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

10  
11 In the Matter of:

12 **MIGUEL PULIDO,**

13 Respondent.

FPPC Case No. 14/131

STIPULATION, DECISION AND ORDER

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15 **STIPULATION**

16 This settlement is the result of a joint investigation with the Orange County District Attorney's  
17 office. Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
18 Respondent Miguel Pulido hereby agree that this Stipulation will be submitted for consideration by the  
19 Fair Political Practices Commission at its next regularly scheduled meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
21 matter and to reach a final disposition without the necessity of holding an additional administrative  
22 hearing to determine the liability of Respondent, pursuant to section 83116 of the Government Code.

23 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural  
24 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
25 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to  
26 appear personally at any administrative hearing held in this matter, to be represented by an attorney at  
27 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to

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1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 As described in Exhibit 1, it is further stipulated and agreed that Respondent committed six  
4 violations of the Political Reform Act. Exhibit 1, which is attached hereto and incorporated by reference  
5 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

6 Respondent agrees to the issuance of the Decision and Order, which is attached hereto. Also,  
7 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of  
8 \$13,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General  
9 Fund of the State of California—is/are submitted with this Stipulation as full payment of the  
10 administrative penalty described above, and same shall be held by the State of California until the  
11 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the  
12 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)  
13 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered  
14 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent further  
15 stipulates and agrees that in the event the Commission rejects the Stipulation and a full

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1 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,  
2 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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5 Dated: \_\_\_\_\_  
6 Galena West, Acting Chief of Enforcement  
Fair Political Practices Commission

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8 Dated: \_\_\_\_\_  
9 Miguel Pulido, Respondent

10 **DECISION AND ORDER**

11 The foregoing Stipulation of the parties “In the Matter of Miguel Pulido,” FPPC No. 14/131,  
12 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political  
13 Practices Commission, effective upon execution below by the Chair.

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15 IT IS SO ORDERED.

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17 Dated: \_\_\_\_\_  
18 Joann Remke, Chair  
Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

This settlement is the result of a joint investigation with the Orange County District Attorney's office.

Miguel Pulido is the Mayor of Santa Ana. He is required to disclose certain economic interests on Statements of Economic Interests ("SEI's").

This case involves multiple violations of the Political Reform Act (the "Act").<sup>1</sup> One of the violations is a conflict of interest for voting to renew a contract with a source of income. The income resulted from a real estate transaction. The other violations involve failure to disclose certain information on SEI's. Most of the omitted information pertained to the property that was involved in the real estate transaction.

### **SUMMARY OF THE LAW**

All legal references and discussions of law pertain to the Act's provisions as they existed at the time of the violations described above (2009 through 2012).

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

There are many purposes of the Act. One purpose is to prevent conflicts of interest by public officials; along these lines, such officials are required to disclose assets and income that may give rise to conflicts of interest.<sup>3</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."<sup>4</sup>

#### **Conflicts of Interest**

The primary purpose of the conflict of interest provisions of the Act is to ensure that, "public officials, whether elected or appointed, perform their duties in an impartial manner, free

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<sup>1</sup> 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 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

<sup>2</sup> Section 81001, subd. (h).

<sup>3</sup> Section 81002, subd. (c).

<sup>4</sup> Section 81002, subd. (f).

from bias caused by their own financial interests or the financial interests of persons who have supported them.”<sup>5</sup>

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six steps to consider when determining whether an individual has a conflict of interest in a governmental decision.<sup>6</sup>

First, the individual must be a public official.<sup>7</sup> Section 82048 defines “public official” to include an employee of a local government agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision.<sup>8</sup>

Third, the official must have an economic interest that may be financially affected by the governmental decision.<sup>9</sup> A public official has a financial interest in any person who is a source of income to the official of \$500 or more during the 12 months preceding the governmental decision.<sup>10</sup> Income may take forms other than cash. For example, real property received by an official in a land trade is income to the official, and the other party is a source of income to the official.<sup>11</sup>

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision.

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest.<sup>12</sup> For a directly involved source of income, any reasonably foreseeable financial effect is deemed material.<sup>13</sup>

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<sup>5</sup> Section 81001, subd. (b).

<sup>6</sup> The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

<sup>7</sup> Section 87100.

<sup>8</sup> Section 87100 and Regulation 18700.

<sup>9</sup> Sections 87100 and 87103.

<sup>10</sup> Section 87103, subd. (c).

<sup>11</sup> See *Hensley* Advice Letter, No. A-07-045.

<sup>12</sup> Sections 87100 and 87103.

<sup>13</sup> Regulation 18705.3, subd. (a).

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect.<sup>14</sup> A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.<sup>15</sup> Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case.<sup>16</sup>

### Required Filing of Annual SEI’s

Certain public officials, including mayors, must file SEI’s on an annual basis.<sup>17</sup>

Among other things, SEI’s must include certain information about real property interests that are worth \$2,000 or more, such as the location of the property and information about the value of the property. Also, if the property was acquired or disposed of during the period covered by the statement, the date of acquisition or disposal must be reported.<sup>18</sup>

Additionally, SEI’s must include certain information about sources of income of \$500 or more during the period covered by the statement, such as the name and address of each source of income, information about the amount of income, and a description of the consideration (if any) for which the income was received.<sup>19</sup> However, the general rule is that income (other than a gift) from outside the official’s jurisdiction is not reportable—unless the source does business in the jurisdiction, plans to do business in the jurisdiction, or has done business in the jurisdiction in the past two years.<sup>20</sup>

Not all officials are subject to SEI filing requirements under Sections 87200 and 87203. Some are required to file SEI’s pursuant to agency conflict of interest codes, which have the force of law.<sup>21</sup> Often, reportable items under these conflict of interest codes must be disclosed in a manner that is substantially equivalent to the requirements for officials who file under Sections 87200 and 87203.<sup>22</sup>

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<sup>14</sup> Sections 87100 and 87103.

<sup>15</sup> Regulation 18706, subd. (a).

<sup>16</sup> Regulation 18706, subd. (b).

<sup>17</sup> Sections 87200 and 87203.

<sup>18</sup> See Sections 82033, 87200, and 87206.

<sup>19</sup> See Sections 87200 and 87207.

<sup>20</sup> Section 82030, subd. (a).

<sup>21</sup> Section 87300.

<sup>22</sup> Regulation 18730.

## SUMMARY OF THE FACTS

In 2010, Mayor Pulido was one of five family members who owned equal shares of a parking lot that was located immediately behind Orange County Auto Parts in Santa Ana, California. The other owners were Mayor Pulido's father and three siblings.

At the time, Rupen James Akoubian and his wife, Silva Akoubian, owned a house in Westminster, California. Also, Mr. Akoubian owned and operated Orange County Auto Parts.

In approximately September 2010, the Akoubians and the Pulidos carried out a land trade. The Pulidos became the new owners of the house in Westminster, and the Akoubians became the new owners of the parking lot behind Orange County Auto Parts. Mr. Akoubian had wanted the parking lot for many years; it was particularly valuable to him because it was located directly behind his store, and he had a need for off-street parking.

In connection with the land trade, Mayor Pulido and his other four family members were required to sign a deed.

During the property transfer process, Mayor Pulido's father and Mr. Akoubian signed a preliminary change of ownership report characterizing the transaction as an exchange worth \$200,000. The Orange County Assessor disputed the value of the Westminster home, finding it to be worth \$430,000. However, Mayor Pulido maintains that the parking lot actually was worth more than the Westminster home. During the investigation of this case, he paid for and provided a supporting appraisal of \$720,000.

Additional facts are set forth below with information about the violations to which they relate. For settlement purposes, Mayor Pulido is being charged as follows:

## VIOLATIONS

### Count 1: Conflict of Interest

Approximately four months after the land trade, at a Santa Ana City Council meeting on January 4, 2011, Mayor Pulido voted to renew a contract with Mr. Akoubian's auto parts store for a one-year period in an amount not to exceed \$50,000. The agenda item for the contract was part of a consent calendar vote, which passed unanimously.

When he voted, Mayor Pulido was a public official who made a governmental decision. At the time, Mr. Akoubian was a source of income to Mayor Pulido because of the land trade.<sup>23</sup> Mr. Akoubian was directly involved in the decision because the vote was about a contract with his business. At the time of the vote, Mayor Pulido knew or should have known that the vote would have a financial effect on Mr. Akoubian because the vote pertained to renewing a contract

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<sup>23</sup> See *Hensley* Advice Letter, No. A-07-045.

with Mr. Akoubian's auto parts store for a one-year period in an amount up to \$50,000. Since Mr. Akoubian was directly involved, the financial effect is deemed material.<sup>24</sup>

In this way, Mayor Pulido violated Section 87100, which prohibits conflicts of interest by public officials.

#### Count 2: Reporting Violation – Annual SEI's for Calendar Year 2009

In addition to being the Mayor of Santa Ana, Mayor Pulido also held other official positions that required him to file SEI's. For example, he is a member of the Board of Directors for the Orange County Transportation Authority. Additionally, he served as a member of the Board of Directors for the South Coast Air Quality Management District. Thus, in addition to his mayoral SEI filing requirements under Sections 87200 and 87203, Mayor Pulido also had SEI filing requirements under the conflict of interest codes for the Orange County Transportation Authority and the South Coast Air Quality Management District.

Since the Orange County Transportation Authority's jurisdiction extends to a larger geographical area than just the city of Santa Ana, this position actually requires greater disclosure on SEI's than what is required for the Mayor of Santa Ana. According to the Orange County Transportation Authority's conflict of interest code, members of the Board of Directors are required to disclose all interests in real property in Orange County, as well as investments, business positions, and sources of income. Reportable items must be reported in a manner substantially equivalent to the manner in which other officials must report under Sections 87200 and 87203.

Members of the Board of Directors for the South Coast Air Quality Management District are governed by similar reporting requirements—except that the jurisdiction is broader, encompassing multiple counties in addition to Orange County.

In 2010, Mayor Pulido filed separate SEI's for calendar year 2009 for the Orange County Transportation Authority, the South Coast Air Quality Management District, and for his position as Mayor of Santa Ana, but on each SEI, he misreported the above-described parking lot as being held by the Pulido Family Trust. The property was not held in trust, and misreporting it in this way resulted in the property being reported on the wrong schedule. In turn, this led to omission of information about rental income attributable to the property.

In this way, Mayor Pulido violated Sections 87206 and 87300.

#### Count 3: Reporting Violation – Annual SEI's for Calendar Year 2010

In 2011, Mayor Pulido filed separate SEI's for calendar year 2010 for the Orange County Transportation Authority, the South Coast Air Quality Management District, and for his position as Mayor of Santa Ana, but on each SEI, he misreported the parking lot as being held by the Pulido Family Trust (which led to omission of information about rental income); he failed to

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<sup>24</sup> See former Regulation 18705.3, subd. (a), as it was in effect in 2011.



report the land trade with the Akoubians (including dates of disposal/acquisition); he failed to report the Westminster home; and he failed to report the Akoubians as sources of income. (Since the Westminster home was in another city, it was not required to be reported on the Santa Ana mayoral SEI, but the jurisdiction of Mayor Pulido's other official positions was broad enough to require reporting.)

In this way, Mayor Pulido violated Sections 87206, 87207, and 87300.

Count 4: Reporting Violation – Annual SEI's for Calendar Year 2011

In 2012, Mayor Pulido filed separate SEI's for calendar year 2011 for the Orange County Transportation Authority and the South Coast Air Quality Management District, but on each SEI, he failed to report the Westminster home.

In this way, Mayor Pulido violated Section 87300.

Count 5: Reporting Violation – Annual SEI's for Calendar Year 2012

On or about August 3, 2012, Mayor Pulido's father and siblings conveyed their interest in the Westminster home to Mayor Pulido—making Mayor Pulido the sole owner.

Later that month, Mayor Pulido sold the Westminster home for \$397,000.

In 2013, Mayor Pulido filed separate SEI's for calendar year 2012 for the Orange County Transportation Authority and the South Coast Air Quality Management District, but on each SEI, he failed to report the Westminster home and his sale of the home. Also, he failed to report the buyers of the home as sources of income.

In this way, Mayor Pulido violated Section 87300.

Count 6: Reporting Violation – SEI Amendments for Calendar Year 2012

In November and December 2013, Mayor Pulido filed SEI amendments for calendar year 2012, including amendments for the Orange County Transportation Authority and the South Coast Air Quality Management District. By this time, his land trade with the Akoubians—and the related conflict of interest—were being questioned by the media. Also, the media was questioning whether the land trade was an over-the-limit gift.

On both SEI amendments, Mayor Pulido disclosed the Westminster home, and he reported the date that he disposed of the property (8/31/12), but he underreported the fair market value. He should have checked the box for "\$100,001 - \$1,000,000" because he was the sole owner when he sold the home. Instead, he checked the box for "\$10,001 - \$100,000."

In this way, Mayor Pulido violated Section 87300.

## PROPOSED PENALTY

This matter consists of six counts. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed is \$30,000.<sup>25</sup>

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness 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 isolated or part of a pattern; and (e) whether the violator has a prior record of violations.<sup>26</sup> Additionally, the Commission considers penalties in prior cases with similar violations.

Regarding Count 1, making a governmental decision in which an official has a financial interest is a serious violation of the Act. It undermines public trust in government by creating the appearance that the decision was the product of a conflict of interest. Also, such conduct contradicts the Act's decree that government should serve the needs of all citizens equally, in an impartial manner—without regard to wealth or financial interests.<sup>27</sup>

Recently, the Commission imposed a penalty in the mid-range for this type of violation. See *In the Matter of John Dukes*, FPPC No. 12/660 (approved Nov. 20, 2014), where a penalty in the amount of \$3,000 was imposed against a city councilman for a conflict of interest involving a source of income.

In the current case, Mayor Pulido is a sophisticated individual with ample reason and opportunity to become familiar with the requirements of the Act. He holds a degree in mechanical engineering, and he has served as the Mayor of Santa Ana for more than 20 years. Also, he served on the city council for a number of years before becoming mayor. With this background, Mayor Pulido knew or should have known that his vote on the contract with the auto parts store was prohibited by his own recent real estate transaction with the store owner. This was more than an inadvertent oversight.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,000 for Count 1 is justified. A higher penalty is not being sought because Mayor Pulido (by and through his attorney) cooperated with the investigation and agreed to an early settlement of this matter. Also, Mayor Pulido does not have a history of prior violations of the Act. Additionally, Mayor Pulido maintains that his favorable vote in question actually was recommended by city staff and was not a matter of controversy; he did not argue or lobby for passage of the item, either with staff or any other person. The vote was not for a new contract, but rather for an extension of a pre-existing contract from a time when no conflict existed. Also, Mayor Pulido maintains he did not realize the Akoubians were a source of

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<sup>25</sup> See Section 83116, subd. (c).

<sup>26</sup> Regulation 18361.5, subd. (d).

<sup>27</sup> Section 81001, subds. (a) and (b).

income to him for conflict of interest purposes because he did not receive any cash from them in the land trade.

Regarding Counts 2 through 6, failure to comply with SEI reporting requirements deprives the public of important information about the official's economic interests, and it has the potential to conceal conflicts of interest. In the *Dukes* case (mentioned above), the Commission imposed a penalty in the amount of \$1,000 against a city councilman for failure to disclose two sources of income on a single SEI. Although the undisclosed income was a relatively small amount, failure to disclose the income served to conceal a conflict of interest.

In the current case, a higher penalty is justified. Mayor Pulido's SEI reporting violations also served to conceal a conflict of interest. However, the monetary value of the undisclosed matters was relatively large compared to the small amounts involved in the *Dukes* case because Mayor Pulido's SEI violations involved real property. Additionally, as described above, Mayor Pulido is a sophisticated individual who has been regulated by the Act for more than 20 years. With this background, he knew or should have known about the extent of his SEI filing requirements—and his SEI violations were more than an inadvertent oversight. Also, these violations comprised a repeated pattern of misreporting on multiple SEI's each year over a period of time spanning more than three years. During this time, there was ample opportunity for Mayor Pulido to reflect and realize that he was not reporting matters correctly.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,000 per count for Counts 2 through 6 is justified. A higher penalty is not being sought because Mayor Pulido (by and through his attorney) cooperated with the investigation and agreed to an early settlement of this matter. Also, Mayor Pulido does not have a history of prior violations of the Act. Regarding the parking lot, Mayor Pulido misreported it as being held in trust because he mistakenly believed that the lot was part of his family trust along with other family property. He did not realize that the property never was formally conveyed to the family trust. Additionally, regarding Mayor Pulido's underreporting of the value of his interest in the Westminster home, Mayor Pulido maintains this occurred because he failed to take into account the fact that he was the sole owner of the home at the time of sale. (Prior to the sale, his father and siblings had conveyed their interest in the Westminster home to him—making him the sole owner.)

## **CONCLUSION**

For the foregoing reasons, an agreed upon penalty of \$13,000 is recommended (\$3,000 for Count 1, and \$2,000 per count for Counts 2 through 6).