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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA
10

11 In the Matter of:

FPPC Case No. 13/908

12 IVAN ALTAMIRANO and FRIENDS OF
13 IVAN ALTAMIRANO FOR COUNCIL
2013,

STIPULATION, DECISION AND ORDER

14 Respondents.
15

16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Ivan Altamirano and Friends of Ivan Altamirano for Council 2013 hereby agree that this
19 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
20 regularly scheduled meeting.

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

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

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 It is further stipulated and agreed that Respondents violated the Political Reform Act as set forth
4 in Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated
5 by reference as though fully set forth herein.

6 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
7 Respondents agree to the Commission imposing against it an administrative penalty in the amount of
8 \$15,500. A cashier's checks or money order totaling said amount—to be paid to the General Fund of the
9 State of California—is submitted with this Stipulation as full payment of the administrative penalty
10 described above, and same shall be held by the State of California until the Commission issues its
11 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
12 accept this Stipulation, it shall become null and void, and within fifteen business days after the
13 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
14 connection with this Stipulation shall be reimbursed to Respondents.

15 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
16 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the
17 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
18 Stipulation.

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21 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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25 Dated: _____

Ivan Altamirano, individually and on behalf of Friends
of Ivan Altamirano for Council 2013, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Ivan Altamirano and Friends of Ivan
3 Altamirano for Council 2013,” FPPC Case No. 13/908, including all attached exhibits, is hereby accepted
4 as the final decision and order of the Fair Political Practices Commission, effective upon execution below
5 by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: _____

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11 Joann Remke, Chair
12 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Ivan Altamirano is currently the Mayor of the City of Commerce. Altamirano has been a member of the Commerce City Council since March 2012. He successfully ran for Commerce City Council in the March 5, 2013 election. Respondent Friends of Ivan Altamirano for Council 2013 (“Committee”) is the candidate controlled committee for Altamirano. At all relevant times, Altamirano was the treasurer of the Committee. This case resulted from a formal complaint.

The Political Reform Act (the “Act”)¹ requires candidates, their controlled committees, and the treasurers of those committees file campaign statements at specific times disclosing information regarding contributions received and expenditures made by their committees. Further, the Act prohibits public officials from making, participating in making, or attempting to use his official position to influence a governmental decision in which he knew, or had reason to know, that he had a financial interest.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation in question.

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.² To that end, the Act must be liberally construed to achieve its purposes.³

One of the purposes of the Act is to prevent conflicts of interest by public officials.⁴ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

Duty to File Preelection Campaign Statements

In addition to semi-annual campaign statements, the Act requires all candidates being voted upon in on the first Tuesday after the first Monday in June or November of an odd-numbered year, and their controlled committees, to file preelection campaign statements.⁶

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Section 81001, subd. (h).

³ Section 81003.

⁴ Section 81002, subd. (c).

⁵ Section 81002, subd. (f).

⁶ Section 84200.5, subd. (c).

The Act provides that preelection campaign statements for an election not held in June or November of an even numbered year must be filed as follows:

- (1) For the period ending 45 days before the election, the statement must be filed no later than 40 days before the election.
- (2) For the period ending 17 days before the election, a statement must be filed no later than 12 days before the election.⁷

Duty to File 24-Hour Reports

When a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report filed at each office with which the committee is required to file its next campaign statement, within 24 hours of making or receiving the contribution.⁸ In relevant part, a “late contribution” means a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a candidate or a controlled committee.⁹

Conflicts of Interests

To prevent conflicts of interest in governmental decision making, the Act prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have a financial interest.¹⁰ 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 a recognized economic interest of the official.¹¹ The six relevant steps of the analysis follow below.

First, the individual must be a public official as defined by the Act. A “public official” includes members of a state or local governmental agency.¹²

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. A public official “makes a governmental decision” when the official votes on a matter.¹³

Third, the official must have an economic interest that may be financially affected by the governmental decision. An economic interest of a public official includes any source of income of \$500 or more within 12 months prior to the time when the relevant governmental decision is made.¹⁴ Further, an economic interest of a public official includes any real property in which the public official has a direct or indirect interest worth \$2,000 or more.¹⁵

⁷ Section 84200.8, subd. (a) and (b).

⁸ Sections 84203, subdivisions (a) and (b), and 84215.

⁹ Section 82036. The law extending the 24 Hour Reports from 16 days prior to the election to 90 days prior to the election became effective on January 1, 2013.

¹⁰ Section 87100.

¹¹ Section 87103.

¹² Section 82048.

¹³ Regulation 18702.1, subd. (a) (1), effective 06/10/03 – 04/26/15.

¹⁴ Section 87103, subd. (c).

¹⁵ Section 87103, subd. (b).

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision.¹⁶ A person, including sources of income, are directly involved in a decision before an official's agency when that person, either directly or by an agent: (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request, or; (2) is a named party in, or is the subject of the proceeding concerning the decision before the official or the official's agency.¹⁷ Real property in which a public official has an economic interest is directly involved if the real property is located within 500 feet of the boundaries or proposed boundaries of the property which is the subject of the governmental decision.¹⁸

For the decision made in February 2015, the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is material whenever the governmental decision would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, or involves construction of, or improvements to, streets, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision, or would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.¹⁹

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. Any reasonably foreseeable the financial effect on a person who is a source of income to the public official, and who is directly involved in a decision before the official's agency, is deemed material.²⁰

For the decision made in April 2015, when the source of income is the applicant, contracting party or is otherwise named or identified as the subject of the proceeding, the reasonably foreseeable financial effect of a governmental decision on an official's financial interest is material.²¹

If real property is directly involved in a governmental decision, the financial effect of a governmental decision is presumed to be material.²² For the decision made in February 2015, the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest is material whenever the governmental decision would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, or involves construction of, or improvements to, streets, and the parcel in which the official has an interest will receive new or improved services that are distinguishable

¹⁶ Regulation 18704.2, subd. (a)(1), effective 09/09/04-05/30/14.

¹⁷ Regulation 18704.1, subd. (a), effective 02/13/01 – 01/13/15.

¹⁸ Regulation 18704.2, subd. (a)(1), effective 09/09/04 - 05/30/14.

¹⁹ Regulation 18705.2, subdivisions (a)(6)(10) and (11), effective 11/24/14 – 04/26/15.

²⁰ Regulation 18705.3, subd. (a), effective 02/13/01 – 10/28/14.

²¹ Regulation 18705.3, subd. (a), effective between 03/04/15 – 04/26/15.

²² Regulation 18705.2, subd. (a), effective 02/01/01 – 05/30/14.

from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision, or would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest.²³

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision.²⁴

For decisions after May 31, 2014, an economic interest is explicitly involved when the financial effect on an economic interest is presumed to be reasonably foreseeable if the economic interest is a named party in, or the subject of, a governmental decision before the official or the official's agency.²⁵ Further, an economic interest is the subject of a proceeding if the decision includes any governmental decision affecting a real property economic interest,²⁶ if the decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the parcel in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or where the official will otherwise receive a disproportionate benefit or detriment by the decision.²⁷

VIOLATIONS

Counts 1-2 Campaign Filing

Count 1: Failure to Timely File and Properly Disclose Financial Activity on a Preelection Campaign Statement

For the preelection campaign statement for the reporting period January 20, 2013, through February 16, 2013 in connection with the March 5, 2013 election, Altamirano and the Committee filed almost 3 months after the election and erroneously reported the expenditures made as shown in the table below:

²³ Regulation 18705.2, subdivisions (a)(6)(10) and (11), effective 11/24/14 – 4/26/15.

²⁴ Regulation 18706, effective 02/21/02 – 05/30/14.

²⁵ Regulation 18706, effective 05/31/14 – 04/26/15.

²⁶ Id.

²⁷ Regulation 18705.2, subd. (a)(6), effective 11/24/14 – 04/26/15.

Campaign Statement Period January 20, 2013—February 16, 2013, Due February 21, 2013		
Date Filed	Contributions Received	Expenditures Made
March 25, 2013 (After the March 5, 2013 Election.)	\$12,378	\$11,054
True Activity Based on Committee Records		
	\$12,378	\$14,237

Altamirano and the Committee failed to timely file the preelection campaign statement for the January 20, 2013, through February 16, 2013 reporting period and failed to timely and properly disclose approximately \$14,237 in expenditures made, violating Sections 84200.5, subdivision (c), 84200.8, subdivision (b) and 84211, subdivisions (b),(j) and (k).

Counts 2-3: Failure to File 24-Hour Contribution Reports

According to records maintained by the Commerce City Clerk, 24-Hour Contribution Reports were not filed for the following contributions received.

Count	Date the Contribution was Reported Received	Filing Deadline	Contributor	Amount of the Late Contribution
2	January 13, 2013	Within 24 Hours	Justman Packaging & Display	\$1,000
	January 22, 2013	Within 24 Hours	CalMet Services, Inc.	\$1,000
	January 23, 2013	Within 24 Hours	Jasmine Mgrdichian Living Trust	\$1,000
	January 24, 2013	Within 24 Hours	Haig Papian, Jr. Gary W. Hamper	\$1,000 \$1,000
	January 28, 2013	Within 24 Hours	George Tumanjan and Irene Tumanjan Trust	\$1,000
	January 30, 2013	Within 24 Hours	Commerce Hyundai Lysa Grigorian	\$1,000 \$1,000
3	February 7, 2013	Within 24 Hours	Tom Malkasian	\$1,000
	February 8, 2013	Within 24 Hours	Jeanette Harris	\$1,000
	February 11, 2013	Within 24 Hours	R. Beard Trust Personal Acct	\$1,000
	February 12, 2013	Within 24 Hours	Lakecrest Business Center	\$1,000
	February 21, 2013	Within 24 Hours	Sterling Meats	\$1,000
	March 4, 2013	Within 24 Hours	Brian Dror Tabitha Dror (1 Check) David Iskowitz Julie Sager(1 Check)	\$1,000 \$1,000 \$1,000 \$1,000
		Total:	\$17,000	

Altamirano and the Committee failed to disclose seventeen late contributions of \$1,000 or more in twelve separate 24-Hour Contribution Reports within 90 days of the March 5, 2013 election, in violation of Section 84203.

Counts 4-5: Conflicts of Interest

Count 4: Making a Governmental Decision in Which the Public Official Had a Financial Interest

Altamirano has been a member of the Commerce City Council since March 2012. At all relevant times, Altamirano has owned a rental property within the city. Altamirano's sister, Julissa Altamirano, has been a tenant in this rental property, worth over \$2,000, for at least 10 years and pays rent to Altamirano. As such, Julissa Altamirano is a source of income to Altamirano.

On November 20, 2012, Altamirano appointed, and the Commerce City Council approved, the appointment of his sister, Julissa Altamirano, to the Commerce Planning Commission, for a term to expire in March 2013. The Commerce Planning Commissioners receive a stipend of \$50 per month. On April 2, 2013, the Commerce City Council, including Altamirano, approved the re-appointment of Julissa Altamirano to the Commerce Planning Commission, for an additional 2-year term. On April 7, 2015, the Commerce City Council, including Altamirano, re-appointed all existing commissioners, including Julissa Altamirano to the Commerce Planning Commission for an additional 2-year term.

Altamirano voted on three separate occasions to appoint and re-appoint his sister to the Commerce Planning Commission, who is a source of income to him as a tenant in his rental property, in violation of Section 87100.

Count 5: Making a Governmental Decision in Which the Public Official Had a Financial Interest

Altamirano has been a member of the Commerce City Council since March 2012. Altamirano submitted a request to the Commerce Traffic Commission in 2012 for a stop sign to be placed on Fidelia Avenue and Jillson Street, within 150 feet from his personal residence and his rental property, both worth over \$2,000. When this was denied, he submitted a request to the City Administrator for consideration of the stop sign in 2014.

On February 3, 2015, the Commerce City Council considered an appeal of the Traffic Commission decision, the decision requested by Altamirano. The staff report provided to the Commerce City Council recommended upholding the decision of the Traffic Commission. Altamirano stated from the dias that it is the only intersection on Jillson Street that does not have a stop sign and has created a dangerous situation. On February 3, 2015, Altamirano made a motion to approve, and the Commerce City Council voted to approve installation of an all way stop sign at Fidelia Avenue and Jillson Street, within 150 feet of both Altamirano's personal residence and his rental property. This decision also included an improvement to a street that altered traffic close to Altamirano's home and rental property.

Altamirano and the Commerce City Council decided not to accept the recommendation of the Traffic Commission or the Staff Report and voted to place an all way stop sign within 150 feet of Altamirano's home and rental property, in violation of Section 87100.

CONCLUSION

This matter consists of five counts of violating the Act, carrying a maximum administrative penalty of \$5,000 per count for a total administrative penalty of \$25,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

1. The seriousness of the violations;
2. The presence or lack of intent to deceive the voting public;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the Respondent demonstrated good faith in consulting with Commission staff;
5. Whether there was a pattern of violations; and
6. Whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent cases for similar violations include:

Campaign Filing and Disclosure

In the Matter of Virginia Mari Goodman, Mari Goodman for Assembly 34-2012, and Joan Slater, FPPC Case No. 13/1327. On June 18, 2015, the Commission approved a penalty of \$2,500 for failing to file two preelection campaign statements for the November 2012 election. Respondent in this matter was an unsuccessful candidate for State Assembly. During 2012, Mari Goodman for Assembly 34-2012 received \$20,466 in contribution and made \$16,673 in expenditures.

Here, Altamirano was a successful candidate for the Commerce City Council in March 2013. Altamirano was previously appointed to the Commerce City Council in 2012. He was fined by the Commission in 2011 for failing to file a Statement of Economic Interest, FPPC Case No. 11/927. He has no prior enforcement history regarding campaign filing, disclosure or conflicts of interests. In this matter, a penalty in the amount of \$2,500 for Count 1 is recommended.

24-Hour Reports

In the Matter of Salud O. Carbajal, Salud Carbajal For Supervisor 2012, and David Peri. FPPC Case No. 14/851. In April 2015, the Commission approved a penalty of \$2,000 each for 3 counts of failing to file 3 late contribution reports disclosing \$11,500.

In this matter, Altamirano failed to file 24-Hour Reports, depriving the public of financial information prior to the election. In mitigation, the law had recently changed from requiring 24-

Hour Reports 16 days prior to the election to 90 days prior to the election. As such, the twelve 24-Hour Reports were combined into two counts. Altamirano contends he did not realize that the 24-Hour reporting period was extended to 90 days prior to the election. Further, Altamirano contends that the local contribution limit had increased from \$500 to \$1,000 from a single source and he did not realize each of these contributions would trigger a 24-Hour Report within 90 days prior to the election. In this matter, a penalty in the amount of \$2,000 for Counts 2 and 3 each is recommended, for a total of \$4,000.

Conflict of Interests

In the Matter of Jonathan Sharkey, FPPC No. 16/066. Jonathan Sharkey, a member of the Port Hueneme City Council, made a governmental decision on November 9, 2015 in which he had a financial interest. Sharkey voted to approve the 2015-2016 city budget and Capital Improvement Program which included funding for park improvement projects at two parks located within 500 feet of Sharkey’s residence, in violation of Government Code Section 87100. On July 21, 2016, the Commission approved a penalty of \$3,000 per count for two counts.

In this matter, both Counts 4 and 5 include multiple instances of participation and making decisions. Regarding the appointment of his sister and overruling the Traffic Commission decision to place an all way stop sign within 150 feet of his home and rental property, Altamirano knew or should have known of he had an impermissible conflict of interest. In addition, Altamirano made or participated in other decisions regarding improvement projects in the area in which he resides and misapplied the public generally exception. Altamirano now understands these rules and contends that he will abide by them in the future. Altamirano contends his decision regarding the all way stop sign was to protect the public safety in that area and that he did not believe this decision would improve the market value of his real property. Altamirano contends that he did not intentionally violate the conflict of interest rules and he was not made aware of any potential legal issues. Further, Altamirano cooperated with the investigation and resolved this case before the issuance of a Probable Cause Report. In this matter, a penalty in the amount of \$5,000 for Count 4 and \$4,000 for Count 5 is recommended.

PROPOSED PENALTY

The facts of this case, including the aggravating and mitigating factors above, justify imposition of the agreed upon penalty of \$15,500.

* * * * *