

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2015-009

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, and Board staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

**A. STIPULATED FACTS**

1. On February 4, 2015, the Executive Ethics Board (Board) received a complaint referred by Cheryl Wolfe-Lee, Assistant Vice President for Human Resources at Western Washington University (WWU) alleging that ██████████ former Technology Specialist 3 with WWU, may have violated the Ethics in Public Service Act by using state resources for his personal benefit.

2. [REDACTED] had worked for WWU since August 14, 2006, as a Technology Specialist 2. On June 1, 2011, Mr. Marino was promoted to Technology Specialist 3. He was employed for all times pertinent to this investigation.

3. On November 21, 2014, WWU placed [REDACTED] on administrative leave pending an investigation into misuse of WWU resources based on an observed incident of Mr. [REDACTED] participating in non-work related activities involving state computer resources.

4. Jesse Regalado, Digital Forensics, LLC, (DF) was contracted by WWU to conduct a forensic examination of [REDACTED] work computer.

5. The examination of [REDACTED] hard drive by DF concluded that on November 12, 2014, [REDACTED] downloaded a free public computer software program identified as "C Cleaner." "C Cleaner" is a program designed to remove internet history, registry entries, and other information. As a result, the examination was impacted by the amount of data that had been completely or partially removed by this program. [REDACTED] maintains that he had received instructions from WWU's own IT desktop support staff to download and use this program in an attempt to resolve ongoing issues he had been experiencing on his work desktop computer.

6. DF's summary analysis of [REDACTED] work computer hard drive revealed evidence to support WWU's allegations. The summary of DF's analysis are shown below:

**Personal Emails**

Most of the non-work related emails found were received due to [REDACTED] use of his WWU email account as a login for the Facebook site.

A summary of Facebook notifications and updates [REDACTED] received in his WWU email account for a period of May 15 through November 21, 2014 are shown below:

- Whatcom Watch notifications: Over 250
- Whatcom Hawk notification: Over 250
- Whatcom Gardeners notifications: Over 250
- Facebook updates: Over 175

██████████ asserts that these automatically generated emails were being directed to his Junk Mail folder, and that these emails were not being read on his work desktop computer.

### **Facebook Apps**

Facebook Applications (Apps) were accessed on at least 286 days out of the approximate 552 work days from October 3, 2012 to November 13, 2014. There were some days that had more than one occurrence of the use. Over 567 Facebook App records were located on Mr. Marino's work computer hard drive. Some examples of Facebook Apps use include the following:

- Jackpot Party Casino
- Lucky Gem Casino
- Caesars
- House of Fun
- Hearts of Vegas
- Atlantis Adventures
- Slotomania

██████████ indicated in his response to Board staff that none of the sites shown above are gambling sites, they are games without any exchange of money and that he would only visit these sites during his breaks, lunch, or after hours.

DF's summary reflects that ██████████ used his work computer for personal use on approximately 52% of work days. DF does not state the duration of his computer use on any occasion. ██████████ asserts that he visited these sites no more than once a day and only for a few minutes.

### **Following Links from Facebook**

There were at least 389 instances where [REDACTED] would "follow a link from Facebook" located on the hard drive during the period of October 3, 2012 to October 7, 2014. This type of activity occurred on 165 days over that period. Some examples of sites to which links were followed include:

- NaturallyCuriousWith MaryHolland.wordpress.com
- OrganicGardening.com
- EasyBloom.com
- SweeneyPolitics.com
- GardeningKnowHow.com
- TorontoMasterGardeners.com
- BellinghamHerald.com
- HuffingtonPost.com

[REDACTED] asserts that he visited these sites far less than once a day for only a few minutes.

### **General Facebook Activity**

General Facebook activity records exist for at least 295 days out of the approximate 552 workdays from October 3, 2012 to November 13, 2014. Some days include several instances of use. Over 1,700 instances of general Facebook, activity were found for this period. Some recent examples of sites to which links were followed include:

- Looking at Facebook page titled: The Orpheum Theatre
- Looking at Facebook group with group id: WhatcomHawk
- Looking at Facebook photos of profile id: Buick
- Looking at Facebook photos of profile id: We Stand for Energy
- Looking at Facebook photos of profile id: Carbon Washington

[REDACTED] asserts that he visited these sites far less than once a day for only a few minutes.

### **Other Internet Activities**

#### **Shopping Site:**

Shopping site records exist for at least 88 days during the period October 26, 2012 to October 24, 2014. Some of those days had several instances of use. Over 200 instances of shopping site records were found. Alleged activity included looking at products, purchasing items, and checking on purchases. Shopping sites include Amazon, eBay, Craigslist, JC Penney, NewEgg, and Best Buy.

██████████ indicated in his response to Board staff that part of his job at WWU was to stay abreast of current pricing on PC equipment and peripheral devices as such most of the these site visits would have been work related. ██████████ maintains that he never made personal purchases on his work desktop computer.

#### **Three Palms Designs (personal business activity):**

There were at least 55 days of internet activity related to Three Palms Designs during the period of October 29, 2012 to November 12, 2014. There were more than 400 records related to Three Palms Designs found on ██████████ work computer.

In an interview with WWU Human Resource Department (HR), ██████████ stated that Three Palms Designs was a former "entrepreneurial endeavor that never got off the ground." ██████████ acknowledges that he accessed the Three Palms Designs email application for communications with his union representatives. ██████████ personal email address has a domain name which references the three palms designs and is also the official email address on file with WWU.

As of September 1, 2015, Three Palms Designs was still an active website, listing Mr.

██████████ as the founder. The website describes services offered as:

- Photograph and framing by commission
- Digital Image Scanning, Enhancement, manipulation, and retouching
- Custom Artwork and framing by commission
- Large-Format Image Reproduction and Framing

In ██████████ response to Board staff, he indicated that he developed the website in approximately 2003, before being hired by WWU. The website was developed as a learning opportunity for building a website and as a possible future photography business that never materialized.

██████████ further indicated that none of the photographs found on the website were taken during his employment with WWU and that he has never made money or had any clients or employees. ██████████ indicated in his response that the website created no “private gain” other than personal satisfaction and technical education.

Some examples of recent logins to Three Palms Design by ██████████ from his work computer are show below:

- Mail.threepalmsdesigns.com/Login – 11/12/14 @ 10:08 am – Firefox Browser
- Mail.threepalmsdesigns.com/Login – 8/11/14 @ 3:36 pm – Firefox Browser
- Mail.threepalmsdesigns.com/Login – 8/16/14 @ 10:35 am – Firefox Browser
- Mail.threepalmsdesigns.com/Login – 7/25/14 @ 10:13 am – Firefox Browser
- Mail.threepalmsdesigns.com/Login – 7/24/14 @ 10:54 am, 10:58 am, 3:07 pm, 3:15 pm – Firefox Browser
- Mail.threepalmsdesign.com/Login – 7/22/14 @ 9:07 am, 2:12 pm – Firefox Browser.

These examples reflect that [REDACTED] accessed his personal Three Palms Designs email account.

### Political or Social Activism

There were more than 265 days during the period October 3, 2012 to November 12, 2014, in which activity was conducted related to online petitions and political or social activism efforts. During this time more than 2,400 internet records of this type of activity were found on [REDACTED] work computer. Some recent examples of this activity include:

- Credoaction.com – last visit, 11/12/14 @ 9:22 am.
- Greenamerica.org – last visit, 11/12/14 @ 10:55 am.
- Sierriclub.org – last visit, 11/12/14 @ 10:56 am.
- Civilrights.org – last visit, 11/12/14 @ 11:51 am.
- Thepetitionsite.com – last visit, 11/10/14 @ 3:59 pm.
- Leftaction.com/Georgia vote – last visit, 10/29/14 @ 12:39 pm.
- Sherrodbrown.com/petition – last visit, 10/24/14 @ 11:52 am
- Earthjustice.org/site/donations – last visit. 10/23/14 @ 12:35 pm.
- Citizen.org – last visit, 10/15/14 @ 3:50 pm.
- Causes.com/action – last visit, 10/14/14 @ 10:03 am.
- Change.org – last visit, 10/2/14 @ 12:51 pm.
- Votevets.org – last visit, 9/15/14 @ 12:59 pm.
- Biologicaldiversity.org – last visit, 9/15/14 @ 2:46 pm.
- Defenders.org – last visit, 9/5/14 @ 11:06 am

7. WWU claims that as a result of their internal investigation into these and other alleged disciplinary issues, [REDACTED] was terminated from state service on January 26, 2015.

8. While Board staff found policies that [REDACTED] was required to review as part of his employment, Board staff was unable to locate records of formal ethics training.

### **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

2. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160.

3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

### **C. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that, these types of violations significantly reduce the public respect and confidence in state government employees and that they were continuous in nature.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. [REDACTED] agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b)



of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. [REDACTED] further agrees that the evidence available to the Board is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against [REDACTED] at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of two thousand dollars (\$2,000) associated with the improper use of public resources, RCW 42.52.160.

12. The civil penalty in the amount of two thousand dollars (\$2,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

## II. CERTIFICATION

I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

[REDACTED]  
Respondent

11/15/2016  
Date

Presented by:

K. Reynolds  
KATE REYNOLDS  
Executive Director

11/17/16  
Date

**II. ORDER**

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

- ACCEPTED in its entirety;
- REJECTED in its entirety;
- MODIFIED. This stipulation will become the order of the Board if the

Respondent approves\* the following modification(s):

\_\_\_\_\_  
\_\_\_\_\_

DATED this 18th day of November, 2016

absent  
Anna Dudek Ross, Chair

[Signature]  
Samantha Simmons, Vice-Chair

Lisa Marsh  
Lisa Marsh, Member

absent  
Sumeer Singla, Member

[Signature]  
John Ladenburg, Member

\* I, [Redacted] accept/do not accept (circle one) the proposed modification(s).

[Redacted Signature]

11/3/2016  
Date