarding earning and disclosing additional income. Respondent's deliberate decision to not disclose his secondary income amounts to concealment of such income. Also, although Respondent has since amended his filings to disclose the income from the stated years, Respondent only amended his filings after an extended process with enforcement staff and the involvement of DPH leadership. Respondent's failure to timely file the required disclosures despite being aware of the rules, as well as completing the annual ethics training for each year since becoming a Nursing Director, demonstrates a deliberate disregard of the rules.

In mitigation, Respondent has no prior record of violations of City ethics laws. Also, Respondent ultimately cooperated with the investigation and amended the relevant filings. Thus, the appropriate penalty amount for Count 1 is \$1,000 per omitted source of income on each of the five filings in question, for a total penalty of \$5,000.

In balancing the above facts and considering the penalty factors and prior analogous enforcement cases resolved by the Ethics Commission, and to promote a future deterrent effect, Staff proposes, and Respondent agrees to, the following penalty for the above listed violation of City law:

Count 1 (Form 700 Disclosures): \$5,000

TOTAL PENALTIES: \$5,000