

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2018-036

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 July 3, 2018, the Executive Ethics Board (Board) received a complaint alleging that ██████████), Livestock Inspection Program Supervisor with the Washington State Department of Agriculture (WSDA), may have violated the Ethics in Public Service Act. The complaint alleged that he used his position to receive a special privilege and conducted activities incompatible with his official duties related to using WSDA employees to complete inappropriate livestock brand inspection on his personal livestock. The complaint further alleged that ██████████ engaged in personal business transactions with a business he regulates as a part of his official duties as a livestock inspector.

2. On September 27, 2017, Robbie Parke (Mr. Parke), Administrative Operation Manager for the Livestock Inspection Program with WSDA, reported to his supervisor Brian Joseph (Mr. Joseph), Washington State Veterinarian, potential WSDA policy violations regarding using a WSDA employee to conduct inspection of cattle that another WSDA employee had recently purchased.

3. On November 28, 2017, the WSDA requested the Washington State Patrol (WSP) conduct an internal investigation into allegations that for the period of February 28, 2016 through September 21, 2017, Mr. Budde was involved in several policy violations regarding the purchase of cattle from Nate Hair (Mr. Hair), a person regulated by the WSDA. Based on the WSP investigation, WSDA believed that [REDACTED] violated WSDA policies and the Ethics in Public Service Act on the following dates:

- On March 9, 2017, [REDACTED] and his father-in-law purchased cattle from Mr. Hair and requested Kyle Schaffer (Mr. Schaffer), a WSDA employee, complete the Brand Certificate/Change of Ownership on March 9, 2017, even though Mr. Schaffer would not actually inspect the animals until July 15, 2017. (Washington Brand certificate – 393-CO-00292).
- On May 12, 2017, [REDACTED] and his father-in-law purchased cattle from Mr. Hair and requested Mr. Schaffer complete the Brand Certificate/Change of Ownership on May 12, 2017, even though Mr. Schaffer would not actually inspect the animals until July 15, 2017. (Washington Brand certificates – 393-CO-00304 and 393-CO-00305)

4. [REDACTED] has been employed by the WSDA since January 29, 1999 in the Brand Inspection Program of the Animal Services Division. For all times pertinent to this investigation, [REDACTED] was the Livestock Inspection Program Supervisor (Program Specialist 4). As the Livestock Inspection Program Supervisor, [REDACTED] was responsible for administration, oversight, and

direction of the activities of the Livestock Inspection Program as a member of the management team, specifically related to the management of internal/external public relations and compliance management.

5. In 2002, [REDACTED] created the 3/8's Cattle Company, LLC. The Washington Secretary of State identified [REDACTED] as the Registered Agent and Leona Budde (spouse), Dudley and Georgia Fick (in-laws) as Governing Individuals. The business license has an expiration date of December 31, 2018.

6. [REDACTED] failed to notify the WSDA of his outside business as required by WSDA Policy POL-HR-214 – Engaging in outside employment while employed by WSDA.

7. Mr. Shaffer has been employed by the WSDA since June of 2009. At that time, [REDACTED] was his supervisor. In August of 2013, Mr. Shaffer was promoted to Brand Inspector 2 (supervisor) and reported to Dawn Gast (Ms. Gast). In August 2015, the Livestock Inspection Program was re-structured from one program manager ([REDACTED]) to three program managers. Both Mr. Schaffer and [REDACTED] were promoted to a Program Specialist 4. The third program manager, Mr. Parke, was not hired until February 17, 2017.

8. Brand Inspections - Change of Ownership Inspections: Change of Ownership Inspections are required when the ownership of cattle is transferred to someone else (sale, gift, barter, trade, etc.). When livestock are consigned to a public livestock market, this inspection is performed automatically by WSDA staff. For a private treaty transaction, the inspection is scheduled by the seller in advance of the transaction, and should be done before payment for the livestock is made. Once the

inspection is performed, the buyer is provided with a certificate documenting the sale and transferring the title of the animal from the seller to the buyer<sup>1</sup>.

9. [REDACTED] father-in-law and governing person in the 3/8's Cattle Company purchased three cows and three calves from Mr. Hair. At the time of the purchase, Mr. Hair refused to comply with WSDA regulations requiring him to have a brand inspection prior to the sale of livestock. [REDACTED], knowing that a brand inspection was required, contacted Mr. Schaffer by phone and requested that he complete a Washington Brand Certificate (393-CO-00292) on the animals. The total cost of the Brand Certificate was \$18.48 and was paid by [REDACTED] on April 17, 2017. The Washington Brand Certificate/Change of Ownership, indicated it was issued on the date of the sale, March 29, 2017.

10. WSDA procedure Manual Section Four states in part:

#### Basic Steps for Inspection

Even though the type, location and situation may change, there are five basic steps that must be taken to correctly complete the inspection process.

1. Look at both sides of the animal to determine if it bears a brand(s).
2. If a brand(s) is located "read" the brand and check the current brand book and supplement to determine whom the brand is recorded to.
3. If brand is not recorded to the seller/shipper, request written documentation to validate his/her ownership claim of the animal(s).
4. Review documentation to determine if it is valid and clearly links the seller/shipper to the animal(s).
5. After ownership claim has been validated, issue inspection certificate.

As an inspector, your actions serve two purposes:

- a) You ensure that the seller/shipper has legal possession of the animal,
- b) You provide the buyer with a valid ownership document for the animal(s) purchased.

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<sup>1</sup> WSDA Website - <https://agr.wa.gov/foodanimal/livestock/inspectionrequirementsandfees.aspx>

**No Inspector shall issue an inspection certificate without first seeing the animal(s) in advance. Inspectors issuing certificates for animals that they do not see or actually inspect will be terminated.**

11. [REDACTED] was aware that as a Brand Inspector he would not be allowed to inspect animals he or his family would be purchasing or selling so he requested Mr. Schaffer complete the inspection. Mr. Schaffer told WSP investigators that he did not see or inspect the animals on March 29, 2017, and it was not until Saturday, July 15, 2017 at [REDACTED] residence, that he actually saw the animals.

12. WSDA procedures require inspectors to include all inspections they conduct, location, miles and time to complete any inspections on their daily activity report. The Washington Brand Certificate (393-CO-00292) indicates that Mr. Schaffer completed it on March 29, 2017, but it is not on his daily activity report.

13. Mr. Schaffer was asked by the WSP investigators if he was aware of the WSDA policy that states, "*No inspector shall issue inspection certificates without first seeing the animal in advance. Inspectors issuing certificates for animals that they did not see or actually inspect will be terminated.*" (WSDA Procedure Manual Section Four, pages 31 and 32.) Mr. Schaffer replied, "Yes, I did not do that, but I did inspect after... I did look at the animals on July 15."

14. The Brand Certificate (393-CO-00292) indicates that the inspection was performed at the residence of Mr. Hair by Mr. Schaffer. The WSP investigators asked Mr. Schaffer about that discrepancy. He indicated in his reply that was inaccurate and it should indicate that the inspection occurred at [REDACTED] residence.

15. Mr. Shaffer told WSP investigators that he received a call from [REDACTED] on March 29, 2017 that he was at Mr. Hair's home and he asked him to write up an inspection for him for Mr.

Hair to Mr. Fick. Mr. Schaffer told WSP investigators that he based the inspection on what he was told by [REDACTED] knowing that he would see the animals. He was hoping to see them before July 15 but he did not see them until July 15.

16. On July 15, 2017, Mr. Schaffer drove his WSDA vehicle from his residence in Ephrata to [REDACTED] residence in Rosalia to meet up with [REDACTED] to travel together to a conference in Boise, Idaho. According to Mr. Schaffer and [REDACTED], the animals were inspected at that time.

17. The WSP internal investigation revealed that on May 12, 2017, [REDACTED] purchased two cows and two steers from Mr. Hair. On the same day, Mr. Fick purchased two cows and two steers from Mr. Hair. On May 12, 2017, at the request of [REDACTED], Mr. Schaffer created a Washington Brand Certificate (393-CO-00305) for the animals purchased by [REDACTED] and a Washington Brand Certificate (393-CO-00304) for the animals purchased by Mr. Fick. Again, Mr. Hair refused to pay for the certificates. [REDACTED] paid for both inspections on May 12, 2017. The Washington Brand Certificate/Change of Ownership document indicated it was issued on the date of the sale, May 12, 2017. Again, Mr. Schaffer conducted the Brand Inspection at [REDACTED] residence on July 15, 2017.

18. Mr. Schaffer told WSP investigators that this was the same scenario as the March 29, 2017 Brand Inspection (393-CO-00292). He received a call from [REDACTED] to do the inspection. Mr. Schaffer stated that he wrote the inspection prior to looking at the animals knowing that he would be looking at them later.

19. The WSP investigators asked Mr. Schaffer if [REDACTED] asked him to do the inspection and change of ownership for Mr. Hair to [REDACTED] Mr. Schaffer replied, "Correct."

20. In a pre-disciplinary meeting held on April 2, 2018, ██████████ stated that he did not write the inspections from March 29, 2017, that they were written by Mr. Schaffer and that he could have declined to if he was not comfortable with doing so.

21. The WSDA and ██████████ regulate Mr. Hair in regards to the sale or purchase of livestock. Board staff discovered email evidence of ██████████ conducting an inspection for Mr. Hair on October 9, 2017. The email indicated that Mr. Budde originally requested another WSDA inspector complete the inspection. On September 27, 2017, ██████████ sent an email to Stacy Gundersen (Ms. Gundersen) with WSDA indicating that he needed someone to cover an inspection for Mr. Hair as he would not be available because he was scheduled for another inspection. Ms. Gundersen replied that an inspector out of Moses Lake would be available to do the inspection. ██████████ then replied he would do the inspection because he did not want Mr. Hair to have to pay mileage and time for an inspector to come from the Moses Lake area.

22. Board staff obtained a copy of the Washington Brand Certificate (085-CO-00420) issued on October 9, 2017 for sale of 84 heads of cattle from Mr. Hair to J and F Holding in Malta, Idaho.

23. Mr. Schaffer resigned from his position with the WSDA on December 27, 2017.

24. Because of the violation of WSDA Policies POL-HR-212, Establishing and Maintaining Standards of Ethical Conduct as well as Section 4 of the Livestock Inspection policy and Procedure Manual, ██████████ received a 10% reduction of pay for three months effective May 1, 2018.

## **B. CONCLUSIONS OF LAW**

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (conflict of interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties..

2. Based on the stipulated facts above, [REDACTED] conducted activities incompatible with his official duties by requesting another WSDA employee to violate WSDA policy for his personal benefit and by purchasing cattle from a person, he regulates in violation of RCW 42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts above, [REDACTED] used his position to receive a Brand Certificate prior to an actual inspection of the animals as required by WSDA policy in violation of 42.52.070.

5. 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 a mitigating factor that [REDACTED] received a 5% reduction in pay for three months and resigned from his agency.

#### 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 violations of, RCW 42.52.

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]

6/20/19  
Date

Respondent

Presented by:

K. Reynolds  
KATE REYNOLDS  
Executive Director

10/24/17  
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 12<sup>th</sup> day of July, 2019

Shirley Battan  
Shirley Battan, Chair

Lisa Marsh  
Lisa Marsh, Vice-Chair

Anna Dudek Ross  
Anna Dudek Ross, Member

Gerri Davis  
Gerri Davis, Member

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

                    , Respondent                      Date