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

11
12 In the Matter of) FPPC No. 14/194
13)
14 ARTHUR J. AGUILAR,) STIPULATION, DECISION and
15 Respondent.) ORDER
16)

17 Complainant, the Fair Political Practices Commission, and respondent Arthur J. Aguilar
18 (“Respondent”) agree that this Stipulation will be submitted for consideration by the Fair Political
19 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 administrative hearing to
22 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 Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
25 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
26 the right to personally appear at any administrative hearing held in this matter, to be represented by an
27 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the
28

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

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by: failing to
4 report 31 gifts he received between January 1, 2009, and October 31, 2012, in violation of Government
5 Code section 87300 (1 count); accepting gifts in excess of the annual gift-limit in 2009, 2010, 2011, and
6 between January 1 and October 31, 2012, in violation of Government Code section 89503 (1 count),
7 and; making, participating in making, or attempting to use his official position to influence eight
8 governmental decisions in which he knew, or had reason to know, he had a financial interest, in
9 violation of Government Code section 87100 (7 counts).

10 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
11 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

12 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
13 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
14 of \$30,000. A cashier's check from Respondent in said amount, made payable to the "General Fund of
15 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
16 to be held by the State of California until the Commission issues its decision and order regarding this
17 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
18 become null and void, and within 15 business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be
20 reimbursed to Respondent. Respondent further stipulate and agree that in the event the Commission
21 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
22 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
23 consideration of this Stipulation.

24 Dated: _____

Gary Winuk, Enforcement Chief,
On behalf of the Fair Political Practices Commission

27 Dated: _____

Arthur J. Aguilar, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Arthur J. Aguilar” FPPC No. 14/194,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7 Dated: _____

8 _____
9 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Arthur J. Aguilar (“Respondent”) was the General Manager of the Central Basin Municipal Water District (the “Water District”) from 2006 until October 31, 2012. Respondent failed to report on his statements of economic interests (“SEI”) 31 gifts totaling approximately \$3,500 in value that he received from Pacifica Services, Inc. (“Pacifica”), in 2009, 2010, 2011, and 2012, in violation of Section 87300 of the Political Reform Act.¹ Additionally, Respondent accepted gifts in excess of the annual gift-limit from Pacifica in 2009, 2010, 2011, and 2012, in violation of Section 89503, subdivision (c). Also, Respondent made, participated in, or attempted to use his official position to influence eight decisions by the Water District to award Pacifica over \$6,000,000 in contracts, in violation of Section 87100.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1 Respondent Arthur J. Aguilar failed to timely disclose 31 gifts, totaling \$3,495.03 in value, he received between January 1, 2009, and October 31, 2012, in violation of Government Code section 87300.

COUNT 2 Respondent Arthur J. Aguilar accepted gifts in excess of the annual gift-limit from Pacifica Services, Inc., in 2009, 2010, 2011, and between January 1 and October 31, 2012, in violation of Government Code section 89503.

COUNT 3 On or about October 26, 2009, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made, participated in making, or attempted to use his official position to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 4 On or about April 12, 2010, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made, participated in making, or attempted to use his official position to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 5 On or about January 24, 2011, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made, participated in making, or attempted to use his official position to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 6 On or about March 28, 2011, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made,

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

participated in making, or attempted to use his official position to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 7 On or about June 22, 2011, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made, participated in making, or attempted to use his official position to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 8 On or about January 23, 2012, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made, participated in making, or attempted to use his official position to influence two governmental decisions in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

COUNT 9 On or about June 25, 2012, Respondent Arthur J. Aguilar, in his capacity as the General Manager of the Central Basin Municipal Water District, made, participated in making, or attempted to use his official position to influence a governmental decision in which he knew or should have known he had a financial interest, in violation of Government Code section 87100.

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 violations.

Liberal Construction and Vigorous Enforcement of the Act

When the 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. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

SEI Disclosure Requirements

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, that may be materially affected by their official actions, be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, Section 87300 requires every agency to adopt and promulgate a conflict-of-interest code.

Section 82019, subdivision (a), defines "designated employee" to include any member of any agency whose position is "designated in a conflict-of-interest code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest." Additionally, Section 87302, subdivision (a), provides that an agency's conflict-of-interest code must specifically designate the positions within the agency that are required to file SEI's, disclosing reportable investments, business positions, interests in real property, and sources of income. Thus, designated employees must file SEI's under the Act.

Under Section 87300, the requirements of an agency's conflict-of-interest code have the force of law, and any violation of those requirements is deemed a violation of the Act.

The Water District's Conflict-of-interest Code incorporates Regulation 18730 and requires the Water District's General Manager (the "General Manager") to report on his or her SEI, among other things, all income he or she has received during the period covered by the SEI. The Water District's Conflict-of-interest Code requires the General Manager file all his or her SEI's with the Water District.

Income that must be reported includes, but is not limited to, any gifts accepted by the official. (Section 82030.) A gift is any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. (Section 82028, subd. (a).) A gift is received or accepted when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift. (Regulation 18941.) A gift confers a personal benefit on the official when the official enjoys direct benefit from the gift, the official uses the gift, or the official exercises discretion and control over who will use the gift or how to dispose of the gift. (Regulation 18944.) The value of a gift is the fair market value as of the date of receipt or promise of the gift. (Regulation 18946.)

In the case of a gift, the SEI must include: 1) the name, address and business activity of the donor and any intermediary through which the gift was made; 2) a description of the gift; 3) the amount or value of the gift; and 4) the date on which the gift was received. (Section 87207, subd. (a); Regulation 18730, subd. (b)(7)(B)(4).)

The General Manager is required to report by April 1 to the Water District all reportable income he or she received during the previous calendar year. (Regulation 18730, subs. (b)(5)(C) and (b)(6)(C).) The General Manager is also required to report to the Water District within 30 days after leaving office all reportable income he or she received during the period between the closing date of the last statement filed and the date of leaving office. (Regulation 18730, subd. (b)(5)(D).)

Gift-Limit

No designated employee of a local government agency shall accept gifts from any single source in any calendar year with a total value of more than \$250 if the employee would be required to report the receipt of gifts from that source on his or her SEI's. (Section 89503, subd. (c).) The \$250 gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index pursuant to Section 89503, subdivision (f). For 2009, 2010, 2011, and 2012, the applicable gift limit from a single source was \$420. (Regulation 18940.2, subd. (a).)

Conflict-of-Interest

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his 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 several analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include “every member, officer, employee or consultant” of a local government agency. Section 82041 defines “local government agency” to include a district of any kind.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. (Section 87100 and Regulation 18700.) A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position: (1) Votes on a matter; (2) Appoints a person; (3) Obligates or commits his or her agency to any course of action; (4) Enters into any contractual agreement on behalf of his or her agency; or (5) Determines not to act, unless such determination is made because of his or her financial interest. (Regulation 18702.1, subd. (a).) A public official “participates in making a governmental decision” when, acting within the authority of his or her position, the official negotiates, without significant substantive review, regarding a governmental decision or advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review. (Regulation 18702.2.) A public official “attempts to use his or her official position to influence a governmental decision” of his or her agency when the official acts or purports to act, on behalf of, or as the representative of his or her agency to any member, officer, employee, or consultant. (Regulation 18702.3.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) In 2009, 2010, 2011, and 2012, a public official had a financial interest in any donor of a gift or gifts aggregating \$420 or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.) A source of a gift is directly involved in a decision if he or she is the “subject of the proceeding.” (Regulation 18704.1.) A person is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person. (Regulation 18704.1, subd. (a)(2).)

Lastly, it must be determined if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have a material financial effect on the economic interest. (Sections 87100 and 87103.) Any reasonably foreseeable financial effect upon a person which is a source of a gift to a public official and is directly involved in a governmental decision is deemed material. (Regulation 18705.4, subd. (a).)

SUMMARY OF THE FACTS

On or about October 1, 2007, the Water District and Pacifica entered into a contract (“Original Agreement”). Under the terms of the Original Agreement, the Water District was obligated to pay Pacifica up to \$600,000 for Pacifica’s technical assistance in several of the Water District’s projects from October 1, 2007, through September 30, 2008. The Original Agreement was signed by Respondent, on behalf of the Water District, and Michael B. Sisson, on behalf of Pacifica, on October 17, 2007. Mr. Sisson was, at all relevant times, the Vice President of Pacifica.

Pacifica and the Water District subsequently modified the Original Agreement three times to extend terms of the Original Agreement and increase the Water District's financial obligation to Pacifica under the terms of the Original Agreement.

On or about May 29, 2009, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent's green fee cost of \$69.30 and food/drink costs totaling \$23.36.

On or about August 28, 2009, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent's green fee cost of \$95.

On or about September 9, 2009, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent's green fee cost of \$255 and food/drink costs totaling \$44.19.

On or about October 26, 2009, Respondent, in his capacity as the General Manager, submitted a staff report to the Water District's Board of Directors (the "Board") that recommended that the Water District extend the terms of the Original Agreement through June 30, 2011, for \$1,851,000. At their October 26, 2009, meeting, the Board, by a majority vote, approved the staff recommendation and authorized Respondent to amend the Original Agreement as recommended by the staff report. On the same day, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Amendment No. 4 to the Original Agreement, which extended the terms of the Original Agreement through June 30, 2011, and obligated the Water District to pay Pacifica up to \$1,851,000 for services rendered.

On or about December 12, 2009, Respondent and his wife attended Pacifica's Winter Party at Langham Hotel at a cost of approximately \$150 per person. The cost of Respondent and his wife's attendance, totaling \$300, was paid for by Pacifica.

On or about January 13, 2010, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent's green fee cost of \$125.

On or about March 3, 2010, Respondent filed his 2009 Annual SEI with the Water District. On his 2009 Annual SEI, Respondent did not report receiving any gifts from Pacifica or Mr. Sisson between January 1 and December 31, 2009.

On or about March 26, 2010, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent's green fee cost of \$148 and food/drink costs totaling \$18.12.

On or about April 12, 2010, Respondent, in his capacity as the General Manager, negotiated with Pacifica a new rate of compensation for Pacifica's work under the terms of the Original Agreement. On the same day, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Amendment No. 5 to the Original Agreement, which changed Pacifica's rate of compensation from the Water District under the terms of the Original Agreement.

On or about April 20, May 6, May 28, June 4, July 8, July 30, August 19, September 10, October 21, and November 30, 2010, Respondent played golf with Mr. Sisson, and Mr. Sisson, on behalf of Pacifica, paid Respondent's respective green fee cost of \$27, \$385, \$56.26, \$56.25, \$41.75, \$90, \$61.25, \$125, \$140, and \$135.

On or about December 13, 2010, Respondent and his wife attended Pacifica's Winter Party at Pacifica CEO Ernest Camacho's residence at a cost of approximately \$150 per person. The cost of Respondent and his wife's attendance, totaling \$300, was paid for by Pacifica.

On or about January 24, 2011, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water Board award a contract to Pacifica for \$168,547.50. At its January 24, 2011, meeting, the Board, by a majority vote, approved the staff recommendation and authorized Respondent to enter into an agreement with Pacifica as recommended in the staff report. On the same day, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Professional Service Agreement No. C2278 (“C2278”), which obligated the Water District to pay Pacifica up to \$168,547.50 for services rendered.

On or about February 10, 2011, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent’s green fee cost of \$52.

On or about March 3, 2011, Respondent filed his 2010 Annual SEI with the Water District. On his 2010 Annual SEI, Respondent reported receiving \$135 in golf from Pacifica on November 30, 2010. Respondent did not report receiving any other gifts from Pacifica, Mr. Sisson, or Mr. Camacho between January 1 and December 31, 2010.

On or about March 10, 2011, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent’s green fee cost of \$70.

On or about March 28, 2011, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District award a contract to Pacifica to manage the Water District’s Water and Energy Emergency End Use Demand Management Measures Project for \$247,500. At its March 28, 2011, meeting, the Board, through a majority vote, approved the staff recommendation and authorized Respondent to enter into an agreement with Pacifica as recommended by the staff report. On the same day, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Professional Services Agreement No. C2290 (“C2290”), which obligated the Water District to pay Pacifica up to \$247,500 for services rendered.

On or about June 22, 2011, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District extend the terms of the Original Agreement through June 30, 2012, for \$278,000. At its June 22, 2011, meeting, the Board, through a majority vote, approved the staff recommendation and authorized Respondent to amend the Original Agreement as recommended by the staff report. On or about July 11, 2011, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Amendment No. 6 to the Original Agreement which extended the terms of the Original Agreement through June 30, 2012, and obligated the Water District to pay Pacifica up to \$278,000 for services rendered.

On or about September 9, 2011, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent’s green fee cost of \$102.75.

On or about December 16, 2011, Respondent and his wife attended Pacifica’s Winter Party at Mr. Camacho’s residence at a cost of approximately \$150 per person. The cost of Respondent and his wife’s attendance, totaling \$300, was paid for by Pacifica.

On or about December 23, 2011, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent’s green fee cost of \$84.

On or about January 23, 2012, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District extend C2278 for an additional year for \$198,000. At its January 23, 2012, meeting, the Board, by a majority vote, accepted the staff recommendation and authorized Respondent to amend C2278 as recommended

by the staff report. On the same day, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed an amendment to C2278 that extended C2278 for an additional year and obligated the Water District to pay Pacifica up to \$198,000 for services rendered.

Also on or about January 23, 2012, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District increase its obligation to Pacifica under the terms of the Original Agreement by \$594,000. At its January 23, 2012, meeting, the Board, through a majority vote, accepted the staff recommendation and authorized Respondent to amend the Original Agreement as recommended by the staff report. On or about February 24, 2012, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Amendment No. 7 to the Original Agreement, which obligated the Water District's to pay Pacifica up to \$594,000 for services rendered.

On or about February 17, 2012, Respondent played golf with Mr. Sisson. Mr. Sisson, on behalf of Pacifica, paid Respondent's green fee cost of \$60.

On or about March 5, 2012, Respondent filed his 2011 Annual SEI with the Water District. On his 2011 Annual SEI, Respondent did not report receiving any gifts from Pacifica, Mr. Sisson, or Mr. Camacho between January 1 and December 31, 2011.

On or about April 13, April 20, and June 22, 2012, Respondent played golf with Mr. Sisson, and Mr. Sisson, on behalf of Pacifica, paid Respondent's respective green fee cost of \$95, \$47, and \$69.

On or about June 25, 2012, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District extend the terms of the Original Agreement to June 30, 2014, for \$2,439,360. At its June 25, 2012, meeting, the Board, by a majority vote, accepted the staff recommendation and authorized Respondent to amend the Original Agreement as recommended by the staff report. On or about July 2, 2012, Respondent, on behalf of the Water District, and Mr. Sisson, on behalf of Pacifica, signed Amendment No. 8 to the Original Agreement, which extended the terms of the Original Agreement to June 30, 2014, and obligated the Water District to pay Pacifica up to \$2,439,360 for services rendered.

On or about August 3, and October 5, 2012, Respondent played golf with Mr. Sisson, and Mr. Sisson, on behalf of Pacifica, paid Respondent's respective green fee costs of \$58.99, and \$135.

On or about October 31, 2012, Respondent retired from the Water District.

On or about January 25, 2013, Respondent filed his Leaving Office SEI with the Water District. On his Leaving Office SEI, Respondent did not report receiving any gifts between January 1 and October 31, 2012.

Accordingly, Respondent committed the following violations of the Act:

COUNT 1

Failure to Report Gifts

Respondent was the General Manager from 2006 until October 31, 2012. As such, Respondent was required to file an Annual SEI with the Water District by April 1, 2010, April 1, 2011, and April 1, 2012, that disclosed all gifts he received in 2009, 2010, and 2011, respectively. (Section 87300; Regulation 18730.) Respondent was also required to file a

Leaving Office SEI with the Water District by November 30, 2012, that disclosed all gifts he received between January 1 and October 31, 2012. (*Id.*) Respondent failed to disclose six gifts totaling \$786.85 in value on his 2009 Annual SEI by April 1, 2010, 14 gifts totaling \$1,634.44 in value on his 2010 Annual SEI by April 1, 2011, five gifts totaling \$608.75 in value on his 2011 Annual SEI by April 1, 2012, and six gifts totaling \$464.99 in value on his Leaving Office SEI by November 30, 2012, in violation of Section 87300.

COUNT 2

Acceptance of Gifts in Excess of the Gift-Limit

Respondent was the General Manager from 2006 through October 31, 2012. As such, Respondent was prohibited from accepting gifts from a single source in excess of the \$420 annual gift-limit in 2009, 2010, 2011, and between January 1 and October 31, 2012. (Section 89503, subd. (c); Regulation 18940.2, subd. (a).) Respondent accepted gifts from Pacifica totaling \$786.85 in value in 2009, totaling \$1,634.44 in value in 2010, totaling \$608.75 in value in 2011, and totaling \$464.99 in value between January 1 and October 31, 2012, in violation of Section 89503, subdivision (c).

COUNT 3

Conflict-of-Interest

On October 26, 2009, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

On or about October 26, 2009, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended the Water District extend the terms of the Original Agreement and increase the Water District's obligation to Pacifica by \$1,851,000. Respondent, by making the recommendation directly to the decisionmaker, participated in the governmental decision. (Regulation 18702.2.)

Between October 26, 2008, and October 26, 2009, Respondent accepted gifts from Pacifica with a total value of \$486.85. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decision, Respondent had an economic interest in Pacifica when he participated in the governmental decision on October 26, 2009. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The Board's decision on October 26, 2009, was to award a contract to Pacifica, and therefore Pacifica was the subject of the proceeding. (Regulation 18704.1.) Because Pacifica was the subject of the proceeding, Pacifica was directly involved in the decision. (*Id.*)

Because Pacifica was directly involved in the decision and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable that the governmental decision would have a *material* financial effect on Pacifica if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the governmental decision would have a financial effect on Pacifica because the governmental decision was to award Pacifica a \$1,851,000 contract. Consequently, it was reasonably

foreseeable that the governmental decision would have a material financial effect on Pacifica. (*Id.*)

Therefore Respondent, by recommending that the Water District award a \$1,851,000 contract to Pacifica, violated Section 87100.

COUNT 4

Conflict-of-Interest

On April 12, 2010, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

On April 12, 2010, Respondent, in his capacity as the General Manager, negotiated and executed Amendment No. 5 to the Original Agreement. By negotiating and entering into a contractual agreement on behalf of his agency, Respondent made a governmental decision. (Regulation 18700.)

Between April 12, 2009, and April 12, 2010, Respondent accepted gifts from Pacifica with a total value of \$803.85. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decision, Respondent had an economic interest in Pacifica when he made the governmental decision on April 12, 2010. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The government decision was to negotiate and execute a contract with Pacifica, and therefore Pacifica was the subject of the proceeding. (Regulation 18704.1.) Because Pacifica was the subject of the proceeding, Pacifica was directly involved in the decision. (*Id.*)

Because Pacifica was directly involved in the decision and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable that the governmental decision would have a *material* financial effect on Pacifica if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the governmental decision would have a financial effect on Pacifica because the governmental decision was to change the rate at which Pacifica was compensated under the terms of the Original Agreement. Consequently, it was reasonably foreseeable that the governmental decision would have a material financial effect on Pacifica. (*Id.*)

Therefore Respondent, by negotiating and executing a contract with Pacifica, violated Section 87100.

COUNT 5

Conflict-of-Interest

On January 24, 2011, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

On or about January 24, 2011, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District award Pacifica a contract that obligated the Water District to pay Pacifica up to \$168,547.50 for services rendered. Respondent, by making the recommendation directly to the decisionmaker, participated in the governmental decision. (Regulation 18702.2.)

Between January 24, 2010, and January 24, 2011, Respondent accepted gifts from Pacifica with a total value of \$1,285.50. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decision, Respondent had an economic interest in Pacifica when he participated in the governmental decision on January 24, 2011. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The government decision was to award a contract to Pacifica, and therefore Pacifica was the subject of the proceeding. (Regulation 18704.1.) Because Pacifica was the subject of the proceeding, Pacifica was directly involved in the decision. (*Id.*)

Because Pacifica was directly involved in the decision and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable that the governmental decision would have a *material* financial effect on Pacifica if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the governmental decision would have a financial effect on Pacifica because the governmental decision obligated the Water District to pay Pacifica up to \$168,547.50. Consequently, it was reasonably foreseeable that the governmental decision would have a material financial effect on Pacifica. (*Id.*)

Therefore Respondent, by recommending that the Water District award Pacifica a contract for \$168,547.50, violated Section 87100.

COUNT 6

Conflict-of-Interest

On March 28, 2011, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

At the March 28, 2011, Water Board meeting, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District award Pacifica a contract that obligated the Water District to pay Pacifica up to \$247,500 for services rendered. Respondent, by making the recommendation to the decisionmaker, participated in the governmental decision. (Regulation 18702.2.)

Between March 28, 2010, and March 28, 2011, Respondent accepted gifts from Pacifica with a total value of \$1,251.50. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decision, Respondent had an economic interest in Pacifica when he participated in the governmental decision on March 28, 2011. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The government decision was to award a contract to Pacifica, and therefore Pacifica was the subject of the proceeding. (Regulation 18704.1.) Because Pacifica was the subject of the proceeding, Pacifica was directly involved in the decision. (*Id.*)

Because Pacifica was directly involved in the decision and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable that the governmental decision

would have a *material* financial effect on Pacifica if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the governmental decision would have a financial effect on Pacifica because the governmental decision obligated the Water District to pay Pacifica up to \$247,500. Consequently, it was reasonably foreseeable that the governmental decision would have a *material* financial effect on Pacifica. (*Id.*)

Therefore Respondent, by recommending that the Water District award Pacifica a contract for \$247,500, violated Section 87100.

COUNT 7

Conflict-of-Interest

On June 22, 2011, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

On June 22, 2011, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that Water District award Pacifica a contract that obligated the Water District to pay Pacifica up to \$278,000 for services rendered. Respondent, by making the recommendation directly to the decisionmaker, participated in the governmental decision. (Regulation 18702.2.)

Between June 22, 2010, and June 22, 2011, Respondent accepted gifts from Pacifica with a total value of \$1,015. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decision, Respondent had an economic interest in Pacifica when he participated in the governmental decision on June 22, 2011. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The government decision was to extend a contract with Pacifica, and therefore Pacifica was the subject of the proceeding. Because Pacifica was the subject of the proceeding, Pacifica was directly involved in the decision. (Regulation 18704.1.)

Because Pacifica was directly involved in the decision and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable that the governmental decision would have a *material* financial effect on Pacifica if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the governmental decision would have a financial effect on Pacifica because the governmental decision entitled Pacifica up to \$278,000. Consequently, it was reasonably foreseeable that the governmental decision would have a material financial effect on Pacifica. (*Id.*)

Therefore Respondent, by recommending that the Water District award Pacifica a contract for \$278,000, violated Section 87100.

COUNT 8

Conflict-of-Interest

On January 23, 2012, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

On January 23, 2012, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District award Pacifica a contract that obligated the Water District to pay Pacifica up to \$198,000 for services rendered. Respondent, by making the recommendation directly to the decision maker, participated in the governmental decision. (Regulation 18702.2.)

Also on January 23, 2012, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District award Pacifica a contract that obligated the Water District to pay Pacifica up to \$594,000 for services rendered. Respondent, by making the recommendation directly to the decisionmaker, participated in the governmental decision. (Regulation 18702.2.)

Between January 23, 2011, and January 23, 2012, Respondent accepted gifts from Pacifica with a total value of \$632.75. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decisions, Respondent had an economic interest in Pacifica when he participated in the governmental decisions on January 23, 2012. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The governmental decisions were to award contracts to Pacifica, and therefore Pacifica was the subject of the proceedings. (Regulation 18704.1.) Because Pacifica was the subject of the proceedings, Pacifica was directly involved in the decisions. (*Id.*)

Because Pacifica was directly involved in the decisions and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable the governmental decisions would have a *material* financial effect on Pacifica if, at the time of the governmental decisions, it was reasonably foreseeable that the decisions would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the decisions would have a financial effect on Pacifica because the decisions entitled Pacifica up to \$198,000 and \$594,000, respectively. Consequently, it was reasonably foreseeable that the governmental decisions would have a material financial effect on Pacifica. (*Id.*)

Therefore Respondent, by recommending that the Water District award contracts to Pacifica for \$198,000 and \$594,000, violated Section 87100.

COUNT 9

Conflict-of-Interest

On June 25, 2012, Respondent was the General Manager and therefore a public official. (Sections 82048 and 82041.)

On June 25, 2012, Respondent, in his capacity as the General Manager, submitted a staff report to the Board that recommended that the Water District award a contract to Pacifica

that obligated the Water District to pay Pacifica up to \$2,439,360 for services rendered. Respondent, by making the recommendation directly to the decisionmaker, participated in the governmental decision. (Regulation 18702.2.)

Between June 25, 2011, and June 25, 2012, Respondent accepted gifts from Pacifica with a total value of \$781.75. Because Respondent accepted gifts from Pacifica totaling \$420 or more in value in the 12 months prior to the governmental decision, Respondent had an economic interest in Pacifica when he participated in the governmental decision on January 23, 2012. (Section 87103, subd. (e), and 89503, subd. (a); Regulation 18940.2.)

The government decision was to award Pacifica a contract, and therefore Pacifica was the subject of the proceeding. (Regulation 18704.1.) Because Pacifica was the subject of the proceeding, Pacifica was directly involved in the decision. (*Id.*)

Because Pacifica was directly involved in the decision and the source of the gifts to Respondent, it is presumed that it was reasonably foreseeable that the governmental decision would have a *material* financial effect on Pacifica if, at the time of the governmental decision, it was reasonably foreseeable that the governmental decision would have *any* financial effect on Pacifica. (Regulation 18705.4, subd. (a).) It was reasonably foreseeable that the governmental decision would have a financial effect on Pacifica because the governmental decision obligated the Water District to pay Pacifica up to \$2,439,360. Consequently, it was reasonably foreseeable that the governmental decision would have a material financial effect on Pacifica. (*Id.*)

Therefore Respondent, by recommending that the Water District award Pacifica a contract for \$2,439,360, violated Section 87100.

CONCLUSION

This matter consists of nine counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total of \$45,000.

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): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Fair Political Practices Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Fair Political Practices Commission (the "Commission") under Regulation 18361.5.

SEI Non-Disclosure: Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Recent penalties concerning SEI disclosure violations include:

In the Matter of Andres Herrera, FPPC No. 12/027: In December 2012, the Commission fined a city councilmember \$1,000 per count for failing to report hundreds-of-dollars in gifts. The sources of the gifts were a developer and a bond underwriter that regularly had business with the city. However, the respondent had no prior enforcement actions, cooperated with the investigation, and agreed to an early settlement of the matter.

In the Matter of Edmund Sotelo, FPPC No. 12/029: In August 2012, the Commission fined a city manager \$1,000 per count for failing to report hundreds-of-dollars in gifts. The sources of the gifts were a developer and a bond underwriter that regularly had business with the city. However, the respondent had no prior enforcement actions, and amended his SEI's once he realized that he was required to disclose the gifts and before he was contacted by the Commission, cooperated in the investigation, and agreed to an early settlement of the matter.

In this matter, Respondent failed to disclose 31 gifts totaling approximately \$3,500 in value that he received from a single source over the course of approximately four years. Additionally, by not disclosing those gifts he concealed his conflict-of-interest in recommendations he made to the Board that led to over \$6,000,000 in contracts being awarded to the source of the undisclosed gifts. However, Respondent does not have a history of enforcement actions, cooperated with the investigation, and has agreed to an early settlement. Therefore a \$2,000 penalty for Count 1 is recommended.

Over-the-limit Gifts: Accepting gifts in excess of the legal gift limit is a serious violation of the Act.

Recent penalties concerning over-the-limit gift violations include:

In the Matter of Andres Herrera, FPPC No. 12/027: In December 2012, the Commission fined a city councilmember \$2,000 per count for accepting gifts over the gift limit. The respondent received gifts over the gift limit by a few hundred dollars and from a developer and a bond underwriter who regularly had business with the city. However, the respondent had no prior enforcement actions, cooperated with the investigation, agreed to an early settlement of the matter, and paid down the gifts received to the amount of the gift limit.

In the Matter of Edmund Sotelo, FPPC No. 12/029: In August 2012, the Commission fined a city manager \$2,000 per count for accepting gifts over the gift limit. The respondent received gifts over the gift limit by a few hundred dollars and from a developer and a bond underwriter who regularly had business with the city. However, the respondent had no history of enforcement actions, and paid down the gifts he received to the amount of the gift limit.

In this matter, Respondent accepted gifts in excess of the annual gift-limit for four consecutive years and in doing so created a conflict-of-interest in the recommendations he made to the Board that led to over \$6,000,000 in contracts being awarded to the source of the gifts. However, Respondent does not have a history of enforcement actions, cooperated with the investigation, and has agreed to an early settlement. Therefore a \$3,500 penalty for Count 2 is recommended.

Conflict-of-Interest: Making, participating in, or attempting to use one's official

position to influence a governmental decision in which an official has a financial interest may create the appearance that the governmental decision was a product of that conflict-of-interest, and is a serious violation of the Act.

Recent penalties concerning conflict-of-interest violations include:

In the Matter of Andres Herrera, FPPC No. 12/027: In December 2012, the Commission fined a city councilmember \$3,500 per count for conflict-of-interest violations stemming from gifts he had received over the gift-limit. The respondent had no prior enforcement actions, was cooperative in the investigation, and agreed to an early settlement of the matter.

In the Matter of Edmund Sotelo, FPPC No. 12/029: In August 2012, the Commission fined a city manager \$3,500 per count for conflict-of-interest violations stemming from gifts he had received over the gift-limit. The respondent had no prior enforcement actions, was cooperative in the investigation, and agreed to an early settlement of the matter.

In Counts 3 through 9, Respondent made, participated in making, or attempted to use his official position to influence decisions by the Water District to award contracts to the source of the gifts he received. Each of the eight decisions was to award a very large contract to the source of Respondents gifts, totaling over \$6,000,000 in contracts. Additionally, Respondent concealed that he had a disqualifying economic interest in each decision by failing to report gifts he received from the vendor that was the subject of each decision. However, Respondent does not have a history of enforcement actions, cooperated with the investigation, and has agreed to an early settlement. Therefore a \$3,500 penalty per count for Counts 3 through 9 is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$30,000 penalty on Respondent Arthur J. Aguilar is recommended.

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