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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11
12 In the Matter of

13 ANDREW DO,
14 Respondent.

FPPC Case Nos. 16/510 and 18/648

**AMENDED REPORT IN SUPPORT OF A
FINDING OF PROBABLE CAUSE**

15 Conference Date: TBA
16 Conference Time: TBA
17 Conference Location: 1102 Q Street, Suite 3000
Sacramento, CA 95811

18 **INTRODUCTION**

19 Andrew Do is a member of the Orange County Board of Supervisors, First District. Also, he is a
20 member of the CalOptima Board of Directors. CalOptima is a county organized health system that
21 administers health insurance programs for low-income children, adults, seniors, and people with
22 disabilities in Orange County. Its board members are appointed by the Orange County Board of
23 Supervisors.

24 During calendar years 2016 through 2018, CalOptima was seeking professional service contracts
25 for federal and state lobbyist representation. Various bids/proposals were submitted to CalOptima by
26 interested lobbying firms, and Andrew Do was involved in the selection proceedings. Some interested
27 participants previously had made campaign contributions to his supervisor committee.

28 This case involves multiple violations of the disqualification and disclosure requirements of the

1 Political Reform Act—with respect to certain types of government decisions in which campaign
2 contributors (of more than \$250) have a financial interest.¹ Also, this case involves non-filing and failure
3 to timely file 34 Form 803 behested payment reports—in 2015 and 2016—with respect to payments
4 totaling approximately \$174,072 that were made at the behest of Do by various donors (of \$5,000 or
5 more per calendar year). These payments were made for the purpose of financing a public art project in
6 Mile Square Park (located in the City of Fountain Valley). This involved the purchase, erection, and
7 unveiling of various statues of historical figures—including a statue of Ronald Reagan and a statue of
8 General Tran Hung Dao.

9 **SUMMARY OF THE LAW**

10 The Act and its regulations are amended from time to time. The violations in this case occurred
11 during calendar years 2015 through 2018. All legal references and discussions of law pertain to the Act’s
12 provisions as they existed at that time. However, all legal discussions regarding jurisdiction and the
13 probable cause process are based on the current state of the law.

14 **Jurisdiction**

15 The Fair Political Practices Commission has administrative jurisdiction to enforce the provisions
16 of the Act.²

17 **Probable Cause Proceedings**

18 Prior to the Enforcement Division commencing an administrative action, the General Counsel of
19 the Commission or his designee (the “hearing officer”), must make a finding that there is probable cause
20 to believe one or more respondents violated the Act.³ After a finding of probable cause, the Commission
21 may hold a noticed hearing in accordance with the Administrative Procedure Act to determine whether
22 violations occurred—and to levy an administrative penalty of up to \$5,000 for each violation.⁴

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25 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
26 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
are to this source.

27 ² Section 83116.

28 ³ Sections 83115.5, 83116; Regulations 18361 and 18361.4.

⁴ Sections 11500, et seq.; 83116; and Regulation 18361.4, subdivision (e).

1 **Standard for Finding Probable Cause**

2 The hearing officer may find there is probable cause to believe a violation occurred if the
3 evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong
4 suspicion that a proposed respondent committed or caused a violation.⁵

5 **Contents of the Probable Cause Report**

6 The probable cause report is required to contain a summary of the law and evidence gathered in
7 connection with the investigation, including any exculpatory and mitigating information of which the
8 staff has knowledge and any other relevant material and arguments. The evidence recited in the probable
9 cause report may include hearsay.⁶

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

11 When enacting the Political Reform Act, the people of California found and declared that
12 previous laws regulating political practices suffered from inadequate enforcement by state and local
13 authorities.⁷ Thus, it was decreed that the Act “should be liberally construed to accomplish its
14 purposes.”⁸

15 One purpose of the Act is to curtail pay-to-play practices—and the appearance of such
16 practices—with respect to appointed members of boards and commissions who receive campaign
17 contributions from persons appearing before them (such as persons submitting bids on contracts and
18 applicants for permits/licenses). For this reason, the Act imposes limitations on such contributions. Also,
19 the Act includes disqualification and disclosure requirements for officials who receive over-the-limit
20 contributions of this nature.⁹

21 Another purpose of the Act is to ensure transparent reporting by elected officials with respect to
22 certain types of fundraising—where payments are made by donors at the behest of the officials. These

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26 ⁵ Section 83115.5 and Regulation 18361.4, subdivision (e).

27 ⁶ See Regulation 18361.4, subdivision (a).

28 ⁷ Section 81001, subdivision (h).

⁸ Section 81003.

⁹ See Section 84308. Also, see: <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/pay-to-play-contribution-restrictions.html>.

1 payments are a means by which donors may seek to gain favor with elected officials, and this type of
2 reporting serves to increase public awareness regarding potential attempts to influence in this manner.¹⁰

3 Yet another purpose of the Act is to provide adequate enforcement mechanisms so that the Act
4 will be “vigorously enforced.”¹¹

5 **Pay-to-Play Restrictions**

6 The limitations on campaign contributions that are mentioned above—and the related
7 disqualification/disclosure requirements—are more commonly known as pay-to-play restrictions. These
8 restrictions apply to officers of some, but not all, state and local government agencies. For example, these
9 restrictions do not apply to an official who is elected to be a county supervisor, but if the supervisor is
10 appointed to act as a voting member of another agency, such as CalOptima (whose members are not
11 directly elected by the voters)—then the Act’s pay-to-play restrictions do apply.¹²

12 These restrictions are similar to the Act’s conflict of interest provisions. However, conflicts of
13 interest arise from financial interests—and as a matter of law—such financial interests do not include
14 campaign contributions. On the other hand, campaign contributions can and do trigger disqualification
15 under the Act’s pay-to-play restrictions, which are summarized below.

16 *Definitions*

17 For ease of reference, the term “officer” is used to describe an official who is subject to the Act’s
18 pay-to-play restrictions.

19 The term “party” means any person who files an application for, or is the subject of, a proceeding
20 involving a license, permit, or other entitlement for use.¹³

21 The term “participant” means any person who is not a party but who actively supports or opposes
22 a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has
23 a financial interest in the decision. A person actively supports or opposes a particular decision in a

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27 ¹⁰ See Section 82015, subdivision (b)(2)(B)(iii).

¹¹ Section 81002, subdivision (f).

¹² Section 84308, subdivision (a)(3).

¹³ Section 84308, subdivision (a)(1).

1 proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person
2 before the agency, or otherwise acts to influence officers of the agency.¹⁴

3 The phrase “license, permit, or other entitlement for use” includes “all contracts (other than
4 competitively bid, labor, or personal employment contracts), and all franchises.”¹⁵

5 *Limitations on Contributions*

6 No officer may accept, solicit, or direct a contribution of more than \$250 from any party (or his or
7 her agent) or from any participant (or his or her agent) while a proceeding involving a license, permit, or
8 other entitlement for use is pending before the agency and for three months following the date a final
9 decision is rendered in the proceeding—if the officer knows or has reason to know that the participant
10 has a financial interest. This prohibition applies regardless of whether the officer accepts, solicits, or
11 directs the contribution for himself, or on behalf of any other officer, or on behalf of any candidate for
12 office, or on behalf of any committee.¹⁶

13 A similar prohibition exists for parties, participants, and their agents—who may not contribute
14 more than \$250 to any officer while the license, permit, or other entitlement for use is pending before the
15 agency. This prohibition continues for three months following the date a final decision is rendered by the
16 agency in the proceeding.¹⁷

17 *Mandatory Disqualification*

18 No officer may make, participate in making, or in any way attempt to use his or her official
19 position to influence the decision in a proceeding involving a license, permit, or other entitlement for use
20 pending before the agency if the officer has willfully or knowingly received a contribution in an amount
21 of more than \$250 within the preceding 12 months from a party (or his or her agent) or from any
22 participant (or his or her agent)—if the officer knows or has reason to know that the participant has a
23 financial interest in the decision.¹⁸

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26 ¹⁴ See Section 84308, subdivision (a)(2).

27 ¹⁵ Section 84308, subdivision (a)(5).

28 ¹⁶ See Section 84308, subdivision (b).

¹⁷ See the second sentence of Section 84308, subdivision (d).

¹⁸ See the second sentence of Section 84308, subdivision (c).

1 *Required Disclosure by Officer*

2 Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for
3 use pending before an agency, each officer who received a contribution within the preceding 12 months
4 in an amount of more than \$250 from a party or from any participant shall disclose that fact on the record
5 of the proceeding.¹⁹ The disclosure must be made at the beginning of a public hearing in a proceeding
6 involving the license, permit, or other entitlement for use—if a hearing is held. If there is no public
7 hearing, the disclosure must be entered into the written record of the proceeding.²⁰

8 *Required Disclosure by Contributor*

9 A party to a proceeding before an agency involving a license, permit, or other entitlement for use
10 must disclose on the record of the proceeding any contribution in an amount of more than \$250 made
11 within the preceding 12 months by the party (or his or her agent) to any officer of the agency.²¹ This
12 disclosure must be made at the time the application is filed (or when the proceeding is otherwise
13 commenced). If the contribution is made at any stage of the proceeding after commencement, then the
14 disclosure must be made no later than 30 days after the contribution is made.²²

15 **Required Filing of Behested Payment Reports**

16 Separate and distinct from campaign contributions and gifts, an elected officer (or his
17 staff/agents) may raise funds for a variety of causes. However, under certain circumstances, this type of
18 fundraising must be detailed in a report that is required to be filed by the officer. The purpose of this
19 reporting is to shed light on the transactions—in favor of the public’s right to know about the elected
20 officer’s role or involvement.²³

21 The report that must be filed is known as a [Form 803](#) behested payment report.

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25 ¹⁹ See the first sentence of Section 84308, subdivision (c).

26 ²⁰ See Regulation 18438.8, subdivision (a).

27 ²¹ See the first sentence of Section 84308, subdivision (d).

28 ²² See Regulation 18438.8, subdivision (b).

²³ Section 82015, subdivision (b)(2)(B)(iii); and Regulation 18215.3. Also, see [Peak Advice Letter](#) (A-12-094), page 3 (purpose of behested payment reporting is to capture reporting for payments that are not direct contributions to elected officials, but payments in which the public would have an interest, given the fundraising role/involvement of the officials [or their staff/agents].)

1 Generally, *any* payment from one individual or entity to another is subject to this reporting
2 requirement if it meets all three of the criteria described below:²⁴

- 3 1. The payment was “made under the control or at the direction of, in cooperation,
4 consultation, coordination, or concert with, at the request or suggestion of, or with the
5 express, prior consent of the elected officer . . . *or his or her agent.*” (Regulation 18215.3,
6 subd. (a). Emphasis added.) This “includes personal solicitations by the elected officer,
7 but also encompasses less active roles,” such as where “an elected officer . . . has his or
8 her chief-of-staff solicit contributions. . . .” ([Peak Advice Letter](#) (A-12-094), p. 4.) All
9 such payments are considered to be “made at the behest of” the elected officer—even
10 where the fundraising is carried out by the officer’s staff or agents.²⁵
- 11 2. Principally, the payment was made for legislative, governmental, or charitable purposes.
- 12 3. The payment was in the amount of \$5,000 or more—or the payment was one of multiple
13 payments from the same source in the same calendar year, which total \$5,000 or more, in
14 the aggregate.

15 *Any* payment that meets the above criteria must be reported on a Form 803 filed by the elected
16 officer with his agency—within 30 days of the date that the payment was made. In the case of multiple
17 payments from the same source in the same calendar year, the 30-day deadline to file the Form 803
18 begins on the earliest date when the payments add up to \$5,000 or more. Once the \$5,000 aggregate
19 threshold from a single source has been reached for a calendar year, each subsequent payment from that
20 source *for the rest of the calendar year* must be disclosed within 30 days of the making of the payment—
21 *regardless* of the amount of the payment.²⁶

22 The Form 803 behested payment report is a public record, which must include the name and
23 address of the payor, the amount of the payment, the date of payment, the name and address of the payee,
24 a brief description of the goods or services provided or purchased (if any), and a description of the
25 specific purpose or event for which the payment or payments were made.²⁷

26 It is not a defense for an official to claim lack of knowledge about payments made at his behest
27 (whether behested directly by him—or indirectly by his staff/agents). “[A]n official has a *duty* to be
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²⁴ Section 82015, subdivision (b)(2)(B)(iii). (Although there is an exception when the payor is a government agency, that exception is not applicable to the facts in this case.)

²⁵ Regulation 18215.3, subdivision (a).

²⁶ See Section 82015, subdivision (b)(2)(B)(iii).

²⁷ Section 82015, subdivision (b)(2)(B)(iii).

1 informed of payments made at his or her behest, and must make an effort to file required forms as soon
2 as possible.” (See [St. Croix Advice Letter](#) (I-13-107), p. 4. Emphasis added.)²⁸

3 A payment is not “made at the behest of” an elected officer and is not subject to behested
4 payment reporting if the payment is made in response to a fundraising solicitation from a charitable
5 organization requesting a payment where the solicitation does not “feature an elected officer.” For
6 purposes of this exception, such a solicitation “features an elected officer” if it “includes the elected
7 officer’s photograph or signature, or singles out the elected officer by the manner of display of his or her
8 name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type
9 color.” Also, an elected officer is “featured” if the roster or letterhead listing the governing body contains
10 a majority of elected officers.²⁹

11 **SUMMARY OF THE EVIDENCE**

12 In early 2015, Andrew Do was elected to the Orange County Board of Supervisors, First District.

13 In April 2015, he received a campaign contribution in the amount of \$900 from lobbyist James
14 McConnell. In October 2015, Do received another \$1,900 from McConnell.

15 On or about June 28, 2016, the Orange County Board of Supervisors appointed Do to be a
16 member of the CalOptima Board of Directors.

17 **CalOptima Federal Lobbyist Contract**

18 On or about August 9, 2016, Do received another contribution from McConnell in the amount of
19 \$1,900.

20 At the time, McConnell was providing CalOptima with federal lobbyist services, under a contract
21 that would be expiring on or about January 7, 2017. (This contract was not a competitively bid, labor, or
22 personal employment contract.)

23 On or about September 8, 2016, CalOptima issued a request for proposal (RFP) with respect to a
24 new contract for federal lobbyist services. (This was not to be a competitively bid, labor, or personal

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27 ²⁸ Of note, the signature block for this advice letter shows that it was written by Zackery Morazzini and Heather
28 Rowan. Currently, Mr. Morazzini is Director of the Office of Administrative Hearings (OAH)—and Ms. Rowan is an
Administrative Law Judge for OAH. Thus, OAH is likely to view the proposition for which this advice letter is cited—as a
sound statement of the law.

²⁹ See Regulation 18215.3, subdivision (b).

1 employment contract.) In response, CalOptima received six competing lobbyist proposals for the new
2 contract. One of the competitors was McConnell, who sought to renew his contract. CalOptima staff and
3 external experts reviewed the six proposals and ranked them into the top four semi-finalists. McConnell
4 was one of these semi-finalists.

5 On or about October 20, 2016, Do was informed via email as to the identities of the four semi-
6 finalists. Also, the email indicated that an ad hoc committee, which included Do, would interview and
7 score the semi-finalists.

8 At a meeting of the CalOptima Board of Directors, which was held on December 1, 2016, Do
9 voted (along with five other board members) to extend McConnell's current contract by up to six
10 months—during the pendency of the RFP process.

11 On or about January 6, 2017, the ad hoc committee interviewed the four semi-finalists. At the
12 conclusion of the interviews, the ad hoc committee members discussed their respective impressions. Do
13 felt that McConnell gave the strongest presentation, but the other three members of the ad hoc committee
14 had the highest impression of a different semi-finalist, Akin Gump Strauss Hauer & Feld LLP. Of the
15 four semi-finalists interviewed, the ad hoc committee selected two finalists. McConnell was not selected
16 to be one of the finalists. Rather, the Akin Gump firm and another firm were selected. These two finalists
17 were asked to submit a best and final offer, which led to a recommendation by the ad hoc committee that
18 the contract should be awarded to the Akin Gump firm.

19 At a meeting of the CalOptima Board of Directors, which was held on February 2, 2017, Do
20 made a motion to approve the ad hoc committee's recommendation in favor of the Akin Gump firm. This
21 motion was seconded and carried by a unanimous vote (with one director noted as absent).

22 **CalOptima State Lobbyist Contract**

23 In December 2016, Christopher Townsend made a campaign contribution to Do in the amount of
24 \$1,900. Later that month, Townsend's wife also contributed \$1,900 to Do.

25 In March 2017, Mr. Townsend made an additional contribution to Do in the amount of \$2,000. In
26 April 2017, Mrs. Townsend did the same.

27 In August 2017, CalOptima issued an RFP for state lobbyist services. (This was not to be a
28 competitively bid, labor, or personal employment contract.) Two proposals were received in response to

1 the RFP. One of the proposals was from Mr. Townsend’s lobbying firm, Townsend Public Affairs. The
2 other proposal was from a firm known as Edelstein Gilbert Robson & Smith.

3 In September 2017, the Chairman of the CalOptima Board of Directors formed an ad hoc
4 committee to interview the two lobbying firms and make recommendations to the full board. Do was
5 appointed to be one of the members of this ad hoc committee.

6 After interviewing the firms, the ad hoc committee recommended that the Edelstein Gilbert firm
7 should be retained as the lead lobbying firm. A two-year contract was recommended at a cost of \$95,000
8 per year (with three one-year extension options).

9 Also, the ad hoc committee recommended that CalOptima should enter into a two-year contract
10 on an as-needed basis with Townsend Public Affairs at a cost of \$24,000 per year (subject to three one-
11 year extensions).

12 At a meeting of the CalOptima Board of Directors, which was scheduled for February 1, 2018,
13 one of the items on the agenda involved consideration and potential approval of the ad hoc committee’s
14 recommendations. However, the Chairman announced that the item was being pulled from the agenda
15 because of some potential conflicts of interest amongst the ad hoc committee members. Additionally, it
16 was stated that CalOptima would be re-issuing the RFP to restart the selection process.

17 **Behested Payments**

18 In 2015, shortly after his election to the Orange County Board of Supervisors, Do began
19 organizing and arranging for a public art project in Mile Square Park with the help of his Deputy Chief of
20 Staff, Tam Lecong. The project included the purchase, erection, and unveiling of various statues of
21 historical figures, including a statue of Ronald Reagan and a statue of General Tran Hung Dao.

22 In support of this project, various individuals and entities made payments aggregating \$5,000 or
23 more in a calendar year. Principally, these payments were made for legislative, governmental, or
24 charitable purposes. Each of these payments was made at the behest of Do. These payments are itemized
25 in the chart below:

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#	Payment Date	Payor	Payee	Payment Type	Amount	Purpose
1	3/18/15	Tam Lecong	All Classics Ltd.	Bank Wire	\$9,995	Ronald Reagan Statue
2	3/23/15	Tam Lecong	Crossroads Global	Credit Card	\$495	Ronald Reagan Statue
3	5/21/15	Tam Lecong	All Classics Ltd.	Bank Wire	\$12,000	General Tran Hung Dao Statue
4	6/5/15	Van Hanh Assembly DBA Chua Lien HOA	Tam Lecong	Check	\$10,490	Charitable, Mile Square Park Public Art/Historic Project
5	10/19/15	Nguoi Viet Daily News	Tam Lecong	Check	\$12,000	General Tran Hung Dao Statue
6	11/17/15	Tam Lecong	Dong Nguyen	Check	\$1,500	Ronald Reagan Statue
7	12/5/15	Tam Lecong	Dong Nguyen - Dong Associates	Cash	\$900	Ronald Reagan Statue
8	12/7/15	Van Hanh Assembly DBA Chua Lien HOA	Tam Lecong	Check	\$25,000	Charitable, Mile Square Park Public Art/Historic Project
9	12/11/15	Tam Lecong DBA T & T Consulting Translation	Dong Nguyen	Check	\$2,000	Ronald Reagan Statue
10	12/15/15	Nguoi Viet Daily News	All Classics Ltd.	Check	\$25,950	General Tran Hung Dao Statue
11	12/19/15	Dalat Supermarket	Parcel & Praty Foundation	Check	\$5,000	Charitable, Mile Square Park Public Art/Historic Project
12	12/23/15	Tam Lecong DBA T & T Consulting Translation	Dong Nguyen	Check	\$1,500	Labor Costs
13	12/23/15	Tam Lecong DBA T & T Consulting Translation	Gustavo Guevara	Check	\$1,500	Labor Costs for Ronald Reagan statue
14	12/27/15	Tam Lecong DBA T & T Consulting Translation	Razmik Abedi	Check	\$2,000	Plaques for RR & General Tran Statues
15	12/28/15	Tam Lecong DBA T & T Consulting Translation	LBE Orange	Check	\$2,677	Lights for Ronald Reagan Statue
16	12/30/15	Minh T. Nguyen	Parcel & Praty Foundation - Hoang Sa Truong Sa Foundation	Check	\$5,000	Charitable, Mile Square Park Public Art/Historic Project
17	1/5/16	Parcel & Praty Foundation - Hoang Sa Truong Sa Foundation	Peter Anh Pham	Check	\$5,000	Check Memo: "General Tran statue (base)"

#	Payment Date	Payor	Payee	Payment Type	Amount	Purpose
18	1/6/16	Nguoi Viet Daily News ³⁰	Tam Lecong	Check	\$1,495	General Tran Freight Costs
19	1/7/16	United Care Medical Group, Inc.	Paracel & Pratly Foundation - Hoang Sa Troung Sa Foundation	Check	\$5,000	Charitable, Mile Square Park Public Art/Historic Project
20	1/8/16	Family Choice Medical Group, Inc.	Hoang Sa Troung Sa Foundation	Check	\$10,000	Charitable, Mile Square Park Public Art/Historic Project
21	1/10/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Tam Lecong	Check	\$628	Reimbursement for Renting National Fence
22	1/17/16	Tam Lecong	Home Depot	Credit Card Purchases	\$7,420	Mile Square Statue Projects
23	1/17/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Doan [...] Thien An	Check	\$1,500	Check Memo: "the unveil of statue general Tran performance payment"
24	1/17/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	[...] CLB Tinh Nehi Fi	Check	\$500	Check Memo: "payment for performance on General Tran unveil ceremony"
25	1/20/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Ca't Tuong Florist	Check	\$1,000	Flowers for Unveiling Event
26	1/20/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	VQT music	Check	\$500	Check Memo: "musical for unveil event 1/17/16"
27	1/20/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Thuy Food Togo	Check	\$2,500	Check Memo: "1000 Boxes lunch \$2.50 for event 1/17/16"
28	1/20/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	City of Garden Grove	Check	\$68.50	Check Memo: "City [...] license"

³⁰ This payment from the Nguoi Viet Daily News (Payment No. 18) is the only payment that the news agency made in 2016, and it was less than \$5,000. (The rest of the news agency's payments, aggregating more than \$5,000, were made in 2015.) This payment from the agency in 2016 is not being charged, but it is listed in the chart above because it is part of a pattern showing reimbursement to Lecong, which is discussed in more detail in this report.

#	Payment Date	Payor	Payee	Payment Type	Amount	Purpose
29	1/20/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	A Plus Education Organization	Check	\$1,500	Check Memo: "canopys, chairs, stage, labor & rental"
30	1/27/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Tam Lecong	Check	\$1,428.73	Check Memo: "reimbursement for permits PW of RI Statue"
31	1/29/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Peter Anh Pham	Check	\$3,000	Check Memo: "Construction for RR Statue"
32	3/7/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Peter Anh Pham	Check	\$6,499	Check Memo: "General Tran construction cost partial payment"
33	3/7/16	Tam Lecong DBA T&T Consulting Translation	Peter Anh Pham	Check	\$6,301	Check Memo: "General Tran construction paid in full"
34	3/29/16	Tam Lecong	Home Depot	Credit Card	\$219.89	Mile Square Statue Projects
35	6/22/16	Paracel & Pratly Foundation - Hoang Sa Truong Sa Foundation	K & G Concrete, Inc.	Check	\$3,000	Check Memo: "Miguel Hidalgo Pedestal"

For ease of reference, these payments are identified and referred to by their respective payment numbers (as shown in the left-most column of the chart above).

At the time, two of the donors identified above—the United Care and Family Choice medical groups—were involved in contractual business relationships with CalOptima. (See Payment Nos. 19 and 20.)

Each of the foregoing payments was made at the behest of Do. He was required to report each payment by filing a Form 803 behested payment report with his agency within 30 days of the making of each payment, but he failed to do so. This is discussed in more detail below.

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1 **1. The payments by Tam Lecong were made at the behest of Do because Lecong was Do’s**
2 **agent/Deputy Chief of Staff—and Do actively was involved in directing both Lecong and the**
3 **statue project.**

4 On or about February 3, 2015, Do was sworn in as an Orange County Supervisor.³¹ That same
5 day, Tam “Nick” Lecong assumed office as Do’s Executive Assistant/Deputy Chief of Staff.³²

6 Starting the very next month—and continuing through March 2016—Lecong made 13 payments
7 in support of the statue project, totaling approximately \$48,508. (See Payment Nos. 1-3, 6, 7, 9, 12-15,
8 22, 33, and 34 in the chart above.)

9 **a. From the very beginning, Do was heavily involved in the statue project, and Lecong was**
10 **acting at Do’s behest.**

11 The evidence strongly suggests that Lecong made the foregoing statue-related payments at the
12 behest of his boss, Supervisor Do, starting with Lecong’s *very first* payment in the amount of \$9,995 to
13 All Classics Ltd. This payment was made for a bronze, life-size sculpture of Ronald Reagan—pursuant to
14 an invoice, which reflected: “Bill To: Nick Lecong” and “Ship To: Andrew Do, Esq.” Not only does this
15 invoice show that Lecong was doing this for his boss, Supervisor Do—it shows that Do *knew* what
16 Lecong was doing.

17 Later, Do publicly would acknowledge his own role in the statue project at a meeting of the
18 Orange County Board of Supervisors—where he would state that the statue of Ronald Reagan was in
19 storage, and: “*We* donated it, but it hasn’t been erected. It is still being constructed—the base being
20 finalized.” His use of the word “we”—and his level of knowledge about the status of completion—
21 establish his heavy involvement and show that Lecong’s actions were carried out at the behest of Do.

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26 ³¹ Source: various news articles. Also, see term information found on Orange County’s website here:
board.ocgov.com/about-board.

27 ³² Source: Lecong’s assuming office Form 700, which identifies him as an Executive Assistant. Also, the document
28 identifies Lecong’s first name as “Tam (Nick).” Additionally, Leon Page, Orange County Counsel, has identified Lecong as
Do’s Deputy Chief of Staff, which is consistent with emails showing Lecong was Do’s Deputy Chief of Staff, and another
person, by the name of Brian Probolsky, was Do’s Chief of Staff.

1 **b. During the statue-making process, Andrew Do was so involved that he was complaining**
2 **about—and directing changes to—the General Tran statue, including email comments**
3 **about the eyes looking “too Chinese” and the nose needing to be “less Western in**
4 **appearance.”**

5 On or about July 1, 2015, the maker of the General Tran statue (All Classics Ltd.) emailed
6 Lecong, stating: “Attached are photos of the small model of General Tran. Take a look and let me know
7 on the design as this is what they will use to help create him in the 8ft size. Thanks.”

8 That same morning, Lecong forwarded this email to Do, and Do replied to Lecong: “[D]o you
9 think the eyes look *too Chinese*? Please also pay close attention to the crest and Insignia on the chest
10 armor to make sure there’s no historical anomalies. Thank you.” (Emphasis added.)

11 Still that same morning, Lecong replied to Do: “Supervisor, [¶] I will wait for you to come back
12 to make *decision* on the modification *whatever we need*.” (Emphasis added.) Again, it is clear that
13 Lecong’s statue-related efforts, and the Lecong payments in the chart above, were carried out at the
14 behest of Supervisor Do.

15 On July 7, 2015, Do sent the following email to the statue company:

16 This is Andrew Do. Nick asked me to give you a couple of
17 feedbacks on your mock up. First, we are extremely impressed with the
18 artistry and likeness of the mock up. I think we are close. There are just a
19 couple of minor adjustments:

- 20 1. please use the attached sketch image on the paper money as a
21 guide for the General’s facial features, especially his eyes; and
22 2. bring down the back of the outfit, so that it is not furled too
23 much.

24 Please send us back the modified mock up when you’re done.

25 Thanks.

26 On July 24, 2015, All Classics Ltd. emailed photos of the revised statue to Lecong. That same
27 morning, Lecong forwarded the email to Do for discussion/approval.

28 Later, on September 8, 2015, Do directed Lecong (via email) to confirm the statue’s completion
29 date with the artist.

30 On September 18, 2015, Do emailed the statue company, stating: “This is Andrew Do again. I
31 have conferred with Nick, and we both would like to request that you modify General’s nose a little less

1 Western in appearance. The bridge of the nose is too prominent. Please let us see the design of the head
2 again after you make the modification.” In the email, Do continued to list several other complaints about
3 the statue. Then, he stated: “I hope I don’t come across too critical. I think these are only minor changes.
4 Otherwise, I love your work. Thank you.”

5 Later that day, Lecong emailed the statue company, stating: “My *boss Supervisor* Andrew Do just
6 sent you all his comment please ask the artist modify according to his idea.” (Emphasis added.)

7 Although defense counsel has made one or more statements to the effect that Lecong was acting
8 on his own, this simply is not true. Lecong was acting at the behest of his *boss*, Supervisor Do, and all of
9 Lecong’s payments in the foregoing chart were *behested* payments—such that Do was required to report
10 them on Form 803s.

11 **c. Supervisor Do directed Lecong to move “incrementally” on the statue project so as to**
12 **“keep my name and the project on people’s mind much longer”—and emails show that**
13 **Do was *instructing* Lecong, who described that the “pressure to build” the statues “was**
14 **so heavy beyond my estimation, supervisor.”**

15 In December 2015, Do expressed some concerns to Lecong about the statue project, and Do
16 directed Lecong to “[k]eep in mind that by moving incrementally we get to keep my name and the
17 project on people’s mind much longer.”

18 In an email reply, Lecong stated: “I am sorry if I caused any problems regarding to the
19 construction of the bases of the statues. *I took your instruction seriously. . . .*”

20 Also, in this same email thread, Lecong described how the “pressure to build” the statues “was so
21 heavy beyond my estimation, supervisor.”

22 These emails, which are discussed in more detail below, show that Supervisor Do was instructing
23 and directing Lecong—such that Lecong’s statue-related activities and the payments that Lecong made in
24 furtherance of the statue project were done at the behest of Lecong’s boss, Supervisor Do.

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1 **d. In December 2015, Do started paying closer attention to Lecong’s activities—partly due**
2 **to concern about FPPC reporting requirements. Emails from this time show that Do had**
3 **an ongoing, pre-existing arrangement whereby Lecong (and/or Lecong’s wife) were**
4 **“advancing” the expenses of the statue project—meaning all of Lecong’s payments were**
5 **made at Do’s behest.**

6 On December 22, 2015, at approximately 8:52 a.m., Do sent the following email to Lecong: “I
7 just received a call from Dung of Saigon City Market that troubles em a little bit. Did you send him a
8 solicitation of donation for funds for the General Tran Statue? He also said that the request says to send
9 the donation to some foundation. This is the first time I’ve heard of this. Can anh let em know. Thanks.”

10 Later that morning, Lecong replied: “Yes supervisor, I did asked some people in the past that they
11 expressed their desire to contribute. I had not reported to you that because I just asked him yesterday. In
12 the last few days I so busy with these projects and didn’t have time to report to you.”

13 Also, Lecong’s email included an update for Do regarding various issues with respect to the
14 statue project, including pedestal construction costs, plaques, lights, permit fees, and labor costs. Lecong
15 indicated “right now I have to be in charge all the cost” for these things—apparently due to concern
16 raised by Lecong that the amount of financial support would not be enough to cover all three statue
17 pedestals (Ronald Reagan, General Tran Hung Dao, and a third statue of Miguel Hidalgo).

18 Additionally, Lecong reminded Do that Lecong “had got commitment from anh Tho (A Dong
19 market) which I already reported to you last time.” (Most likely, this relates to Payment No. 11 from
20 Dalat Supermarket, given the timing of that payment and the Facebook page for “A Dong Supermarket
21 Group (Dalat Supermarket)” in Garden Grove, California, which is in Orange County.)

22 Lecong’s email continued with more information about how “anh Minh wanted to help
23 [apparently relating to Payment No. 16 from Minh T. Nguyen],” and Lecong indicated: “I don’t want to
24 keep money by myself, therefore I ask the Hoang Sa & Truong Sa Foundation to keep the funding (Mr.
25 Khiem the Pharmacist).” This last part relates to the involvement of the foundation, which made certain
26 payments and received certain donations. (See Payment Nos. 11, 16, 17, 19-21, 23-32, and 35. Do was
27 aware of this foundation at least as early as June 23, 2015, when he made comments at a meeting of the
28 Orange County Board of Supervisors in connection with a discussion about a statue maintenance

1 agreement with Khiem Pham. At the meeting, Do talked about how the foundation was waiting for final
2 approval, and then Do would bring back the foundation as the responsible party. The foundation filed its
3 Articles of Incorporation with the Secretary of State around this same time.)

4 In conclusion, Lecong's email reply of December 22, 2015 talked about how Lecong "will have
5 the accountant to do the book for all the cost," and Lecong stated that "[t]he pressure to build the three
6 pedestals was so heavy beyond my estimation, supervisor."

7 Later that morning, Do replied (with emphasis added):

8 Anh Tam, I'm very concerned that you are constantly upgrading and
9 modifying *our* plans, *driving up costs* and pressure on yourself. I believe
10 that having a statue on a 6-foot base is impressive enough for now. No one
11 is going to fault us for not having a fully built "memorial complex"
12 immediately.

13 *Keep in mind that by moving incrementally we get to keep my name and the
14 project on people's mind much longer.* Plus, once the community sees the
15 statue they will excited and would want to contribute and have their names
16 recognized as well.

17 I would like to have a "final" proposal and design emailed to me and Brian
18 immediately. [Brian Probolsky was Do's Chief of Staff, and Lecong was
19 Do's Deputy Chief of Staff.] We will agree to a design and there will no
20 more changes made. I will not allow my office to appear like we are
21 shooting from the hips all the time on these statues. *For FPPC purposes, I
22 need to know and pre-approval all requests for donations, no matter how
23 much or for what purposes. Please email me any donation requests you
24 have sent out to people.*

25 Thank you for taking charge of these projects; I know it's a big headache
26 for you, but right now, our left hand doesn't know what our right hand is
27 doing.

28 That afternoon, Lecong replied (with emphasis added):

Supervisor,

I am sorry if I caused any problems regarding to the construction of the
bases of the statues. *I took your instruction seriously*, unfortunately, the
sizes and the weight of the statues were different, according to the architect
the bases must be different a little bit. I didn't want to upgrade or modify
anything at all, I just wanted to get over with these projects therefore I
have to ask another construction company to do the second base and they
agreed with the different of 1 foot higher from the RR base. I didn't have
any plan for the base of the Miguel Hildago. The statue of Tran Hung Dao I
gave the plan to Brian last week and now they just do the new calculation
for the structural.

On the request for donation I will forward to you all my emails.

1 I take all responsible for what may cause trouble to you. Please let me
2 know what the remedy that I should take. Nick

3 Late that afternoon, Do replied: "So why is the base one foot higher now. I thought the permit
4 was for the same base to be built for all 3 statues."

5 Less than an hour later, Lecong replied:

6 Supervisor,

7 That is the argument of the architect, he kept insisted that because the
8 different of the size and, the location of the The general was at the large
9 space therefore one foot didn't make different. I didn't realized that until I
10 went to the plan check.

11 That why I had to change the new construction company. This is my
12 original mistake when I decide to let him take care the project from the
13 beginning with the idea it will be less expensive and more artistic, since he
14 was one of the best architect of the South Vietnamese Army Corps.

15 I took the whole responsibility for this mess, Supervisor, nothing I could do
16 but to try to fix the best I can. Nick

17 That evening, Do replied: "Anh Tam, Let's look over things together from now on so things like
18 this height difference don't catch us by surprise."

19 On December 24, 2015, Do and Lecong had an email discussion regarding statue dedication
20 plaque wording. This included the following statement and question from Do to Lecong: "How come I
21 don't see Nguoi Viet Newspaper's name? If intentional by you then ok."

22 Lecong replied that: "Nguoi Viet has nothing related to the RR statue. They are part of the
23 General Tran statue."

24 On December 27, 2015, at approximately 12:41 a.m., Lecong emailed Do, stating:

25 Supervisor,

26 The unveil ceremony will be on time as planned, once the statue is to be
27 delivered to us. That will be Sunday Jan, 17, 2016, 8 days after the grand
28 opening of our campaign office.

This event if happens will be one of your legacies of the entirety of your
political contribution to the community, I believe as up now you already
realize the impact of this event much, much greater than when we unveil
the RR statue.

There will be thousands of members of our community will attend the
event regardless whatever way we invite people.

1 I understand that after the holiday you will be very busy with the grand
2 opening of the campaign office as well as the selection of the new chair
which will be a few day before the 17 of Jan, 16.

3 I would like you to save some time to think about it and give us your vision
4 and priority how to plan for the event, because I don't think myself will be
able to handle this event.

5 It is also the commemorate the 74 heroes of the South Vietnamese naval
6 officers and soldiers who fought and died gallantly and heroically against
the Chinese in Jan 17, 1974.

7 So this is just a head up and I am waiting for your feed back. Nick

8 A little bit over an hour later (at approximately 1:53 a.m.), Do replied: "Anh Tam, I never
9 underestimate the import of General Tran's statue to our Community, or for that matter all 3 statues to
10 our district. Let's talk Monday about the General Tran event. However, I would like us to move slowly,
11 until we feel absolutely certain that we can meet the 1/17 deadline."

12 Later that morning (at about 9:53 a.m.), Lecong replied (with emphasis added):

13 Dear Supervisor,

14 I had never thought that you are underestimate the important of these three
15 projects, don't get me wrong, once we already publicly announced the date
of the unveil event we have to committed to that.

16 General George Patton once said: "The good plan if we violently execute
17 today, it is far better than the perfect plan next week," and I was working
on that spirit.

18 So far the complete plan for the statue is on time:

19 1/ The Foundry must deliver the statue to us before the 17. I expect that
will be here no more than Jan 10, by the contract.

20 2/ The construction company for the base is very professional. They were
21 working over the holidays and to complete the base may be Jan 5.
providing the there is no delay on inspection part.

22 3/ *As usually* my wife still committed *to advance the expenses* in order to
23 complete the project.

24 I hope that will alleviate your concerns.

25 Later that morning, Do replied: "Yes it does. Thank you."

26 The foregoing emails show that beginning on or about December 22, 2015, Do began scrutinizing
27 Lecong's actions more closely—in substantial part because of Do's stated concerns about FPPC
28 requirements. Thus, Do knew that he needed to be filing Form 803 behested payment reports.

1 Also, these emails show that Do was satisfied with the explanations and information provided by
2 Lecong—especially when Lecong referred to a *known, ongoing, pre-existing* agreement or arrangement
3 whereby Lecong and/or his wife would be *continuing* to “*advance*” the costs of the statue project—as per
4 usual, or as Lecong put it: “[a]s usually.” This appears to have alleviated any concerns held by Do.

5 Given this *arrangement*, and given the fact that Lecong very clearly was carrying out this statue
6 project—at the direction of, and for the benefit of his boss, Supervisor Do—Lecong’s payments should
7 have been reported as behested payments by Supervisor Do on Form 803s.

8 **2. Since Lecong (and/or his wife) only agreed to “advance” expenses (not “cover” them), Do**
9 **knew that Lecong would need to be reimbursed from community donors—and that**
10 **Lecong’s activities would include fundraising solicitations on behalf of Do’s office—which is**
11 **why Do filed Form 803s reporting many of the payments in this case (albeit very late).**

12 Of note, in the email thread that is discussed above, Lecong only was talking about “advancing”
13 expenses—not “covering” them. This strongly suggests that Do and Lecong knew and understood that
14 Lecong (and/or Lecong’s wife) would be getting *reimbursed* by contributions raised from community
15 donors. (In fact, this is exactly what happened. See Payment Nos. 4, 5, 8, 18, 21, and 30, which are
16 payments from donors to Lecong. Also, this is consistent with the email thread of December 22, 2015,
17 wherein Lecong reminded Do that Lecong “had got commitment from anh Tho (A Dong market) which I
18 *already* reported to you last time.” (Emphasis added.) In this same thread, Lecong talked about other
19 support that had been solicited/pledged, and he described how he was using a foundation as a holding
20 company for some of the money. Additionally, in the emails discussed above, Do could have instructed
21 Lecong to *stop* soliciting contributions from the public, to *stop* using the foundation as a holding
22 company, or to *stop* making payments in support of the statues—but Do did not do so. Instead, Do told
23 Lecong that Do’s concerns were alleviated when Lecong indicated that Lecong (and/or Lecong’s wife)
24 would continue to “advance” expenses, as usual.)

25 Since Do was having his agent/Deputy Chief of Staff advance expenses and solicit donations
26 from the community, Do was required to disclose all of these payments as behested payments on Form

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1 803s.³³ For this reason, Do did in fact file Form 803s covering many of the payments in this case.
2 However, these were filed very late and some included reporting deficiencies or false information, which
3 are discussed in more detail below.

4 **a. Form 803 re: Payment from Van Hanh Assembly to Lecong in Amount of \$10,490**

5 On April 14, 2016, Do filed a Form 803, disclosing that Van Hanh Assembly DBA Chua Lien
6 HOA made a charitable, monetary donation (in connection with the statue project) on June 5, 2015 in the
7 amount of \$10,490 to Lecong. This corresponds to Payment No. 4 in the chart above. The report contains
8 accurate information, but was filed more than nine months late.

9 **b. Form 803 re: Payment from Van Hanh Assembly to Lecong in Amount of \$25,000**

10 On April 14, 2016, Do filed a Form 803, disclosing that Van Hanh Assembly DBA Chua Lien
11 HOA made a charitable, monetary donation (in connection with the statue project) on December 7, 2015
12 in the amount of \$25,000 to Lecong. This corresponds to Payment No. 8 in the chart above. The report
13 contains accurate information, but was filed more than three months late.

14 **c. Form 803 re: Payment from Dalat Supermarket to Parcel & Pratlly Foundation in**
15 **Amount of \$5,000**

16 On April 14, 2016, Do filed a Form 803, disclosing that Dalat Supermarket made a charitable,
17 monetary donation (in connection with the statue project) on December 19, 2015 in the amount of \$5,000
18 to the Parcel & Pratlly Foundation. (Secretary of State filings reflect that the full name of this foundation
19 was “The Parcel & Pratlly Foundation – Hoang Sa Truong Sa Foundation.” In December 2015, as
20 discussed above, Lecong indicated to Do that the foundation was being used as a holding company for
21 some of the money that was being raised from donors. For purposes of this case, any reference to “the
22 foundation,” or to “the Parcel & Pratlly Foundation,” or to “the Hoang Sa Truong Sa Foundation” (or
23 any similar spelling), or to the full entity name as noted above—is intended to be a reference to this
24 holding company.) This filing corresponds to Payment No. 11 in the chart above. The report contains
25 accurate information, but was filed close to three months late.

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28 ³³ See [Peak Advice Letter](#) (A-12-094), page 4. Also, see Regulation 18215.3, subdivision (a), as in effect in 2015 and 2016.

d. Form 803 re: Payment from Minh Nguyen to “Hoang SA Tuong SA Foundation” in Amount of \$5,000

On April 14, 2016, Do filed a Form 803, disclosing that Minh Nguyen made a charitable, monetary donation (in connection with the statue project) on December 30, 2015 in the amount of \$5,000 to the holding company foundation. This corresponds to Payment No. 16 in the chart above. The report contains accurate information, but was filed approximately two-and-one-half months late.

e. Form 803 re: Payment from Nguoi Viet Daily News to “Parcel & Paratly Foundation – Hoang Sa Truong Foundation” in Amount of \$39,500

On October 26, 2018, Do filed a Form 803, disclosing that the Nguoi Viet Daily News made a charitable, monetary donation (in connection with the statue project) in January 2016 (approximately) in the amount of \$39,500 to the holding company foundation. This does not correspond to any known payment that was made by this news agency to the foundation. Instead, it appears that this Form 803 corresponds to Payment Nos. 3, 5, 10, and 18, which are shown in the chart below:

#	Payment Date	Payor	Payee	Payment Type	Amount	Purpose
3	5/21/15	Tam Lecong	All Classics Ltd.	Bank Wire	\$12,000	General Tran Hung Dao Statue
5	10/19/15	Nguoi Viet Daily News	Tam Lecong	Check		
10	12/15/15	Nguoi Viet Daily News	All Classics Ltd.	Check	\$25,950	General Tran Hung Dao Statue
18	1/6/16	Nguoi Viet Daily News	Tam Lecong	Check	\$1,495	General Tran Freight Costs
Total: \$39,445						

In October 2015, the Nguoi Viet Daily News and Tam Leong entered into an agreement to transfer ownership of the General Tran Hung Dao statue to the Nguoi Viet Daily News. Under the agreement, the Nguoi Viet Daily News was to reimburse Lecong \$12,000 for a deposit on the statue, pay All Classics Ltd. the amount of \$25,950 for the statue, and pay for the transportation cost to deliver the statue. On or about October 12, 2015, Do sent a letter to representatives of the Nguoi Viet Daily News thanking them for supporting the statue effort.

1 This Form 803 filing by Do is false/inaccurate in three respects. The foundation was not the
2 payee, as reported by Do. Rather, the payees were Do's Deputy Chief of Staff, as well as the statue
3 company, All Classics Ltd. Also, this was not one payment, as reported by Do, but four separate
4 payments. Additionally, the payments were not all made in January 2016, as reported by Do. While it is
5 true that the smallest payment was made on January 6, 2016, the other larger payments were made in
6 May, October, and December 2015.

7 Besides being false/inaccurate, this Form 803 was filed more than two-and-one-half *years* late.

8 **f. Form 803 re: Payment from Lecong's Wife to "Paracel & Paratly Foundation – Hoang**
9 **Sa Truong Foundation" in Amount of \$10,040**

10 On October 26, 2018, Do filed a Form 803, disclosing that Lecong's wife, Tuyen AKA Tina,
11 made a charitable, monetary donation (in connection with the statue project) in January 2016
12 (approximately) in the amount of \$10,040 to the holding company foundation. This does not correspond
13 to any known payment that was made by her.

14 However, the Lecongs produced records to Enforcement, which included the following
15 typewritten accounting:

16

Donation from Tuyen Lecong		
Direct Payment to Architect (11/17/2015)	-	\$1,500.00
Direct Payment to Architect (12/05/2015)	-	\$ 900.00
Direct Payment to Home Depot (01/17/2016)	-	\$7,420.47
Direct Payment to Home Depot (03/29/2016)	-	\$ 219.89
		<hr/>
		\$10,040.36

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21 The information provided by the Lecongs included Home Depot credit card statements, which
22 appear to establish the charge noted above in the amount of \$7,420.47 (for a variety of purchases,
23 including building materials, hardware, and electrical supplies). At the top of the statements is a
24 handwritten note that appears to read, "Tina contribution \$10,040." Other supporting documentation
25 included a Home Depot receipt for \$219.89, a check in the amount of \$1,500 to Dong Nguyen, and a
26 receipt documenting a cash payment to Dong Nguyen in the amount of \$900.

27 However, the evidence strongly suggests that Tam Lecong made these payments, not his wife.
28 The credit card statements reflect that the Home Depot card was in the name of Mr. Lecong, not his wife.

1 Similarly, the check to Dong Nguyen was from a checking account in the name of Mr. Lecong, not his
2 wife. Additionally, Tam Lecong received several reimbursement payments in this case—totaling
3 approximately \$51,041 (see Payment Nos. 4, 5, 8, 18, 21, and 30). No reimbursement payments were
4 found payable to Tuyen Lecong.

5 Thus, Do’s Form 803 filing appears to relate to payments made by his Deputy Chief of Staff in
6 support of the statue project, which totaled approximately \$10,040. This corresponds to Payment Nos. 6,
7 7, 22, and 34 in this case. Do’s filing is false/inaccurate in that it reports Tuyen Lecong as the payor.
8 Also, the filing is false/inaccurate in that it suggests only one payment was made in January 2016. Tam
9 Lecong made the first of these multiple payments beginning in November 2015.

10 Additionally, Do’s filing is false/inaccurate in that it reports the payment as a monetary donation
11 to the holding company foundation. The payments were made to Dong Nguyen and the Home Depot—
12 not to the holding company.

13 Besides being false/inaccurate, this Form 803 was filed more than two years late.

14 **g. Form 803 re: Payment from United Care Medical Group, Inc. to “Paracel & Praty**
15 **Foundation – Hoang SA Tuong SA Foundation” in Amount of \$5,000**

16 On April 14, 2016, Do filed a Form 803, disclosing that United Care Medical Group, Inc. made a
17 charitable, monetary donation (in connection with the statue project) on January 7, 2016 in the amount of
18 \$5,000 to the holding company foundation. This corresponds to Payment No. 19 in the chart above. The
19 report contains accurate information, but was filed more than two months late.

20 **h. Form 803 re: Payment from Family Choice Medical Group, Inc. to “Hoang SA Tuong**
21 **SA Foundation” in Amount of \$10,000**

22 On April 14, 2016, Do filed a Form 803, disclosing that Family Choice Medical Group, Inc. made
23 a charitable, monetary donation (in connection with the statue project) on January 8, 2016 in the amount
24 of \$10,000 to the holding company foundation. This corresponds to Payment No. 20 in the chart above.
25 The report contains accurate information, but was filed more than two months late.

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1 **3. Do’s Form 803s—which were filed by Do with the Orange County Registrar of Voters and**
2 **verified by Do, under penalty of perjury—are admissions against Do’s interests.**

3 Do’s Form 803 filings with the Orange County Registrar of Voters, were verified by Do under
4 penalty of perjury. These filings are an admission that the payments to which they relate actually were
5 behested payments that Do was required to report. Also, they are an admission regarding the general
6 dates of payments and the fact that Do’s filings were late. Additionally, they are an admission that
7 Lecong’s activities on behalf of Do—in terms of “advancing” costs and raising funds from donors—were
8 known about by Do and carried out for Do’s benefit, with Do’s consent, knowledge, approval (or
9 ratification), to such an extent that Do felt compelled to report the activities on Form 803 filings.

10 This is consistent with the discussion above about:

- 11 a. Do’s heavy involvement in the statue project;
- 12 b. The arrangement between Do and Lecong whereby the Lecongs were “advancing” costs, as
13 usual;
- 14 c. Do’s knowledge that Lecong’s activities included raising donations from the community, in
15 part to reimburse Lecong for “advanced” expenses; and
- 16 d. Do’s knowledge that Lecong was using the foundation as a holding company for some of the
17 community donations.

17 **4. Recently, Do submitted a declaration to Enforcement in which he describes a plan to**
18 **“rescind” his Form 803 filings, but even if he does rescind his filings, this merely creates a**
19 **disputed fact—and does not change the conclusion above that Do’s previously filed Form**
20 **803s are admissions against his interests, which support a finding of probable cause.**

21 Earlier this year, Do submitted a declaration in which Do states that his Form 803s were filed out
22 of an abundance of caution, and Do stated that he intends to “rescind” the filings. Respectfully,
23 Enforcement submits that even if Do does rescind his filings, at best (for him), this merely would create a
24 factual dispute, and the prior filings still would support a finding of probable cause. At worst (for him),
25 he could be committing perjury—because the Form 803s were verified under penalty of perjury.

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1 **5. Do submitted false information to Enforcement under penalty of perjury—casting serious**
2 **doubt on his credibility, such that any denials by him may be disbelieved, *entirely*.**

3 In the declaration that Do submitted to Enforcement in February of this year, he stated (with
4 emphasis in original): “Importantly, I never directly communicated with any individuals or entities to
5 request or solicit donations for the Foundation. I therefore never directly communicated with any of the
6 individuals or entities which evidently donated to the Foundation about their donations to the
7 Foundation.”

8 However, this statement is false, as discussed below.

9 Records confirm that Minh Nguyen donated \$5,000 to the foundation, and Do reported this
10 donation to the foundation on a Form 803 that Do filed with his own agency. Via telephone and email,
11 Minh Nguyen confirmed to Enforcement that Do and Lecong *both* approached Minh Nguyen, in person,
12 at Minh’s office, to *ask for*—and pick up—Minh’s donation check. This is the opposite of what Do
13 claims in his declaration.

14 Another example is the Nguoi Viet Daily News. On a Form 803, Do reported that this news
15 agency donated \$39,500 to the foundation. Enforcement made telephone contact with Vinh Hoang, a
16 representative of the news agency. When Mr. Hoang was asked about who asked the agency to donate to
17 the statue project, Mr. Hoang said that it was Andrew Do who came up with the idea, and Nick Lecong
18 reached out to everyone. In a subsequent conversation with Enforcement, Mr. Hoang said that both
19 Lecong and Do had talked to the newspaper about the donation, but mainly Lecong.

20 In addition to Mr. Hoang’s statement, Do’s involvement in soliciting the donation from the
21 newspaper appears to be consistent with Do’s receipt of an email on January 6, 2016 from Dinh Thai,
22 another representative of the newspaper. Though the email appears to be in Vietnamese, there are
23 identifiable names and dollar amounts, which appear to correlate to the newspaper’s payments in this
24 case. On Do’s Form 803, he reported that the newspaper’s donation was made in January 2016
25 (approximately). This matches up with the date of the email being January 6, 2016—which is consistent
26 with Do being involved in the solicitation, as described by Mr. Hoang.

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1 Based on these two examples, alone, Do's statement about not directly communicating with
2 donors strongly appears to be false. Per the Judicial Council of California, Civil Jury Instructions – CACI
3 No. 107, a witness false in one part of his testimony may be disbelieved, entirely.

4 **6. The Foundation's payments were made at the behest of Do because the payments were**
5 **made under the control or at the direction of, in cooperation, consultation, coordination, or**
6 **concert with, at the request or suggestion of, or with the express, prior consent of**
7 **Supervisor Do and/or his agent/Deputy Chief of Staff, Tam Lecong.**

8 Payment Nos. 17, 21, 23-32, and 35, are payments that The Parcel & Praty Foundation – Hoang
9 Sa Truong Sa Foundation made in support of the statue project. As discussed above, this is the money
10 holding company that Lecong asked to hold some of the funds that were raised from the community,
11 which Lecong discussed with Do in December 2015. Clearly, the foundation was being asked to hold the
12 funds with the expectation that the foundation later would spend the held money on the statue project,
13 which is in fact what happened. Of note, all of the above-noted payments by the foundation were made
14 after Lecong and Do had their email discussion about the role of the foundation as a money holding
15 company. So Do knew about the arrangement, which was being handled by his Deputy Chief of Staff,
16 before the foundation made any payments.

17 Also, early public comments made by Do help shed light on his heavy involvement and reliance
18 on certain support arrangements that were described as already in place (or forthcoming in the near
19 future). In this regard, on May 5, 2015, at a regular, public meeting of the Orange County Board of
20 Supervisors, one of the agenda items involved Do's statue project. In connection with this item, Do made
21 various statements, including words to the following effect:

- 22 a. I am pleased to report to you that the fabrication, acquisition, and installation for these statues
23 will be privately funded. When donated, the donation agreement will reflect that the
24 maintenance of the statue will rest with the non-profits who are making the donations. The
25 county will own all three bronze statues as to prevent the conflict of ownership and maybe
26 future squabbling over who has jurisdiction over the statues. The maintenance, like I said, and
27 the cleaning, washing of the statue, and the maintaining of the statues will be done by the non-
28 profits. . . .
- b. For the record I want to state that when the donations are made, the donation agreements will
be brought back to the board for approval. In those agreements, the maintenance of the statues
should be addressed and will be maintained by the non-profits.

- 1 c. [In response to a question about whether pedestals would be part of the donation:] It does
2 come with the donation. The construction and erection of the statue will come to the sole cost
3 to the non-profit—no cost to the county. And I did not request any waivers for fees or any
4 such cost to the county.
- 5 d. The non-profits will apply for their proper permits and comply with all their ADA
6 requirements. So, I don't know other than the permit fees, other than the permit fees, I don't
7 know what else is necessary. I don't anticipate needing county staff in terms of meeting the
8 requirements. We already have the engineering plan. We have already started with public
9 works on behalf of the non-profits. The cost that public parks and OC parks will incur in
10 terms of processing the permit will be part of—the non-profits will pay.

11 These comments show that Do is speaking on behalf of the non-profits, obligating them, using the
12 word “we,” and the comments show that Do heavily was involved in making plans with the non-profits.
13 These are not comments that Do would be able to make—unless the non-profits were operating under the
14 control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or
15 suggestion of, or with the express, prior consent of Supervisor Do (and/or his agent/Deputy Chief of
16 Staff, Lecong). This is the very definition of a behested payment relationship.³⁴

17 Later, it would become more clear that one of these non-profits was to be The Parcel & Praty
18 Foundation – Hoang Sa Truong Sa Foundation, which was founded by Khiem Pham on June 22, 2015
19 (according to the entity's articles of incorporation). The day after this foundation filed its formation
20 papers with the Secretary of State, Supervisor Do made public comments about the foundation at another
21 board meeting (held 6/23/15), where one of the agenda items involved approval of a statue maintenance
22 agreement with the foundation's founder, Khiem Pham. At the meeting, Do made various statements,
23 including words to the effect:

24 Yes, colleagues. I am bringing back this agreement to maintain the statue.
25 It is currently under the name of an individual, but the foundation, while
26 . . . I am only doing it because the foundation is waiting for final approval.
27 Once that happens, I am going to bring back the foundation that donated
28 the statue, and that will be responsible the responsible party. But for now,
at least we have somebody that is responsible for it. I am doing this really
out of an abundance of caution, just to have it on the record. The statue is
actually in storage. We donated it but it has not been erected. It is still
being constructed—the base being finalized. But we now have the
agreement in place so when it does get put in permanently, there is a
responsible party to maintain it. And as indicated it before, none of the cost

³⁴ Regulation 18215.3, subdivision (a), as in effect in 2015 and 2016.

1 of building it, or constructing it or erecting came from the county. It is all
2 donated.

3 These comments further illustrate Do’s close working relationship with the foundation. The day
4 after the foundation files its articles of incorporation, Do speaks on behalf of the foundation to the board
5 of supervisors. Do talks about how once the foundation receives final approval, “I am going to bring back
6 the foundation that donated the statue, and that will be responsible the responsible party.” This language
7 strongly suggests that Do controls the foundation—since he is talking about what he is going to do that
8 will be binding on the foundation.

9 This control is consistent with an email that Do sent to an accountant on March 7, 2016, wherein
10 Do stated: “By the way, the Foundation will also use its cash on hand to pay off the outstanding
11 bills. . . .”

12 The next day, Do sent an email, apparently to Khiem Pham, the foundation’s founder, wherein Do
13 mentions “3 outstanding expenses that are unpaid to date,” and Do states: “I need you to sign those
14 checks tonight, so that anh Tam [Lecong] can deliver them tomorrow.”

15 This type of control by Do is not surprising, given that his Deputy Chief of Staff was using the
16 foundation as a money holding company for some of the funds raised with Do’s knowledge and consent.
17 (Also, this control by Do and Lecong—and the close cooperation, consultation, and direction being
18 given—help explain why Lecong later would be identified as the foundation’s Chief Financial Officer in
19 a February 2018 filing with the Secretary of State.)

20 For all of the foregoing reasons, the foundation’s payments in this case were made at the behest
21 of Do—and needed to be reported by him on Form 803s.

22 VIOLATIONS

23 Counts 1 through 3

24 *Pay-to-Play Contribution Restrictions*

25 *Violation of Disqualification and Disclosure Provisions*

26 As noted above, at a meeting of the CalOptima Board of Directors, which was held on December
27 1, 2016, Do voted to extend McConnell’s federal lobbyist contract up to six months, while a new contract
28 was being considered. Also, on or about January 6, 2017, the CalOptima ad hoc committee—which

1 included Do—interviewed the four semi-finalists for the new federal lobbyist contract. At the conclusion
2 of the interviews, the ad hoc committee members discussed their respective impressions. During this
3 discussion, Do stated that he felt McConnell gave the strongest presentation.

4 In this manner, Do made, participated in making, and attempted to use his official position to
5 influence governmental contracting decisions in favor of McConnell. At the time of Do’s vote to extend
6 McConnell’s contract, and at the time of Do’s participation in the ad hoc committee’s discussion about
7 McConnell’s presentation, Do knew (and had reason to know) that McConnell was a source of
8 contributions to Do’s supervisor campaign committee in excess of \$250 during the past 12 months.
9 Specifically, Do had received a contribution in the amount of \$1,900 from McConnell in August 2016
10 (less than four months before Do’s vote of 12/1/16 and less than five months before the ad hoc
11 committee’s discussion of 1/6/17).

12 Also, as noted above, in September 2017, Do was appointed to be one of the members of an ad
13 hoc committee that was formed to interview two lobbying firms that were competing for a CalOptima
14 state lobbyist contract. After interviewing both firms, the ad hoc committee made its recommendations to
15 the full CalOptima Board of Directors, prior to a public meeting scheduled for February 1, 2018. This
16 included a recommendation in favor of entering into a two-year contract on an as-needed basis with
17 Townsend Public Affairs at a cost of \$24,000 per year (subject to three one-year extensions).

18 In this manner, Do made, participated in making, and attempted to use his official position to
19 influence a governmental contracting decision in favor of Townsend, owner of Townsend Public Affairs.
20 At the time, Do knew (and had reason to know) that Mr. Townsend was the source of campaign
21 contributions totaling more than \$250 during the past 12 months. Specifically, in December 2016, Mr.
22 Townsend contributed \$1,900 to Do. Also, in March 2017, Mr. Townsend made an additional
23 contribution to Do in the amount of \$2,000.

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With respect to McConnell and Townsend, Do was required to recuse/disqualify himself from the governmental decision-making process, and Do was required to disclose the reason for his disqualification (receipt of contributions in excess of \$250 during 12-month look-back period) - but he failed to do so. In this way, Do violated Section 84308, subdivision (c), as noted in the chart below:

Count	Description
1	Federal lobbyist contract – voted to extend McConnell’s contract (on 12/1/16).
2	Federal lobbyist contract – interviewed applicants and recommended McConnell to ad hoc committee (on 1/6/17).
3	State lobbyist contract – served on ad hoc committee starting September 2017, which led to applicant interviews and recommendation in favor of a contract with Townsend.

Counts 4 through 37

Failure to Timely File Form 803 Behested Payment Reports

As noted above, Do failed to timely file Form 803 behested payment reports disclosing 34 payments—totaling approximately \$174,072—which were made at his behest for the statue project (by donors of \$5,000 or more per calendar year).

In this way, Do violated Section 82015, subdivision (b)(2)(B)(iii), with respect to the counts and payments that are set forth in the chart below:³⁵

Count	Pymt. No.	Pymt. Date	Payor	Payee	Amount
4	1	3/18/15	Tam Lecong	All Classics Ltd.	\$9,995
5	2	3/23/15	Tam Lecong	Crossroads Global	\$495
6	3	5/21/15	Tam Lecong	All Classics Ltd.	\$12,000
7	4	6/5/15	Van Hanh Assembly DBA Chua Lien HOA	Tam Lecong	\$10,490
8	5	10/19/15	Nguoi Viet Daily News	Tam Lecong	\$12,000
9	6	11/17/15	Tam Lecong	Dong Nguyen	\$1,500
10	7	12/5/15	Tam Lecong	Dong Nguyen - Dong Associates	\$900
11	8	12/7/15	Van Hanh Assembly DBA Chua Lien HOA	Tam Lecong	\$25,000
12	9	12/11/15	Tam Lecong DBA T & T Consulting Translation	Dong Nguyen	\$2,000
13	10	12/15/15	Nguoi Viet Daily News	All Classics Ltd.	\$25,950
14	11	12/19/15	Dalat Supermarket	Parcel & Praty Foundation	\$5,000
15	12	12/23/15	Tam Lecong DBA T & T Consulting Translation	Dong Nguyen	\$1,500

³⁵ Payment No. 18 is not being charged for the reasons stated previously (the donor’s payments totaled more than \$5,000 in 2015, but not in 2016).

Count	Pymt. No.	Pymt. Date	Payor	Payee	Amount
16	13	12/23/15	Tam Lecong DBA T & T Consulting Translation	Gustavo Guevara	\$1,500
17	14	12/27/15	Tam Lecong DBA T & T Consulting Translation	Razmik Abedi	\$2,000
18	15	12/28/15	Tam Lecong DBA T & T Consulting Translation	LBE Orange	\$2,677
19	16	12/30/15	Minh T. Nguyen	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	\$5,000
20	17	1/5/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Peter Anh Pham	\$5,000
21	19	1/7/16	United Care Medical Group, Inc.	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	\$5,000
22	20	1/8/16	Family Choice Medical Group, Inc.	Hoang Sa Truong Sa Foundation	\$10,000
23	21	1/10/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Tam Lecong	\$628
24	22	1/17/16	Tam Lecong	Home Depot	\$7,420
25	23	1/17/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Doan [...] Thien An	\$1,500
26	24	1/17/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	[...] CLB Tinh Nehi Fi	\$500
27	25	1/20/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Ca't Tuong Florist	\$1,000
28	26	1/20/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	VQT music	\$500
29	27	1/20/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Thuy Food Togo	\$2,500
30	28	1/20/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	City of Garden Grove	\$68.50
31	29	1/20/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	A Plus Education Organization	\$1,500
32	30	1/27/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Tam Lecong	\$1,428.73
33	31	1/29/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Peter Anh Pham	\$3,000
34	32	3/7/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	Peter Anh Pham	\$6,499
35	33	3/7/16	Tam Lecong DBA T&T Consulting Translation	Peter Anh Pham	\$6,301
36	34	3/29/16	Tam Lecong	Home Depot	\$219.89
37	35	6/22/16	Parcel & Pratly Foundation - Hoang Sa Truong Sa Foundation	K & G Concrete, Inc.	\$3,000

1 **EXCULPATORY, MITIGATING AND OTHER RELEVANT INFORMATION**

2 Andrew Do does not have a history of prior, similar violations of the Act. However, Do is a
3 licensed attorney—with a legal background that includes criminal defense—and he is a former
4 prosecutor for the Office of the Orange County District Attorney. Before being elected to the Orange
5 County Board of Supervisors and appointed to the CalOptima Board of Directors, Do served as Chief of
6 Staff to Orange County Supervisor Janet Nguyen—and he served as a Garden Grove City Councilman.
7 In light of this background, it is fair to say that Do is a sophisticated public official who had ample reason
8 to know and understand the requirements of the Political Reform Act.

9 Regarding Count 2, the federal lobbyist contract did not go to McConnell, ultimately.

10 Regarding Count 3, before the CalOptima Board of Directors voted on the state lobbyist contract
11 matter involving Townsend, the matter was pulled from the agenda for the stated purpose of re-starting
12 the RFP process; this was due, at least in part, to the violation that comprises Count 3.

13 Regarding both the federal and state lobbyist contracts that are discussed above, when the RFP
14 process was commenced, McConnell and Townsend were required to disclose (as part of the record of
15 the proceeding) that they had contributed more than \$250 to Do during the look-back period. Currently,
16 Enforcement is not aware that they made this disclosure.

17 Regarding the donation from Family Choice Medical Group, Inc., which is Count 23, the attorney
18 for that company, Lyly Nguyen, stated that someone dropped off a brochure for the statue project, and
19 “[t]he board reviewed the brochure for the statue project for the donation.”

20 Although the brochure appears to be in Vietnamese, it includes a picture of General Tran Hung
21 Dao, and below this picture, a circular image of the Orange County Seal appears, which contains the
22 phrase “SUPERVISOR ANDREW DO” wrapped across the top—and “FIRST DISTRICT” wrapped
23 across the bottom. (The 1st District is Supervisor Do’s district.) Also, there is text in a foreign language
24 below the seal, which references Andrew Do again. This brochure would appear to feature Supervisor Do
25 within the meaning of Regulation 18215.3, subdivision (b)(1), as in effect in 2015 and 2016.
26 Additionally, the donation from this medical group is something that Supervisor Do already has admitted
27 was made at his behest—because he filed a Form 803, under penalty of perjury, admitting as much
28 (albeit the form was filed very late).

