



## MEMORANDUM

To: Chair Remke and Commissioners Audero, Casher, Hatch, and Hayward

From: Galena West, Chief of Enforcement  
Dave Bainbridge, Assistant Chief of Enforcement

Date: April 14, 2017

RE: *In the Matter of I-Chinese American Political Action Committee and Victor Gau*,  
FPPC Nos. 15/661 and 16/379: Respondents' motion to vacate default decision

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On March 16, 2017, the Commission approved on the consent calendar a Default, Decision and Order for the case of *In the Matter of I-Chinese American Political Action Committee and Victor Gau*, FPPC Nos. 15/661 and 16/379 (the "Default"). Gau filed a motion to vacate the Commission's decision received at the Commission's office on April 3, 2017.

The Commission has the authority to vacate its prior decision on a default and grant the respondent a hearing on a showing of good cause.<sup>1</sup> "Good cause" includes, but is not limited to, (1) failure of the person to receive notice of the accusation, and (2) mistake, inadvertence, surprise, or excusable neglect.<sup>2</sup>

As detailed in the Default, Mr. Gau was served with the accusation at his personal residence via substitute service, satisfying the service requirement for accusations.<sup>3</sup> Mr. Gau does not contend he did not receive notice of the accusation.

Mr. Gau's motion offered several reasons for his failure to comply with the Political Reform Act ("Act") and respond to efforts to resolve the matter. The motion does not dispute the Commission's legal basis for approving the Default but instead makes assertions the Commission may find relevant in reconsidering the penalty assessed for the respondents' violations. In taking up this motion, the Commission must determine whether any of Mr. Gau's reasons amount to "mistake, inadvertence, surprise, or excusable neglect," or otherwise constitute "good cause" so as to justify vacating its prior decision.

The Enforcement Division is sympathetic to Mr. Gau and appreciate his willingness to accept responsibility for his violations of the Act. We would have taken these factors into consideration in making a recommendation to the Commission to resolve the case had Mr. Gau participated in the process. But as detailed in the Default, the Enforcement Division submitted the proposed Default to the Commission only after numerous attempts to contact Mr. Gau to get him to come into compliance with the Act, and after the case went through the lengthy administrative process. This

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<sup>1</sup> Government Code section 11520, subd. (c) and California Code of Regulations, title 2, section 18361.11, subd. (d).

<sup>2</sup> Government Code section 11520, subd. (c).

<sup>3</sup> Government Code section 11505, subd. (c).

provided Mr. Gau ample opportunity to present mitigating information and come into compliance with the Act. At no point did Mr. Gau respond to any of the twenty-three contact attempts made by the Enforcement Division and the Secretary of State's Office via mail, telephone, and email. Due to Mr. Gau's failure to respond, the Enforcement Division had no way to resolve the matter other than submitting the Default to the Commission. Mr. Gau also received notice prior to the Commission's March meeting that the Commission would hear the Default but he did not respond until after the Commission approved the Default.

For these reasons, it's the Enforcement Division's opinion good cause does not exist to justify the Commission vacating its prior decision and ordering an administrative hearing on the matter.