

## CONFIDENTIAL AGREEMENT AND GENERAL RELEASE

This Confidential Agreement and General Release ("Agreement") is made and entered into by and between JOE GIARDIELLO ("GIARDIELLO") and the CALIFORNIA STATE SENATE, THROUGH THE SENATE RULES COMMITTEE ("THE SENATE").

### RECITALS

WHEREAS, GIARDIELLO was employed by THE SENATE at the time of this Agreement, and voluntarily resigned from his employment under the terms of this Agreement; and

WHEREAS, GIARDIELLO has asserted his contention that he possesses certain rights and claims as a result of his employment and voluntary resignation; and

WHEREAS, THE SENATE denies the existence of any and all of GIARDIELLO'S claims and denies that THE SENATE has in any way acted contrary to law with respect to GIARDIELLO;

WHEREAS, GIARDIELLO denies the existence of any claims and denies that he acted in any way contrary to law with respect to THE SENATE; and

WHEREAS, GIARDIELLO and THE SENATE, in order to avoid the costs, uncertainty, and operational burden of a further dispute, desire to settle, fully and finally, all of GIARDIELLO'S alleged claims against THE SENATE as well as any such alleged claims against any current or former Senators, officers, agents, consultants, attorneys, and/or employees (hereinafter "agents"), and in no way limited to claims described or raised at the time of this Agreement;

NOW THEREFORE, in consideration of the mutual promises herein contained, and without admission of any liability or potential liability of THE SENATE, the parties agree as follows:

1. **Effective Date.** The Effective Date of the Agreement shall be the date on which GIARDIELLO and his attorney and the Senate's Chief Executive Officer, Greg Schmidt, and the Senate's attorney, sign this Agreement.

2. **Consideration.** Provided that GIARDIELLO and his attorney first have executed this Agreement, THE SENATE shall provide to GIARDIELLO the following consideration to which, but for this Agreement, GIARDIELLO would not be entitled:

A. GIARDIELLO will remain on THE SENATE'S payroll through August, 2007, on the terms specified below.

B. Health benefits, as per the terms of existing practice, shall continue for an additional thirty (30) days beyond the effective separation date of August 31, 2007.

C. Beginning May 14, 2007, and consistent with a physician's certification of medical condition, GIARDIELLO shall be permitted to exhaust his current sick leave balance.

D. Following exhaustion of his sick leave balance, GIARDIELLO will exhaust his one-day personal holiday.

E. Following exhaustion of his sick leave balance and personal holiday balance, GIARDIELLO will exhaust his vacation leave balance.

F. Following exhaustion of his sick leave, personal holiday, and vacation balances, there shall be additional weeks of paid leave allowed GIARDIELLO until August 31, 2007, the effective date of this agreement.

3. **Waiver of Re-Employment.** GIARDIELLO agrees that by his signature on this Agreement, he promises not to seek or accept future employment with THE SENATE. The Rules Committee of THE SENATE, in its sole and absolute discretion, may waive this provision.

4. **Covenant Not to Sue.** GIARDIELLO represents that neither he, nor anyone acting on his behalf, has now pending any administrative agency claim or charge or complaint in civil litigation against THE SENATE or its Agents or the present or former agents or employees of any of them with any state or federal agency or court. GIARDIELLO agrees that neither he nor anyone acting on his behalf will assert or advance any such claim, charge or complaint, arising in whole or in part out of any act or omission occurring on or before the date he executes this Agreement.

5. **Release of All Claims by GIARDIELLO.** As a material inducement to THE SENATE to enter into this Agreement, GIARDIELLO hereby irrevocably and unconditionally releases and forever discharges THE SENATE and all persons acting by, through, under or in concert with THE SENATE or its agents from any and all charges, claims, liabilities, obligations, promises, grievances, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown, which GIARDIELLO may now have or has ever had against THE SENATE or its agents arising from acts or omissions occurring, in whole or in part, on or before the Effective Date of this Agreement. This Agreement specifically covers, but is not limited to, any and all claims arising from or related to GIARDIELLO'S employment with THE SENATE, all Claims and Causes of Action, including but not limited to claims under the California Constitution, federal, state, or local laws prohibiting employment discrimination, harassment or retaliation (among others, Title VII of the Civil Rights of 1964, as

amended by the Civil Rights of 1991, 42 U.S.C., § 2000e, et seq., the California Fair Employment and Housing Act, Cal. Gov't Code § 12940, et seq., the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.), and federal, state or local laws pertaining to leaves of absence (California Family Rights Act, Cal. Gov't Code § 12945.2, et seq.), any claims alleging defamation or harm to personal reputation, or under any applicable wage and hour law or anti-retaliation law, including, but not limited to, the California Labor Code and the Fair Labor Standards Act or any law, regulation, or ordinance whatsoever, or any claim whatsoever.

6. **Waiver of Civil Code Section 1542.** GIARDIELLO expressly waives and relinquishes any rights and benefits afforded him by Section 1542 of the California Civil Code and does so understanding and acknowledging the significance and consequences of such a waiver. Section 1542 of the California Civil Code states as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Thus, notwithstanding the provisions of Section 1542 and for the purpose of implementing a full and complete release and discharge of THE SENATE and its agents as set forth in Paragraph 5 above, GIARDIELLO expressly acknowledges that (a) this Agreement is intended to include in its effect, without limitation, all claims, causes of action or grievances against THE SENATE or its agents which he does not know or suspect to exist in his favor at the time he executes this Agreement, and (b) that this Agreement contemplates the extinction of any such claim, cause of action, or grievance.

7. **Attorneys' Fees.** In the event any action, proceeding or claim is brought or asserted by any party hereto to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred.

8. **Voluntary Agreement.** GIARDIELLO expressly warrants that he has been supplied with, has read and has had an opportunity to discuss the terms of the Agreement with legal counsel of his own choosing and further warrants that he fully understands the content and effect of this document, approves and accepts the terms and provisions of this Agreement, agrees to be bound thereby, and **signs** the same of his own free will. GIARDIELLO agrees that in **signing** this Agreement, he has not relied on any representation not set forth herein. The parties agree that because the terms of this Agreement have been fully negotiated by legal counsel for the parties hereto, the statutory presumption regarding interpretation against the drafter of any agreement does not apply. GIARDIELLO further acknowledges that he enters into this Agreement freely and voluntarily and is not acting under coercion, duress, menace, economic compulsion, nor is he entering into this Agreement because of any supposed disparity in bargaining power; rather, he is freely and voluntarily **signing** this Agreement for his own benefit.

9. **ADEA Provision:** GIARDIELLO acknowledges that he enters into this Agreement of his own free will; that THE SENATE has encouraged him to and he has discussed this Agreement with an attorney of his choosing; and has encouraged him to review this document thoroughly. GIARDIELLO understands that, under the federal Age Discrimination in Employment Act, he has 21 (twenty-one) days from receipt of this Agreement to **sign** it. GIARDIELLO may **sign** the Agreement sooner in order to invoke the protections and benefits of the Agreement immediately. If he does so, he acknowledges with his own **signature** that the decision to **sign** the Agreement before the expiration of 21 (twenty-one) days was his and his alone and that, as a result, he has voluntarily waived the 21-day consideration period.

10. **Modification.** Any modification of the terms of this Agreement must be made in writing and **signed** by all parties to this Agreement.

11. **Severability.** This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law. Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be automatically conformed to the law, if possible, or deemed not to be a part of the Agreement, if not.

**PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN OR UNKNOWN CLAIMS.**

Dated: May 30, 2007

By: \_\_\_\_\_

JOE GIARDIELLO

Dated: June 15, 2007

By: \_\_\_\_\_

GREG SCUMDT  
on behalf of THE CALIFORNIA STATE  
SENATE, THROUGH SENATE RULES  
COMMITTEE

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**APPROVED AS TO FORM**

Dated: May \_\_\_\_, 2007

By: \_\_\_\_\_  
DAVID BERNSTEIN  
Attorneys for JOE GIARDIELLO

**APPROVED AS TO FORM:**

Dated: May \_\_\_\_, 2007

By: \_\_\_\_\_  
JOHN D. ADKISSON  
HANSON, BRIDGETT, MARCUS,  
VLAHOS & RUDY, LLP  
Attorneys for THE CALIFORNIA STATE  
SENATE, THROUGH SENATE RULES  
COMMITTEE