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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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11

12 In the Matter of) FPPC No. 11/1042
13)
14 FRANK LOPEZ, JR,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17)

18 Complainant, the Fair Political Practices Commission, and Respondent Frank Lopez, Jr. agree
19 that this stipulation will be submitted for consideration by the Fair Political Practices Commission at its
20 next regularly scheduled meeting.

21 The parties agree to enter into this stipulation to resolve all factual and legal issues raised in this
22 matter and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Frank Lopez, Jr. violated the Political Reform
4 Act when he failed to disclose Cameron Glenn Estates, LLC as a source of income on his 2007 and 2008
5 annual statements of economic interests, in violation of Government Code Sections 87203 and 87207,
6 subdivision (a) (1 count). All counts are described in Exhibit 1. Exhibit 1 is attached hereto and
7 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
8 the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing upon it an administrative penalty in the amount of
11 One Thousand Dollars (\$1,000). A cashier's check from Respondent Frank Lopez, Jr. in said amount,
12 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
13 payment of the administrative penalty, to be held by the State of California until the Commission issues
14 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
15 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
17 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
18 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____
23 Gary Winuk, Enforcement Chief,
24 on behalf of the
25 Fair Political Practices Commission

26 Dated: _____
27 Frank Lopez, Jr., Respondent
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1 **DECISION AND ORDER**

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3 The foregoing Stipulation of the parties “In the Matter of the Frank Lopez, Jr.,” FPPC No.
4 11/1042, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
5 Political Practices Commission, effective upon execution below by the Chair.

6 **IT IS SO ORDERED.**

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8 Dated: _____

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10 Anne Ravel, Chair
11 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Frank Lopez, Jr. is currently a member of the Vista City Council, having been elected to that position in 2004. From 2001 until his election to the city council, Respondent served as a member of the Vita Planning Commission.

On his 2007 and 2008 annual statements of economic interests (“SEIs”), Respondent failed to declare a \$25,000 loan that he received from Cameron Glen Estates, LLC in February of 2007.

For the purposes of this Stipulation, Respondent’s violation of the Political Reform Act (the “Act”)¹ is stated as follows:

COUNT 1: Respondent Frank Lopez, Jr. failed to disclose Cameron Glenn Estates, LLC as a source of income on his 2007 and 2008 annual statements of economic interests, in violation of Sections 87203 and 87207, subdivision (a).

SUMMARY OF THE LAW

One of the express purposes of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, so that conflicts of interest may be avoided. The Act therefore establishes an economic interest reporting system designed to accomplish this purpose of disclosure.

In furtherance of that purpose, Section 87203 requires every person who holds an office described in Section 87200 to annually file with the Fair Political Practices Commission, at a time specified in the Commission’s regulations, a statement of economic interests disclosing his or her reportable investments, interests in real property, and income. Under Regulation 18723, subdivision (b)(2), the deadline for a city council member to file an annual statement of economic interests is April 1 of each year. The statement must include all of the city council member’s reportable economic interests during the preceding calendar year. (Regulation 18723, subdivision (a).

The Act specifies disclosure concerning the income of public officials. Section 87207, subdivision (a)(5), requires a filer to declare the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Section 87207, subdivision (a)(5), states that when income is required to be reported, the statement of economic interests shall contain, in the case of a loan, the annual interest rate, the security, if any, given for the loan, and the term of the loan.

Section 82030 subdivision (b)(8) creates a reporting exception for loans made from a commercial lending institution, made in the lender's regular course of business on terms available to the public without regard to official status.

SUMMARY OF THE FACTS

Respondent Frank Lopez, Jr. is currently a member of the Vista City Council, having been elected to that position in 2004. From 2001 until his election to the city council, Respondent served as a member of the Vita Planning Commission.

On or about February 14, 2007, Respondent Frank Lopez, Jr. and his wife Mary Lopez received a loan from Cameron Glen Estates, LLC in the amount of \$25,000, at an interest rate of 8.0%, which was to be repaid in full on or before August 14, 2008. This loan was secured by a deed of trust for real property owned by Respondent and his wife, which was recorded with the San Diego County Recorder's Office.

Cameron Glen Estates, LLC is not a commercial lending institution, and although it has made loans in the past, it is not a part of its normal business to make such loans. The business made this loan because its owner has been a long time friend of the Respondent's. The reporting exception enumerated in Section 82030 subdivision (b)(8) is therefore inapplicable, and the loan was required to be disclosed on Respondent's SEIs.

By failing to disclose the receipt of income from Cameron Glen Estates, LLC on 2007 and 2008 annual SEIs that he filed on or about March 28, 2008 and March 30, 2009, respectively, Respondent violated Sections 87203 and 87207, subdivision (a). Respondent subsequently filed amendments to his 2007 and 2008 annual SEIs disclosing Cameron Glen Estates, LLC as a source of income.

CONCLUSION

This matter consists of one count, which carries a maximum possible administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon

learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Other similar cases regarding a violation of Section 87203 that have been recently approved by the Commission include:

In the Matter of Glen Daigle, FPPC No. 10/474, had a similar fact pattern; a Murrieta City Planning Commissioner failed to disclose required information regarding investments, income, and assets of/from business entities on an annual SEI. The commission approved settlement of this case, with a \$1,000 penalty for the nondisclosure violation, on October 14, 2010.

In the Matter of Michael Rubio, FPPC No. 07/293, had a similar fact pattern; a member of the Kern County Board of Supervisors failed to disclose required information regarding income on an annual SEI. The commission approved settlement of this case, with a \$1,000 penalty for the nondisclosure violation, on January 28, 2011.

Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Failure to report all required information on an SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests and it has the potential to conceal conflicts of interest.

Respondent's violation of the Act was deliberate at worst and negligent at best. Due to previous enforcement action against Respondent, Respondent should have been aware of his duties under the Act disclose all sources of income on his SEIs. No evidence was found that Respondent Lopez was intentionally concealing the income source.

Respondent has held public office for more than ten years, and is therefore aware of the relevant filing obligations. On October 20, 2011, Respondent received a Warning Letter from Enforcement for failure to disclose income, consisting of gambling winnings from a casino, on annual SEIs. Respondent is not eligible for streamline due to this prior enforcement history.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's patter of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of One Thousand Dollars (\$1,000) is recommended.