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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 MIGUEL PULIDO,

13 Respondent.

FPPC Case No. 2019-00531

STIPULATION, DECISION AND ORDER

14
15 **INTRODUCTION**

16 Respondent Miguel Pulido was the Mayor of Santa Ana from 1994 to 2020. Prior to this, he was a
17 member of the Santa Ana City Council, representing Ward 4, from 1986 to 1994.

18 This case involves multiple payments that Pulido received while serving as Mayor of Santa Ana.
19 On Form 700 filings, Pulido reported these payments as personal loans from various parties, but the loans
20 were not in writing—as required by Section 87461 of the Political Reform Act (the Act).¹ Investigation
21 did not reveal any conflict of interest involving the lenders in this case. Also, Pulido cooperated with
22 Enforcement by entering into a tolling agreement with Enforcement with respect to the statute of
23 limitations.

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27 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references
28 are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of
Title 2 of the California Code of Regulations. All regulatory references are to this source.

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. Unless otherwise noted, all legal references and discussions of law pertain to the Act's provisions as they existed at the time of the violations in this case (2018 and 2020).

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

When enacting the Political Reform Act, the people of California found and declared that: “[p]revious laws regulating political practices have suffered from inadequate enforcement by state and local authorities.”² Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”³

The purposes of the Act include the following: “Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.”⁴ Along these lines, the Act requires officials to file Form 700 statements of economic interests, disclosing certain assets and income, including loans.⁵ Also along these lines, the Act includes important safeguards, which are meant to create a paper trail to aid the enforcement process. These safeguards include a rule prohibiting elected officers from receiving any personal loan of \$500 or more, unless the loan is in writing.⁶

Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁷

Prohibited Loans Not in Writing

No elected officer of a state or local government agency may receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to

² Section 81001, subdivision (h).

³ Section 81003.

⁴ Section 81002, subdivision (c).

⁵ Sections 87200, et seq.

⁶ Section 87461.

⁷ Section 81002, subdivision (f).

1 the loan, date of the loan, amount, term, dates when payments are due, amounts of the payments, and rate
2 of interest.⁸

3 SUMMARY OF THE FACTS

4 In 2018, Pulido received one or more personal loans—aggregating at least \$122,000—from a
5 business entity known as Shadow Strategy. The loan(s) was/were not in writing.

6 In April 2019, Pulido filed an annual Form 700 statement of economic interests (SEI), covering
7 calendar year 2018. On Schedule C, he disclosed the loan(s) from Shadow Strategy, but improperly
8 checked a box denoting that the highest balance due was in the range of “\$10,001 - \$100,000.” Instead of
9 this box, he should have checked the box for “OVER \$100,000.” Pulido explained this was a mistake.
10 (The same page of this filing also disclosed the lender as a source of consulting income to Pulido in the
11 range of “\$10,001 - \$100,000.”)

12 In March 2020, Pulido filed an annual SEI for calendar year 2019, disclosing that the loan(s) from
13 Shadow Strategy remained outstanding. The highest reported balance again was noted to be in the range
14 of “\$10,001 - \$100,000.” (Like the prior filing, the same page of this filing also disclosed the lender as a
15 source of consulting income to Pulido in the range of “\$10,001 - \$100,000.”)

16 In December 2020, Pulido left office. Shortly after this, he filed a leaving office SEI, again
17 disclosing that the loan(s) remained outstanding—with no change regarding the highest reported balance
18 due. (A different page of this filing also disclosed the lender as a source of consulting income to Pulido
19 in the range of “\$10,001 - \$100,000,” similar to the prior filings.)

20 On all filings, the interest rate of the loan(s) was noted to be five percent—and security for the
21 loan(s) was noted to be “None.” The first filing noted above did not specify a loan term. The second
22 filing clarified that there was no loan term, and the third filing stated that the loan term was one year.

23 Also in 2020, before leaving office, Pulido received multiple personal loans, aggregating at least
24 \$30,000 from a business entity known as Santa Ana Security Services—and aggregating at least \$20,000
25 from a business entity known as Innovative Janitorial Services. These loans were not in writing either.

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27 ⁸ Section 87461. Exceptions noted in the statute are not applicable in this case.
28

1 They were, however, disclosed on Pulido's leaving office SEI—with an interest rate of five percent and
2 no term length. Security for the loans was noted to be "None."

3 In response to a request for documents from the Enforcement Division, Pulido stated he was
4 gathering information. He then proceeded to file several amendments to his SEI filings about a year-and-
5 a-half after leaving office. These amendments included notations that Shadow Strategy inadvertently was
6 reported as both a lender and as a source of income—but only should have been reported as the latter.
7 However, Enforcement interviewed the lender and confirmed that the money was in fact loaned to
8 Pulido—and Pulido later made efforts to pay off the loan(s) through consulting work. Enforcement also
9 interviewed the other lenders noted above, confirming that the loans were made as described.

10 Although Pulido reported a five percent rate of interest for all of the loans, Enforcement did not
11 find evidence that this interest rate was applied by the lenders.

12 VIOLATIONS

13 In this case, Pulido cooperated with Enforcement by entering into a tolling agreement with
14 Enforcement with respect to the statute of limitations.

15 **Counts 1 and 2: Prohibited Loans Not in Writing**

16 As noted above, in 2018 and 2020, Pulido received personal loans that were not in writing
17 (aggregating at least \$172,000) from three different lenders (Shadow Strategy, Santa Ana Security
18 Services, and Innovative Janitorial Services)—in violation of Section 87461. For settlement purposes,
19 two counts are recommended. Count 1 is for the loan(s) from Shadow Strategy. Count 2 is for the other
20 loans.

21 **STREAMLINE EXCLUSION**

22 This case is excluded from the streamline settlement program, which does not encompass
23 violation of Section 87461.

24 **PROPOSED PENALTY**

25 As discussed in more detail below, two counts are recommended in this case—for which the
26 maximum penalty is \$10,000 (up to \$5,000 per count).⁹

27 ⁹ Section 83116.
28

1 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
2 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
3 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
4 considers the facts and circumstances of the violation in the context of the following factors:¹⁰

- 5 1. the extent and gravity of the public harm caused by the specific violation;
- 6 2. the level of experience of the violator with the requirements of the Act;
- 7 3. penalties previously imposed by the Commission in comparable cases;
- 8 4. the presence or absence of any intention to conceal, deceive or mislead;
- 9 5. whether the violation was deliberate, negligent or inadvertent;
- 10 6. whether the violator demonstrated good faith by consulting Commission staff or any other
11 governmental agency in a manner not constituting a complete defense under Section 83114,
subdivision (b);
- 12 7. whether the violation was isolated or part of a pattern—and whether the violator has a prior
record of violations of the Act or similar laws; and
- 13 8. whether the violator, upon learning of a reporting violation, voluntarily filed amendments to
14 provide full disclosure.

15 The Act requires Form 700 filers to disclose sources of income and gifts, including loans. In some
16 circumstances, unrepaid loans to elected officials may become over-the-limit gifts.¹¹ Additionally, the
17 Act prohibits conflicts of interest, including certain decisions with the potential to benefit an official's
18 creditors/sources of income. By prohibiting an elected officer from receiving personal loans of \$500 or
19 more—unless the loans are in writing—the Act seeks to create a safeguard in the form of a paper trail,
20 which aids the enforcement process.

21 When this safeguard is circumvented, public harm arises in that it becomes difficult or impossible
22 for the Enforcement Division to:

- 23 (a) verify whether loans exist, and if so, whether they are being properly reported on Form 700
24 filings;
- 25 (b) detect the existence of over-the-limit gifts in the form of personal loans—where repayment is
neither made nor sought; and
- 26 (c) identify creditors to determine if they are receiving a financial benefit from the official in a
27 manner that might amount to a conflict of interest.

28 ¹⁰ These factors are set forth in Regulation 18361.5, subdivision (e)(1) through (8).

¹¹ Section 87462.

1 In this case, Pulido timely disclosed his lenders on Form 700 filings, but he under-reported the
2 amount of the Shadow Strategy loan(s)—and he later filed an amendment concealing the Shadow
3 Strategy loan(s). Investigation did not reveal any conflict of interest involving the lenders in this case.
4 Although there is some question as to when and how the loans were repaid by Pulido, there is insufficient
5 evidence to establish that the loans ever became over-the-limit gifts. In 2018 (at the time of the oldest
6 violation charged in this case), Pulido had been a member of the Santa Ana City Council for 32 years
7 (including 24 years as mayor). Given his years of experience, Pulido knew or should have known it was
8 unlawful to receive these loans, which were not in writing.

9 **Comparable Case**

10 In August 2013, the Commission issued a warning letter in [FPPC Case No. 11/790](#) to Jon
11 Alexander, a California State Athletic Commissioner, for accepting a loan in the amount of \$6,000,
12 which was not in writing—in violation of Section 87461. The loan was not disclosed on the respondent's
13 SEI filing. (Also, it was noted that respondent received an over-the-limit gift, but little detail was
14 provided about this, and the focus of the warning letter was on Section 87461.) Reasons for closing the
15 case with a warning letter were noted to include: the loan was repaid within six days; respondent was no
16 longer eligible to practice law as a result of State Bar proceedings; and respondent had been removed
17 from public office.

18 This is the only known Enforcement action regarding Section 87461. (No prior stipulations
19 involving this statutory violation could be found.)

20 Both cases involve violation of the same statute by sophisticated parties who should have been
21 familiar with the Act. (Alexander was an attorney. Pulido had been serving on the Santa Ana City
22 Council since 1986—and since 1994, he had been mayor.)

23 Neither case involved conflicts of interest with respect to the lenders.

24 However, there are some differences between the cases, which warrant a monetary penalty in the
25 current case, as discussed below.

26 *Mitigating Differences*

27 Alexander did not report the loan on his SEI filing. Pulido did report the loans in question
28 (although he under-reported the amount of the Shadow Strategy loan(s) on his 2018 annual SEI filing).

1 Pulido cooperated with Enforcement by entering into a tolling agreement with respect to the
2 statute of limitations. Similar facts were not noted in Alexander.

3 *Aggravating Differences*

4 Alexander involved a single loan in the amount of \$6,000. The current case involves multiple
5 loans aggregating at least \$172,000. (Additionally, the current case only involves loans reachable under
6 the statute of limitations and the tolling agreement with Pulido. Several prior loans reported by Pulido
7 also were not in writing, demonstrating a pattern.)

8 In Alexander, the loan was repaid within six days. Similar facts are not present in the current
9 case.

10 In response to Enforcement's investigation, Pulido filed Form 700 amendments improperly
11 concealing the loan(s) from Shadow Strategy, by claiming it/they should have been reported as income,
12 only. Similar facts were not present in Alexander (where the loan was not reported on SEI filings at all).
13 Whereas Alexander involved a reporting omission, the current case involves some concealment with
14 respect to Shadow Strategy.

15 In Alexander, it was noted that respondent had been disbarred and removed from office,
16 suggesting that a warning letter was appropriate, given this other, recently imposed disciplinary action.
17 Similar facts are not present in the current case. (Pulido left office. He was not removed.)

18 **Recommended Penalty**

19 Under these circumstances, a penalty in the amount of \$4,000 is recommended for Count 1
20 regarding the loan(s) from Shadow Strategy—and a penalty in the amount of \$2,500 is recommended for
21 Count 2 regarding the loans from Santa Ana Security Services and Innovative Janitorial Services.

22 **CONCLUSION**

23 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
24 respondent Miguel Pulido hereby agree as follows:

25 1. Respondent violated the Act as described in the foregoing pages, which are a true and
26 accurate summary of the facts in this matter.

27 2. This stipulation will be submitted for consideration by the Fair Political Practices
28 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

1 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
2 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
3 liability of respondent pursuant to Section 83116.

4 4. Respondent understands and hereby knowingly and voluntarily waives, any and all
5 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
6 This includes, but is not limited to, the right to appear personally at any administrative hearing held in
7 this matter, to be represented by an attorney at respondent’s own expense, to confront and cross-examine
8 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
9 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
10 reviewed.

11 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
12 respondent agrees to the Commission imposing against him an administrative penalty in the amount of
13 \$6,500. One or more payments totaling this amount—to be paid to the General Fund of the State of
14 California—is/are submitted with this stipulation as full payment of the administrative penalty described
15 above, and they will be held by the State of California until the Commission issues its decision and order
16 regarding this matter.

17 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
18 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
19 rejected, all payments tendered by respondent in connection with this stipulation shall be reimbursed to
20 respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
21 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page—including a hardcopy of a signature page transmitted via
3 fax or as a PDF email attachment—is as effective and binding as the original.

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6 Dated: _____

Kendall L.D. Bonebrake, Chief of Enforcement
Fair Political Practices Commission

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8
9
10 Dated: _____

Miguel Pulido, Respondent

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12 The foregoing stipulation of the parties "In the Matter of Miguel Pulido," FPPC Case No. 2019-
13 00531, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
14 effective upon execution below by the Chair.

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16 IT IS SO ORDERED.

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18 Dated: _____

Fair Political Practices Commission
Adam E. Silver, Chair
Fair Political Practices Commission