

1 JAMES M. LINDSAY
Chief of Enforcement
2 THERESA GILBERTSON
Senior Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3050
4 Sacramento, CA 95811

5 Telephone: (916) 323-6421
6 Email: tgilbertson@fppc.ca.gov

7 Attorneys for Complainant

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11 In the Matter of:

12 KELLIE SCHNEIDER,

13 Respondents.

FPPC Case No. 19-01775

STIPULATION, DECISION AND ORDER

Date Submitted to Commission: October 2023

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15 **INTRODUCTION**

16 Respondent Kellie Schneider was the former Chief Operations Officer for the California
17 Earthquake Authority (“CEA”), a public instrumentality.

18 This case arose from an anonymous and a non-sworn complaint.

19 The Political Reform Act¹ (“Act”) prohibits officials from making, participating in making, or
20 attempting to influence governmental decisions in which the official knows or has reason to know they
21 have a financial interest. In addition, Government Code section 1090 is a conflict of interest provision
22 that prohibits officials and public employees from being interested in contracts that they participate in.
23 Schneider had a conflict of interest under the Act and Section 1090 when she participated in and
24 authorized a contract between the CEA and her financial interest, WeidnerCA.

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28 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 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. All legal references and discussions
3 of law are intended to be citations to statutes and regulations as they existed at the time of the violations
4 in this case.

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

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

10 One purpose of the Act is to ensure that public officials perform their duties in an impartial
11 manner, free from bias caused by their own financial interests or the financial interests of persons who
12 have supported them.⁴ Along these lines, the Act requires that public officials' assets and income be
13 disclosed.⁵ Further, in appropriate circumstances, the officials should be disqualified from acting in order
14 that conflicts of interest may be avoided.⁶

15 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
16 be “vigorously enforced.”⁷

17 **Section 87100: Conflicts of Interest**

18 A public official may not make, participate in making, or attempt to use their official position to
19 influence a governmental decision in which they know or have reason to know they have a financial
20 interest.⁸ A public official has a financial interest in a governmental decision if it is reasonably
21 foreseeable that the decision will have a material financial effect, distinguishable from its impact on the
22 public generally, on the official, a member of the official’s immediate family, or any source of income
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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81001, subdivision (b).

⁵ Section 81002, subdivision (c), Section 87100, and Sections 87200 *et seq.*

⁶ Sections 87100, *et seq.*

⁷ Section 81002, subdivision (f).

⁸ Section 87100.

1 aggregating five hundred dollars (\$500) or more in value provided to the public official within 12
2 months prior to the time when the decision was made.⁹

3 To determine whether a public official has a prohibited conflict of interest under the Act, the first
4 step is to determine whether it is reasonably foreseeable for the governmental decision to have a financial
5 effect on the public official’s financial interests.¹⁰ When the financial interest is the named party or
6 subject of the decision, a financial effect is presumed to be reasonably foreseeable.

7 The second step is to determine if the reasonably foreseeable financial effect will be material.¹¹
8 When the financial interest is a source of income, and the source is a contracting party, the financial
9 effect is material.¹²

10 **Prohibited Conflicts of Interest Under Section 1090**

11 Government Code section 1090 states: “Members of the Legislature, state, county, district,
12 judicial district, and city officers or employees shall not be financially interested in any contract made by
13 them in their official capacity, or by any body or board of which they are members. . . .” Courts have
14 interpreted Section 1090 broadly, as the purpose of this conflict of interest provision is to ensure no
15 divided loyalties by those who serve the public. “An important, prophylactic statute such as Section 1090
16 should be construed broadly to close loopholes; it should not be constricted and enfeebled.” (*Carson*
17 *Redevelopment Agency v. Padilla*, 140 Cal. App. 4th 1323, 1334 (2006); *see also Stigall v. City of Taft*,
18 58 Cal. 2d 565, 569071 (1962) (Section 1090 is “concerned with any interest, other than perhaps a
19 remote or minimal interest, which would prevent the officials from exercising absolute loyalty and
20 undivided allegiance to the best interests of the city.”)

21 This prohibition applies to various government officials, including independent contractors and
22 those individuals who perform a public function. This prohibition specifically applies to the making of
23 contracts. It is not necessary for the prosecution to show that the official participated personally in the
24 execution of the questioned contract. It is enough to show that the official, regardless of their job
25 classification, had the opportunity to, and did, influence execution directly or indirectly to promote their
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27 ⁹ Section 87103 and Regulation 18700.

28 ¹⁰ Regulation 18700, subdivision (d)(1).

¹¹ Regulation 18700, subdivision (d)(2).

¹² Regulation 18702.3, subdivision (a)(1).

1 personal interests. This may be shown by the official’s involvement concerning one or more of the
2 following activities, which are embodied in the making of a contract: planning, discussions, reasoning,
3 preparation of plans/specifications, solicitation of bids, negotiations, compromises, give and take, etc.
4 Such involvement violates Section 1090 if the resulting contract causes government business and money
5 to go to an entity or person in which the official has an interest.¹³

6 The statute is more concerned with what *might* have happened than what *actually* happened;
7 Section 1090 prohibits even the *appearance* of impropriety.¹⁴

8 Under Section 1090, prohibited financial interests are not limited to express agreements and need
9 not be proven by direct evidence. Rather, forbidden interests include indirect interests and future
10 expectations of profit (or loss) by express or implied agreement, which may be inferred from the
11 circumstances. Any financial interest not explicitly excluded by the Legislature (in Sections 1091 and
12 1091.5) as too “remote or minimal” is sufficient to incur even criminal liability.¹⁵

13 **Applicability of Conflict of Interest provisions to the California Earthquake Authority**

14 The CEA is a not-for-profit, publicly managed, privately funded entity created by the California
15 Legislature in 1996. The CEA is not a traditional state agency but is considered a public instrumentality,
16 where the exercise of its powers is an essential state governmental function.¹⁶ The CEA was created by
17 the state and operated for public purposes. The authorizing statute makes it clear that the conflict of
18 interest provisions apply. Under Insurance Code Section 10089.17, the CEA is subject to the provisions
19 of the Act. In addition, the position of chief operating officer is required to file periodic statements of
20 economic interest (known as Form 700s) with the Fair Political Practices Commission.¹⁷ Therefore,
21 Schneider is subject to the conflict of interest provisions found in the Act. Concerning Section 1090,
22 courts have broadly construed this conflict of interest provision and have held that even temporary
23 employees and independent contractors are beholden to the provisions. As an organization performing a
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25 ¹³ See *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1051-53; *People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th
26 230, 239-40; and *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 194-97.

27 ¹⁴ *Thorpe v. Long Beach Cmty. College Dist.* (2000) 83 Cal.App.4th 655, 660; *City of Imperial Beach v. Bailey*,
supra, 103 Cal.App.3d at p. 197.

28 ¹⁵ See *People v. Honig, supra*, 48 Cal.App.4th at p. 315; and *People v. Superior Court (Sahlolbei), supra*, 3 Cal.5th at
p. 239.

¹⁶ Insurance Code Section 10089.21.

¹⁷ Insurance Code Section 10089.7, subdivision (i).

1 public function, the CEA is subject to Section 1090. The agency requires employees such as the Chief
2 Operating Officer to complete the same ethics training required of state officials and employees.

3 **SUMMARY OF THE FACTS**

4 At all relevant times, Schneider was CEA's Chief Operating Officer ("COO"). Schneider's
5 spouse, Edward Schneider, was employed by and received income from WeidnerCA for approximately
6 20 years. WeidnerCA was a source of income to Schneider, as the income received by her spouse is
7 considered community property, and her share of that community property exceeded \$500.

8 In November 2018, Schneider and other procurement staff requested bids on a project to
9 manufacture and install signage. Three companies put in bids, including WeidnerCA. Two procurement
10 staff and Schneider considered the proposals. Staff made recommendations, but the ultimate decision was
11 Schneider's. The bid selected was not required to be the lowest, most responsible bid. On or around
12 December 14, 2018, Schneider approved WeidnerCA's proposal in response to the bid for services and
13 signed off on the contract on behalf of the CEA. The contract was for WeidnerCA to provide signage at
14 the CEA's downtown location. The amount of the contract was for just over \$20,000. In justifying the
15 choice, the internal documentation noted that WeidnerCA was selected because the quote was within the
16 project's budget, the bid met all the requested scope of work, and the bidder came highly recommended.

17 Schneider is a public official for purposes of Section 87100 and 1090. Under the authorizing
18 provision of the CEA, the CEA is subject to the Act. Moreover, Schneider, in her capacity as COO, was
19 required to file Statements of Economic Interest, and she did complete an ethics training designed for
20 State Officials. As COO, Schneider had the authority to sign contracts on behalf of the CEA, a public
21 instrumentality performing a public function. By participating in the bid process and by signing off on
22 WeidnerCA as the selected bid for the sign project, Schneider participated in and made a governmental
23 decision to enter into a contract on behalf of the CEA. As WeidnerCA was the contracting party and
24 because WeidnerCA was a financial interest to Schneider, Schneider had a conflict of interest when she
25 approved the contract between CEA and WeidnerCA.

26 The Sacramento County District Attorney's office provided written authorization for the
27 Commission to investigate and pursue a charge under Section 1090, as required under Section 1097.1.

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1 **VIOLATIONS**

2 **Count 1: Conflict of Interest**

3 Schneider had a conflict of interest when she participated in and made the governmental decision
4 to approve a contract with a financial interest in violation of Government Code Section 87100 and
5 Section 1090.

6 **PROPOSED PENALTY**

7 This matter consists of one proposed count. The maximum penalty that may be imposed is \$5,000
8 per count.¹⁸ Thus, the maximum penalty that may be imposed is \$5,000.

9 This matter does not qualify for the Streamline Program because it involves a conflict of interest.

10 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
11 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
12 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
13 considers the facts and circumstances of the violation in the context of the following factors set forth in
14 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
15 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
16 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
17 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
18 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
19 staff or any other governmental agency in a manner not constituting complete defense under Government
20 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
21 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
22 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

23 A conflict of interest is a serious violation of the Act with a high degree of public harm. This type
24 of violation undermines public trust in government by creating the appearance that the decision was the
25 product of a conflict of interest. Such conduct contradicts the Act’s decree that public officials should
26 serve the needs of all citizens in an impartial manner—free from bias caused by their own financial
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¹⁸ See Section 83116, subdivision (c).

1 interests. This matter was referred to the Sacramento County District Attorney’s office. After an
2 investigation, the Sacramento County District Attorney’s Office declined to prosecute.

3 Schneider had been an employee of the CEA since at least 2016 and was promoted to the position
4 of COO in 2017. Schneider left the position on or about January 31, 2020. Schneider completed
5 Statements of Economic Interest but failed to report her spouse's income. She amended her disclosure to
6 include this information prior to the matter being referred to the Enforcement Division. Schneider
7 acknowledged receiving conflicts of interest training while at CEA.

8 The Commission has previously considered another stipulation involving a conflict of interest: *In*
9 *the Matter of Leticia Perez*, FPPC No. 19/960 (The Commission approved a settlement in this matter on
10 June 18, 2020.) The respondent had an economic interest in her spouse’s business and through that
11 business, had an economic interest in a cannabis business. The respondent had a conflict of interest when
12 she voted on a decision to ban the sale of cannabis and related products. The Commission imposed a
13 penalty of \$4,000.

14 There is no evidence that Schneider acted with intent to conceal or deceive.

15 In response to the complaint and investigation, Schneider indicated to investigators that she did
16 not believe she had a conflict because her spouse would not work on the project or receive additional
17 income as a result of the contract. There is no evidence to indicate that Schneider deliberately violated
18 the Act’s conflict rules, but it appears that she misunderstood the rules with regard to her sources of
19 income.

20 Schneider has no prior history of violations.

21 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
22 penalty of \$4,000 is recommended for Count 1.

23 CONCLUSION

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and Kellie
25 Schneider hereby agree as follows:

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

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

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

6 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all
7 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
8 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
9 matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all
10 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
11 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
12 reviewed.

13 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
14 Respondent agrees to the Commission imposing against them an administrative penalty in the amount of
15 \$4,000 One or more payments totaling said amount—to be paid to the General Fund of the State of
16 California—is/are submitted with this stipulation as full payment of the administrative penalty described
17 above, and same shall be held by the State of California until the Commission issues its decision and
18 order regarding this matter.

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

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