FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

October 12, 2009

Mr. Efren Abratique
Abratique & Associates

REDACTED

Warning Letter Re: FPPC No. 06/643, Efren Abratique

Dear Mr. Abratique:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),[1] found in Government Code section 81000, et seq. This letter is as a result of a pro-active investigation begun against you by the FPPC that alleged you violated the Act's conflict of interest provisions and failed to disclose assets on your Statement of Economic Interest (SEI).

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that you did **not** violate the Act's conflict of interest provisions when, as a member of the Los Angeles Building and Safety Commission, you voted on matters related to a company in which you had a financial interest. However, you did violate the Act by failing to disclose these interests on your 2006 leaving office SEI.

The Act provides that making, participating in, or influencing a decision in which you have a material financial interest is prohibited. The Act further provides that you must file a leaving office SEI that discloses all required interests. Specifically the Act provides in Government Code Section 87100 of the Political Reform Act (the "Act"), that: "No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." To determine whether an individual has a

[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.

disqualifying conflict of interests, the FPPC generally employs the following sequenced analysis: 1) was the individual a public official; 2) did the official make, participate in making, or use or attempt to use his official position to influence a governmental decision; 3) what are the public official's economic interests; 4) was the economic interest affected by the decision, either directly or indirectly; 5) was the economic interest materially affected by the decision; 6) was it reasonably foreseeable that the economic interest would be materially affected by the decision. (See Regulation 18700.)

Further, Section 87302 of the Act requires every State and local agency to develop a conflict of interest code. This code must require persons involved in the making or participing in the making of decisions which may foreseeably have a material effect on any financial interest to disclose reportable interests. Persons required to disclose must file a leaving office SEI within 30 days of leaving office.

Your actions violated the Act because you did not disclose reportable interests on your leaving office SEI in 2006. Specifically, you did not disclose your reportable interests in Abratique and Associates, and with Safeprobe, Inc. However, you did file an amended leaving office SEI with this information.

You did **not**, however, violate the conflict of interest provisions of the Act. You were a public official and did make a government decision with regard to Psomas, a source of income to Safeprobe, a company with whom you had a material economic interest. However, the decision you made did not, either directly or indirectly, affect the economic interests of Psomas. The decision you made was with regard to the routes Psomas would use to complete an earth removal project. Your decision did not involve the contract, compensation or payment to Psomas.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed

with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

Gary S. Winuk
Chief, Enforcement Division