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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11
12 In the Matter of) FPPC No. 12/935
13)
14 MADELEINE ZAYAS-MART,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)

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18 Complainant, the Fair Political Practices Commission, and Respondent Madeleine Zayas-Mart,
19 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
20 Commission at its 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.

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 section 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 Respondent's 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 violated the Political Reform Act by (1)
4 failing to timely file a 2011 Annual Statement of Economic Interests and a leaving office statement of
5 economic interests (1 count), as described in Exhibit 1, which is attached hereto and incorporated by
6 reference, as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
7 matter.

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

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

25 Dated: _____

Madeleine Zayas-Mart, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Madeleine Zayas-Mart, FPPC No.
3 12/935,” including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair
4 Political Practices Commission, effective upon execution below by the Chairman.

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6 **IT IS SO ORDERED.**

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8 Dated: _____

9 Joann Remke, Chair
10 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Madeleine Zayas-Mart (“Respondent Zayas-Mart was appointed as a member of the Oakland Planning Commission in 2006, and held this position until leaving office on May 5, 2012. As a Member of the City of Oakland Planning Commission, Respondent is a public official enumerated in Section 87200 of the Political Reform Act (the “Act”) ¹. Each public official enumerated in Section 87200 is required to file an annual statement of economic interests (“SEI”), disclosing his or her reportable economic interests held during the calendar year, each year he or she is in office, and a leaving office statement within 30 days of leaving office.

This matter arose out of a referral from the Fair Political Practices Commission’s (“FPPC”) Technical Assistance Division (“TAD”), who had previously issued written notices to Respondent Zayas-Mart informing her that she had failed to file her 2011 Annual SEI.

In this matter, Respondent failed to file a 2011 annual SEI, which was due by April 2, 2012 and a leaving office SEI, within 30 days of her last day serving as a planning commissioner. For the purposes of this Stipulation, Respondent’s violation is stated as follows:

COUNT 1: As a member of the Oakland Planning Commission, Respondent Madeleine Zayas-Mart failed to file a 2011 annual and a leaving office statement of economic interests, in violation of Sections 87200 and 87204 of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials that may be materially affected by their official actions be disclosed, so that conflicts of interests may be avoided. In furtherance of this purpose, section 87203 requires every person who holds an office specified in section 87200 to file annual SEIs, disclosing the person’s reportable economic interests including investments, interests in real property, and sources of income. Section 87200 lists these public officials and includes “members of planning commissions.” Regulation 18723, subdivision (b)(2), requires that these statements of economic interests be filed with the Commission no later than April 1 of the following year. Section 87204 requires officials to file a leaving office statement within 30 days of leaving office.

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 18110 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.

SUMMARY OF THE FACTS

From 2006, and until leaving office on May 5, 2012, Respondent Zayas-Mart was a member of the Oakland Planning Commission. As a Planning Commissioner, Respondent Zayas-Mart is required to file an annual SEI with the Oakland City Clerk disclosing reportable economic interests that she held in the preceding calendar year. Respondent Zayas-Mart was required to file her 2011 Annual SEI on or before April 2, 2012 and a leaving office SEI within 30 days of leaving office.

On or about June 21, 2012, TAD sent a letter to Respondent Zayas-Mart, stating that her 2011 Annual SEI was past due and requesting that it be filed. This letter advised that if her SEI was not received within fifteen days, the matter would be referred to the FPPC's Enforcement Division. Respondent Zayas-Mart failed to file the 2011 Annual SEI.

On or about August 23, 2012, TAD sent a second letter to Respondent Zayas-Mart, again stating that her 2011 Annual SEI was past due. Respondent Zayas-Mart failed to file the 2011 Annual SEI.

On or about November 13, 2012, after receiving no reply from the Respondent, TAD referred this matter to Enforcement.

As part of this Stipulation, Decision and Order, Respondent filed her delinquent SEIs.

CONCLUSION

This matter consists of one count of violating Section 87200, 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. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 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(s) 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 amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failure to file a statement of economic interests is a serious violation of the Act because it deprives the public of important information about a public official's economic interests which could lead to potential conflicts of interests regarding decisions he/she may make in his/her official capacity.

Failure to file statements of economic interests which are not included in the Expedited Procedures of the SEI Streamlined Program have historically received substantial penalties varying in range up to the maximum penalty of Five Thousand Dollars (\$5,000), per count.

Another similar case regarding failure to file SEIs that have recently been approved by the Commission includes:

In the Matter of Jill Sherman-Warne, FPPC No. 11/838. Respondent, a California Native American Heritage Commissioner, failed to file a 2010 Annual Statement of Economic Interests, in violation of Government Code Sections 87300 and 87302, subdivision (b). A penalty of \$1,000 was approved by the commission on March 15, 2012.

In this case, Respondent's actions were similar to the case above because it appears to include nothing more than negligent behavior. October 13, 2012, Respondent Zayas-Mart was fined a streamlined penalty of \$200 for failing to timely file her 2010 Annual SEI. Due to previous Enforcement action against Respondent for failure to file an SEI, Respondent should have been aware of her duties and requirements under the Act.

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) for Count One is recommended.