1 Repeal and Adopt 2 Cal. Code Regs. Section 18360 to read:

2 ~~§ 18360. Complaints. (a) Pursuant to Section 83115, a person may submit a sworn complaint to~~

3 ~~the Commission or the Commission may on its own initiative investigate an alleged violation of~~

4 ~~the Act.~~

5 ~~(b) A sworn complaint shall be filed on a form made available by the Commission and shall~~

6 ~~comply with all of the following requirements:~~

7 ~~(1) Be in writing.~~

8 ~~(2) Identify the person or persons who allegedly violated the Act and, if known, the specific~~

9 ~~provision or provisions of the Act allegedly violated.~~

10 ~~(3) Describe with as much particularity as possible the facts constituting each alleged violation.~~

11 ~~(4) Be based on facts of which the complainant has personal knowledge, or based on information~~

12 ~~and belief supported by documentary or other evidence included or described in the complaint.~~

13 ~~(5) Include or describe with as much particularity as possible evidence or means of obtaining~~

14 ~~evidence in support of the complaint.~~

15 ~~(6) Include names and addresses of potential witnesses, if known.~~

16 ~~(7) Be signed by the complainant under penalty of perjury.~~

17 ~~(c) This regulation does not prevent a person from complaining by telephone to the Commission~~

18 ~~or requesting anonymity when doing so, but only a sworn complaint filed substantially in~~

19 ~~conformity with subdivision (b) entitles the complainant to the procedural rights set forth in~~

20 ~~Section 83115 and in this regulation.~~

21 ~~(d) Prior to each regularly scheduled Commission meeting, the Commission staff shall provide~~

22 ~~each member of the Commission a report with the information specified in paragraphs (1) and~~

23 ~~(2):~~

~~(1) With respect to sworn complaints received since the last report:~~

~~(A) The name of the complainant unless the complainant is a confidential informant.~~

~~(B) The name of the person or persons complained against.~~

~~(C) The date the sworn complaint was received.~~

~~(D) The alleged violation or violations of the Act.~~

~~(2) With respect to a staff-initiated investigation commenced since the last report:~~

~~(A) The name of the person who is the subject of the investigation.~~

~~(B) The date the staff initiated the investigation.~~

~~(C) The alleged violation or violations of the Act.~~

~~(3) The Commission staff shall also provide additional information a Commissioner requests to that Commissioner, including a copy of a sworn complaint, unless the Executive Director determines, in consultation with the Chief of Enforcement, the information will compromise the impartiality of the Commissioner on matters alleged in a complaint.~~

~~(e) The Chief of Enforcement, with the authorization of the Executive Director, shall provide information about sworn complaints and staff-initiated investigations to other governmental agencies that have an official and specific interest in the information, and make every effort to cooperate with other governmental agencies in a position to assist the Commission with an investigation. However, the Commission may decline to disclose the identity of a confidential informant.~~

~~(f) The Executive Director shall take the following actions with respect to complaints:~~

~~(1) Notify the complainant in writing within 14 calendar days of receipt of a sworn complaint that the Commission will do one or more of the following:~~

~~(A) Investigate the allegations of the complaint, in which case the response shall inform the complainant the commencement of an investigation only indicates the complaint alleges a violation of the Act, and the culpability of the person complained against, if any, has not been determined.~~

~~(B) Refer the complaint to another governmental agency.~~

~~(C) Take no action on the complaint because, on the basis of the information provided, the Commission does not appear to have jurisdiction to investigate, but the complainant may provide additional information.~~

~~(D) Take no action on the complaint because the allegations of the complaint, absent the Commission receiving additional information, do not warrant the Commission's further action for the reason stated.~~

~~(E) Take additional time to evaluate the complaint to determine whether an investigation should ensue and provide an appropriate explanation for the delay. This information shall be provided within successive intervals of no more than 14 calendar days per interval until the Commission notifies the complainant it has acted on the complaint under subparagraphs (A) through (D).~~

~~(2) Ensure that Commission staff does not disclose information relating to the contents of the 14-day notification required by subdivision (f)(1), to anyone other than Commission staff and those listed in subdivision (e) of this Regulation, except for purposes of investigation of the initial complaint, until at least 5 business days have passed from the time the 14-day notification letter is sent by the Commission to the complainant and the subject of the complaint. The limitation in this subdivision does not apply in cases where the Executive Director rejects the formal complaint.~~

~~(3) Provide the subject of the sworn complaint with a copy of the complaint within three business days of receipt. A cover letter shall be included with the copy of the complaint informing the subject of the complaint of the Executive Director's obligations listed in subdivision (f)(1) of this regulation and the subject's opportunity to respond to the allegations in the complaint before the Executive Director makes a final determination on any items listed in subdivisions (f)(1)(A-E) of this regulation. The Executive Director shall not make a final determination on any items listed in subdivisions (f)(1)(A-E) until 14 calendar days have passed from the date the complaint was received by the Enforcement Division, unless the final determination is to take no action. Any additional correspondence sent to the complainant pursuant to subdivision (f)(1) must be provided to the subject of the complaint at the same time it is provided to the complainant. However, upon the recommendation of the Chief of Enforcement and provided withholding the information is otherwise consistent with law, the Executive Director may decline to provide a copy of, or may redact information from, the complaint or the correspondence sent to the complainant. If all or part of a complaint or correspondence is withheld from the subject of the complaint, what is withheld may not be disclosed to another person except to a law enforcement agency on a confidential basis. If the sworn complaint is otherwise made public, a copy of the complaint shall be promptly sent to the subject of the complaint.~~

~~(4) Send notification of a potential staff-initiated investigation to the subject of the potential investigation and inform the subject of the potential staff-initiated investigation that the subject may respond in writing to any allegations set forth in the notification within 10 calendar days from the date the notification is sent. The notification shall also inform the subject of the potential staff-initiated investigation that no final determination on full investigation of the allegations set forth in the notification will be made until at least 10 calendar days have passed~~

~~from the date the notification was sent. Notification of a potential staff-initiated investigation must be sent to the subject of the potential staff-initiated investigation at the same time information of the potential investigation is provided to the Commissioners. The Executive Director shall ensure that Commission staff does not disclose information relating to the staff initiated investigation, to anyone other than Commission staff and those listed in subdivision (e) of this Regulation, except for purposes of investigation, until at least 5 business days have passed from the time the subject of the investigation is informed or sent notification of the investigation. However, upon the recommendation of the Chief of Enforcement that providing the information would jeopardize the investigation, the Executive Director may decline to inform the subject of the complaint. If the Executive Director makes this determination, he or she shall prepare a memorandum setting forth justification for the declination, which shall be retained in the enforcement case file. If the subject of the complaint is not informed of the complaint, the existence of the complaint may not be disclosed except to a law enforcement agency on a confidential basis.~~

~~(g) If the Commission investigates the allegations of a sworn complaint, the Executive Director shall notify the complainant in writing of the following:~~

~~(1) The time, date, and location of any public hearing or public meeting on the complaint scheduled to be heard by an administrative law judge or the Commission.~~

~~(2) The date, time, and location of any public proceeding on the complaint scheduled to be heard by a court.~~

~~(3) The Commission's or a court's final resolution of the complaint.~~

~~(h) If the person who filed the sworn complaint disagrees with the response sent pursuant to subdivision (f)(1)(C) or (D), he or she may submit in writing, within 20 calendar days of receipt~~

1 ~~of the response, a request for reconsideration that shall be directed to the Executive Director,~~

2 ~~who shall forward the correspondence to each member of the Commission for consideration.~~

3 **§ 18360. Enforcement Complaints**

4 (a) **Sworn complaint**. The Enforcement Division considers each complaint it receives but only a

5 sworn complaint entitles the complainant to the procedural rights provided for in subdivisions (b)

6 through (e) of this regulation. In order to file a sworn complaint, the complainant must:

7 (1) File the compliant with the Enforcement Division on a form made available by the

8 Commission.

9 (2) Identify the person or persons who allegedly violated the Act and, if known, the specific

10 provision or provisions of the Act allegedly violated.

11 (3) Describe with as much particularity as possible the facts constituting each alleged violation.

12 (4) State the facts ~~of which the complainant has personal knowledge, or based on information~~

13 ~~and belief supported by documentary or other evidence included or described in the complaint.~~

14 that support the complainant's belief that a person has violated the Act and include any

15 documents or other evidence supporting this conclusion.

16 (5) Include or describe with as much particularity as possible evidence or means of obtaining

17 evidence in support of the complaint.

18 (6) Include names and addresses of potential witnesses, if known.

19 (7) Sign the complaint under penalty of perjury.

20 (b) **Notice of sworn complaint**. Within three business days of receipt of a sworn complaint, the

21 Enforcement Division will provide each person who the complaint alleges violated the Act a

22 copy of the complaint, and notice that the person may respond to the complaint. The

23 Enforcement Division may withhold notice of a complaint or the identity of the complainant if

1 the Enforcement Division Chief determines that disclosing the information would jeopardize the
2 investigation.
3 (c) **Notice to complainant of intended action**. Within 14 calendar days of receiving a sworn
4 complaint, the Enforcement Division will notify the complainant in writing that it will do one or
5 more of the following in response to the complaint:
6 (1) Open a case to further investigate the allegations in the complaint. This notice will include a
7 statement that opening a case indicates the complaint alleges a potential violation of the Act, but
8 the Enforcement Division has not necessarily determined that any violations actually occurred.
9 (2) Refer the complaint to another governmental agency.
10 (3) Take no action on the complaint because the Commission does not have jurisdiction to
11 investigate based on the information provided.
12 (4) Take no action on the complaint because the allegations of the complaint, absent additional
13 information, do not warrant further action for the reason stated.
14 (5) Take additional time to investigate the complaint to determine whether to open a case and
15 provide an explanation for the delay. The Enforcement Division will provide the complainant
16 with subsequent written notice of what action it will take in response to the complaint.
17 (d) **Reconsideration of intended action.** If the person who filed the sworn complaint disagrees
18 with the response sent pursuant to paragraphs (c)(1)-(5), he or she may submit in writing, within
19 20 calendar days of receipt of the response, a request for reconsideration to the Executive
20 Director of the Commission. The Executive Director may deny the request, or based on good
21 cause, direct the Chief of the Enforcement Division to take specified action consistent with the
22 Act and its regulations. The Executive Director will provide the complainant written notice of his
23 or her decision within 20 calendar days of receipt of the request.

1 (e) **Notice to subjects of a sworn complaint**. The Enforcement Division will send a copy of the
2 notice to the complainant of intended action to any person the complaint at issue alleges violated
3 the Act at the same time the notice is sent to a complainant, unless the Enforcement Division
4 Chief determines that providing the person with notice of the complaint would jeopardize the
5 investigation.
6 (f) **Commission initiated investigation**. All investigations that do not result from a sworn
7 complaint are opened on the initiative of the Commission as provided for under Section 83115.
8 The Enforcement Division will determine whether to open Commission initiated investigations.
9 (1) **Letters of Inquiry**. The Enforcement Division may contact subjects of a Commission
10 initiated investigation to gather additional information to determine whether to open an
11 Enforcement case and further investigate potential violations.
12 (2) **Notice of investigation initiated by the Commission**: The Enforcement Division will send
13 notice, as well as a copy of any document submitted to the Enforcement Division, to any
14 identified subjects of a Commission initiated investigation after a case is opened. The
15 Enforcement Division may withhold any document, the identity of any person providing
16 information, or the notice and existence of an investigation if the Enforcement Division Chief
17 determines disclosing the information would jeopardize the investigation, or if the information is
18 privileged, private or confidential. No notice will be sent to the provider of the information
19 regarding whether a case has been opened.
20 (g) **Media and public inquiries**. The Commission will respond to requests for information about
21 complaints and investigations as follows:
22 (1) **Sworn Complaints.** The Commission may confirm receiving a sworn complaint at any time
23 but will not provide a copy of the complaint until five calendar days after a copy of the

1 complaint is sent to all persons the complaint alleges violated the Act as provided in subdivision
2 (b). The Commission is not required to wait five calendar days before providing a copy of the
3 complaint if the Enforcement Division has decided to take no action on the complaint.
4 Commission staff may not disclose any action the Enforcement Division intends to take on a
5 sworn complaint, other than no action, until after notice to complainant of intended action is sent
6 under subdivision (c).
7 (2) **Commission initiated investigation.** The Commission may confirm that the Enforcement
8 Division sent a letter of inquiry and may provide a copy of the letter and any documents
9 submitted to the Enforcement Division by the complaining member of the public five calendar
10 days after sending the letter of inquiry. The Commission may confirm that it has opened a case
11 on its own initiative and provide a copy of the notice sent to all identified subjects of the
12 Commission initiated investigation five calendar days after sending notice to all identified
13 subjects of the investigation as provided in subdivision (f)(2).
14 (3) **Referrals**. The Commission will confirm that it has received a referral from filing officers
15 upon receipt and will provide a copy of the referral upon request.
16 (4) **Protected Information**. The Commission may withhold any document, the identity of any
17 person providing information, or the existence of an investigation or complaint if the
18 Enforcement Division Chief determines that disclosing the information would jeopardize the
19 investigation, or the information is privileged, private or confidential.
20 (h) **Notice of resolution.** The Enforcement Division will send a notice of resolution to each
21 complainant who filed a sworn complaint with the Commission and was notified that the
22 Enforcement Division would investigate the allegations in the complaint.

1 Note: Authority cited: Section 83112, Government Code. Reference: Section 83115,

2 Government Code.