



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Ortiz, Wilson, and Wood

From: James M. Lindsay, Chief of Enforcement
Jenna C. Rinehart, Commission Counsel

Subject: *In the Matter of Jose Pech*; FPPC Case No. 19/1407: Respondent’s motion to vacate default decision

Date: October 26, 2023

On September 21, 2023, the Commission approved on the consent calendar a Default Decision and Order for the case of *In the Matter of Jose Pech*; FPPC Case No. 19/1407 (the “Default”). On September 23, 2023, Respondent, Jose Pech (“Pech”), was personally served with the Notice of Default and Administrative Fine, along with the executed Default, supporting exhibits and Regulation 18361.11. The Notice of Default and Administrative Fine letter explained that Pech had seven days from the date the letter was served on Pech to serve a written motion to vacate with the Commission.¹ On or around October 12, 2023, 19 days after being served, Pech sent via U.S. Mail a motion to vacate the Commission’s decision, which the Enforcement Division received on October 17, 2023. As such, Pech’s motion was not timely served and may be denied on procedural grounds.

If the Commission chooses to consider the motion on the merits, it has the authority to vacate its prior decision on the Default and grant Pech a hearing on a showing of good cause.² “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.³ Pech’s motion does not establish nor make any attempt to establish either of the two enumerated bases for good cause to vacate the Default.

Pech’s motion states, “Initially when I was contacted with the accusation and documents mailed by Jenna Rinehart, Commission Counsel Enforcement Division, I sent an email acknowledging the accusation against me. I also requested information from Ms. Rinehart which I did not receive nor was it addressed.” However, the information and evidence detailed in the Default shows otherwise.

As detailed in the Default, on November 30, 2020, Pech was served with a Report in Support of a Finding of Probable Cause (the “PC Report”) by certified mail.⁴ On December 1, 2020, Pech confirmed receipt of the PC Report and requested records. On October 4, 2021, Pech was served with the Response to Respondent’s Request for Records After Service of Probable Cause Report

¹ Government Code § 11520, subd. (c), and California Code of Regulations, Title 2, § 18361.11, subd. (d)(2).

² *Id.*

³ Government Code § 11520, subd. (c).

⁴ Default Decision and Order FPPC Case No. 19/1407, at pages 4-5.

(“Records Response”).⁵ The Records Response included all records in the possession of the Enforcement Division obtained for the purposes of the investigation, except records determined to be confidential or records received in response to a subpoena.⁶ At this stage, documents obtained via a subpoena are not disclosable in a Records Response.⁷ Instead, pursuant to Regulation 18361.4, subdivision (d)(3)(B), the Enforcement Division provided Pech with a description of records withheld, which included the following for each record withheld: (i) the date of the record; (ii) the identity of the author; (iii) the identity of the recipient; (iv) the specific ground for which the objection to produce the record is made; and (v) the current location of the record. These withheld records would have been releasable at an administrative hearing. Next, Pech was granted two extensions to allow extra time for Pech to submit a written response to the PC Report and/or request a probable cause conference.⁸ However, Pech did not submit a response to the PC Report or request a probable cause conference.⁹

Pech’s motion states, “I am aware that a fine will be imposed if I do not respond and after reviewing the accusation documents, I noticed that there were concerns which I was not allowed to address, as I was informed the decision was made and not much I could do.”

As detailed in the Default, on November 5, 2022, Pech was personally served with the Accusation.¹⁰ Along with the Accusation, the Enforcement Division served Pech with a “Statement to Respondent,” which notified Pech that Pech could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, Pech would be deemed to have waived the right to a hearing.¹¹ Pech did not file a Notice of Defense in this matter.¹² Further, the Enforcement Division did not receive any communications from Pech indicating that Pech wanted to proceed to an administrative hearing.

Pech’s motion states, “I was made aware of your hearing back in June 2023, and it was postponed, reschedule, postponed and finally rescheduled. I was not able to make my presence (virtually) after rescheduling.”

As detailed in the Default, on May 4, 2023, the Enforcement Division sent a letter to Pech advising that the initial notice of this Default will appear on the published agenda for the Commission’s public meeting on May 18, 2023.¹³ On June 5, 2023, the Enforcement Division notified Pech, via email, of the cancellation of the May 18, 2023 Commission meeting. Additionally, the Enforcement Division notified Pech that the matter will appear on the June 15, 2023 Commission meeting as a pre-notice item, then the Commission will be asked to adopt the Default at the meeting scheduled for August 17, 2023. That same day, Pech responded stating, “Thank you for the update. As mentioned earlier I live on my retirement income. I won’t be making any appearances for this hearing. Again thank you for the information.”

⁵ Default Decision and Order FPPC Case No. 19/1407, at page 5.

⁶ See California Code of Regulations, Title 2, § 18361.11, subd. (d)(3).

⁷ Government Code § 11183.

⁸ Default Decision and Order FPPC Case No. 19/1407, at page 5.

⁹ *Id.*

¹⁰ Default Decision and Order FPPC Case No. 19/1407, at page 6.

¹¹ *Id.*

¹² Default Decision and Order FPPC Case No. 19/1407, at pages 6-7.

¹³ Default Decision and Order FPPC Case No. 19/1407, Exhibit A-26.

As detailed in the Default, on June 22, 2023, the Enforcement Division sent another letter to Pech advising that the Commission will be asked to adopt the Default at its meeting scheduled for August 17, 2023.¹⁴ On August 7, 2023, the Enforcement Division notified Pech, via email, that the Commission will be asked to adopt the Default at the meeting scheduled for September 21, 2023.

In summary, the motion is procedurally defective and may be denied on that basis. If the Commission decides to consider the motion on its substance, the Commission must determine whether Respondent has shown good cause to vacate the Default. As stated in the Default documents approved by the Commission and noted here, Respondent has not met the burden to show good cause. Respondent has neither shown nor even alleged that he did not receive the accusation or any other item which prevented participation. Furthermore, there is no showing or allegation of mistake, inadvertence, surprise, or excusable neglect recognized under the law. The motion can best be characterized as disappointment in the disposition of the matter following a conscious decision to not participate.

Accordingly, while the Commission has the discretion to vacate the Default, the Respondent has not shown there is good cause to vacate the Default, and the Enforcement Division recommends this request be denied.

¹⁴ Default Decision and Order FPPC Case No. 19/1407, at page 7 and Exhibit A-27.