

BEFORE THE HAWAI'I STATE ETHICS COMMISSION

STATE OF HAWAI'I

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HAWAI'I STATE ETHICS COMMISSION,	)	COMPL-C-19-00336
	)	
Complainant,	)	FURTHER STATEMENT OF ALLEGED
	)	VIOLATION
vs.	)	
	)	
TIAN XIAO,	)	
	)	
Respondent.	)	

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FURTHER STATEMENT OF ALLEGED VIOLATION

Pursuant to Hawai'i Revised Statutes ("HRS") §§ 84-31(a) and 84-31(b), and Hawai'i Administrative Rules ("HAR") § 21-5-2, the HAWAI'I STATE ETHICS COMMISSION ("Commission") issues this Further Statement of Alleged Violation against TIAN XIAO ("Respondent XIAO") for violations of the State Ethics Code, HRS chapter 84, based on the following allegations:

The State Ethics Code

1. The people of Hawai'i have declared that state employees must exhibit the highest standards of ethical conduct. To this end, the Hawai'i State Constitution mandates that the legislature adopt a code of ethics applicable to all state employees. Haw. Const. Art. XIV.

2. In accordance with and pursuant to the constitutional mandate, the State Ethics Code establishes standards of conduct for state employees that the legislature deemed necessary to preserve the public's confidence in state employees, and

authorizes the Commission to administer and enforce those standards. Preamble, HRS chapter 84; HRS § 84-31.

3. The Legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1.

4. For purposes of investigation and taking appropriate action on alleged violations of the State Ethics Code by an employee or former employee, the Commission has jurisdiction in all proceedings commenced within six years of an alleged violation. HRS § 84-31(a)(6).

#### The Gifts Law

5. The Gifts Law, HRS § 84-11, provides in relevant part:
- No . . . employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the . . . employee in the performance of the . . . employee's official duties or is intended as a reward for any official action on the . . . employee's part.

The Gifts Reporting Law

6. The Gifts Reporting law, HRS § 84-11.5, requires a state employee to file a gifts disclosure statement with the Commission no later than June 30 of each year if all of the following conditions are met:

- (1) The . . . employee, or spouse or dependent child of a . . . employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
- (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the . . . employee; and
- (3) The gift is not exempted . . . from reporting requirements[.]

HRS § 84-11.5(a).

7. Prior to July 1, 2019, the annual gifts disclosure statement covered the period from June 1 of the preceding calendar year through June 1 of the year of the report. HRS § 84-11.5(b) (2018).

8. Effective July 1, 2019, the Gifts Reporting law was amended so that the gifts disclosure statement covered the period from June 1 of the preceding calendar year through May 31 of the year of the report.

9. The gifts disclosure statement must contain the following information:

- (1) A description of the gift;
- (2) A good faith estimate of the value of the gift;

- (3) The date the gift was received; and
- (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

HRS § 84-11.5(c).

10. The following items are excluded from the reporting requirements of the Gifts Reporting law:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. . . .;
- (4) Political campaign contributions that comply with state law;
- (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
- (7) Exchanges of approximately equal value on holidays, birthday[s], or special occasions.

HRS § 84-11.5(d).

11. The failure of an employee to file a gifts disclosure statement as required by the Gifts Reporting Law is a violation of the State Ethics Code. HRS § 84-11.5(e).

#### Respondent XIAO's Employment

12. Respondent XIAO, at all times relevant herein, was employed by the Department of Commerce and Consumer Affairs ("DCCA"), a state agency, as the Chief Examiner of the Insurance Division's Financial Surveillance and Examination ("FSE") Branch.

13. Respondent XIAO was, at all times relevant herein, a state employee as defined in HRS § 84-3.

14. As a state employee, Respondent XIAO was, at all times relevant herein, required to comply with the State Ethics Code.

15. As the Chief Examiner, Respondent XIAO was, at all times relevant herein, responsible for overseeing FSE's financial audits and examinations of Hawai'i-domiciled insurance companies, agencies, health maintenance organizations, and mutual benefit societies.

16. At all times relevant herein, Respondent XIAO's duties and responsibilities as Chief Examiner also included selecting and hiring vendors to perform financial examinations on behalf of the Insurance Division.

17. On or about December 31, 2019, Respondent XIAO terminated his state employment with the Insurance Division.

Risk & Regulatory Consulting, LLC

18. At all times relevant herein, Risk & Regulatory Consulting, LLC (“RRC”) was contracted by the Insurance Division to conduct financial and regulatory examinations of Hawai‘i-domiciled insurance companies, agencies, health maintenance organizations, and mutual benefit societies.

19. As Chief Examiner, Respondent XIAO was involved in the final decision to award the contract to RRC.

Acceptance of Gifts From a State Vendor; Gifts Reporting: Nobu Honolulu

20. In or around August 2018, Respondent XIAO was invited to dinner by Scott Eady, an RRC representative.

21. Respondent XIAO accepted the invitation and recommended Nobu Honolulu, a high-end restaurant in Honolulu.

22. Respondent XIAO and Respondent XIAO’s wife subsequently had dinner with Eady at Nobu Honolulu on or about August 16, 2018. (Hereinafter, the meal at Nobu Honolulu, on or about August 16, 2018, shall be referred to as “the Nobu Honolulu meal.”)

23. The Nobu Honolulu meal was paid for by RRC and/or Eady.

24. The total cost of the Nobu Honolulu meal for the three attendees – Respondent XIAO, Respondent XIAO’s wife, and Eady – was approximately \$500.

25. The total value of the Nobu Honolulu meal for Respondent XIAO and his wife was in excess of \$200.

26. The estimated value of the Nobu Honolulu meal for Respondent XIAO and his wife was approximately two-thirds of the total bill, or approximately \$333.

27. The deadline by which Respondent XIAO was required to report the gift of the Nobu Honolulu was June 30, 2019.

28. Respondent XIAO did not file a 2019 gifts disclosure statement – to report the gift of the Nobu Honolulu meal to Respondent XIAO and his wife – on or before June 30, 2019.

29. To date, Respondent XIAO has not filed a 2019 gifts disclosure statement to report the gift of the Nobu Honolulu meal.

Acceptance of Gifts From a State Vendor; Gifts Reporting: Restaurant Suntory

30. On or about October 18, 2018, Respondent XIAO was invited to dinner by John Humphries, an RRC representative.

31. Respondent XIAO accepted the dinner invitation and joined Eady, Humphries, and Humphries' wife at Restaurant Suntory on or about October 18, 2018. (Hereinafter, the meal at Restaurant Suntory, on or about October 18, 2018, shall be referred to as "the Restaurant Suntory meal.")

32. The Restaurant Suntory meal was paid for by RRC and/or Humphries.

33. The total cost of the Restaurant Suntory meal for four attendees – Respondent XIAO, Eady, Humphries, and Humphries' wife – was approximately \$211.

34. The estimated value of the Restaurant Suntory meal for Respondent XIAO was approximately \$53.

35. Inasmuch as the aggregate value of gifts received from RRC and/or its representatives from June 1, 2018 to June 1, 2019 exceeded \$200, the deadline by which Respondent XIAO was required to report the gift of the Restaurant Suntory meal was June 30, 2019.

36. Respondent XIAO did not file a 2019 gifts disclosure statement to report the gift of the Restaurant Suntory meal on or before June 30, 2019.

37. To date, Respondent XIAO has not filed a 2019 gifts disclosure statement to report the gift of the Restaurant Suntory meal.

Acceptance of Gifts From a State Vendor: Flight Restaurant and Wine Bar

38. On or about July 22, 2019, Respondent XIAO was invited to dinner by Humphries and Eady.

39. At the time, Respondent XIAO was attending the Society of Financial Examiners conference in Memphis, Tennessee.

40. Respondent XIAO accepted the dinner invitation and had dinner with Eady and Humphries at the Flight Restaurant and Wine Bar, in Memphis, Tennessee, on or about July 22, 2019. (Hereinafter, the meal at Flight Restaurant and Wine Bar, in Memphis, Tennessee, on or about July 22, 2019, shall be referred to as “the Flight Restaurant meal.”)

41. The Flight Restaurant meal was paid for by RRC, Eady, and/or Humphries.

42. The total cost of the Flight Restaurant meal for three attendees – Respondent XIAO, Eady, and Humphries – was approximately \$198.



43. The estimated value of the Flight Restaurant meal for Respondent XIAO was approximately one-third of the total bill, or \$66.

Acceptance of Gifts From a State Vendor: Hihimanu Restaurant

44. On or about September 11, 2019, Respondent XIAO was invited to dinner by Eady and Sarah Donald, another RRC representative.

45. Respondent XIAO accepted the invitation and recommended Hihimanu Sushi, a high-end restaurant in Honolulu.

46. Respondent XIAO accepted the dinner invitation and had dinner with Eady and Donald at Hihimanu Sushi on or about September 11, 2019. (Hereinafter, the meal at Hihimanu Sushi, on or about September 11, 2019, shall be referred to as “the Hihimanu Sushi meal.”)

47. The Hihimanu Sushi meal was paid for by RRC, Eady, and/or Donald.

48. The total cost of the Hihimanu Sushi meal was approximately \$669.

49. The estimated value of the Hihimanu Sushi meal for Respondent XIAO was approximately one-third of the total bill, or \$223.

COUNTS 1 to 2

Violations of Gifts Reporting Law, HRS § 84-11.5

Failure to Report Gifts of Meals by Statutory Deadline

Count 1

50. The allegations contained in the paragraphs above are repeated and realleged.

51. Respondent XIAO, by failing to report the gift of the Nobu Honolulu meal from RRC and/or its representative, Eady, valued in excess of \$200, by the statutory deadline of June 30, 2019, violated HRS § 84-11.5.

Count 2

52. The allegations contained in the paragraphs above are repeated and realleged.

53. Respondent XIAO, by failing to report the gift of the Suntory Restaurant meal from RRC and/or its representative, Humphries, by the statutory deadline of June 30, 2019, violated HRS § 84-11.5, inasmuch as the aggregate value of gifts received from RRC and/or its representatives from June 1, 2018 to June 1, 2019 exceeded \$200.

COUNTS 3 TO 6

Violations of Gifts Law, HRS § 84-11

Acceptance of Gifts of Meals

Count 3

54. The allegations contained in the paragraphs above are repeated and realleged.

55. Respondent XIAO, by accepting a gift of the Nobu Honolulu meal – for Respondent XIAO and his wife – from RRC, a state vendor, and/or its representatives, on or about August 16, 2018, violated the Gifts law, HRS § 84-11.

Count 4

56. The allegations contained in the paragraphs above are repeated and realleged.

57. Respondent XIAO, by accepting a gift of the Suntory Restaurant meal from RRC, a state vendor, and/or its representatives, on or about October 18, 2018, violated the Gifts law, HRS § 84-11.

Count 5

58. The allegations contained in the paragraphs above are repeated and realleged.

59. Respondent XIAO, by accepting a gift of the Flight Restaurant meal from RRC, a state vendor, and/or its representatives, on or about July 22, 2019, violated the Gifts law, HRS § 84-11.

Count 6

60. The allegations contained in the paragraphs above are repeated and realleged.

61. Respondent XIAO, by accepting a gift of the Hihimanu Sushi meal from RRC, a state vendor, and/or its representatives, on or about September 11, 2019, violated the Gifts law, HRS § 84-11.

Notice of Respondent's Rights and Obligations

Pursuant to HRS § 84-31(b), Respondent may file a written response within twenty days after service of the Further Statement of Alleged Violation. If after twenty days following service of the Further Statement of Alleged Violation, a majority of the members of the Commission concludes that there is probable cause to believe that a violation of the State Ethics Code has been committed, then the Commission shall set a time and place for a hearing, giving notice to the Respondent. Upon issuance of a notice of hearing, the Charge and the Further Statement of Alleged Violation and Respondent's written responses thereto shall become public records. The hearing shall be held within ninety days of the Commission's issuance of a notice of hearing. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel and (4) to have the right of cross-examination. The hearing shall be in accordance with HRS chapter 91. All witnesses shall testify under oath and the hearing shall be open to the public. HRS § 84-31(c).


Dated: Honolulu, Hawai'i, March 19, 2020.

HAWAI'I STATE ETHICS COMMISSION




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Reynard D. Gaulty, Chair



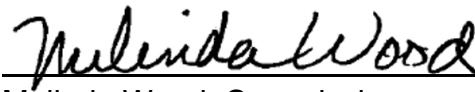
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Ruth D. Tschumy, Vice Chair



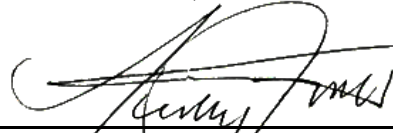
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Susan N. DeGuzman, Commissioner



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Melinda Wood, Commissioner



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Wesley F. Fong, Commissioner