FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

March 4, 2015

Lance Olson
Olson Hagel & Fishburn, LLP
o/b/o Tony Mendoza
[redacted]

Re: Warning Letter
Tony Mendoza, FPPC No. 12/504

Dear Mr. Olson:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"), found in Government Code section 81000, et seq.[1] This letter comes as the result of a sworn complaint filed with the FPPC against your client, Tony Mendoza, alleging that during the time he was an elected state officer he received gifts over the applicable limit in connection with the sale of residential real property in Sacramento (the "Property").

The FPPC has completed its investigation in this case. According to available evidence, payments made to Mr. Mendoza in connection with the Property did not fall within the definition of a "gift" under the Act. But our investigation did show that Mr. Mendoza significantly under-reported the dollar amount of those payments he received from the sale of the Property in violation of the Act.

Under the Act, a "gift" means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. (Section 82028, subd. (a).) A gift can be any payment made by a person of anything of value, whether tangible or intangible, real or personal property, a good or service, that provides a personal benefit to an official for which the official does not provide full consideration for the value of the benefit received. (Regulation 18940, subd. (a).)

Elected state officers are required to report gifts they receive valued at $50 or more on a statement of economic interests (Form 700) (Section 87201, subd. (a)(1)), and are prohibited from accepting gifts with a total value that exceeds the gift limit for that year from any single source in any calendar year. (Section 89503, subd. (a).) For 2009 through 2012, the applicable gift limit from a single source was $420. (Regulation 18940.2.) The Act also requires elected

1The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated.

state officials to report gross income received from the sale of real property on their Form 700. (Section 87207.)

Our investigation found that Mr. Mendoza purchased the Property in November of 2006. The purchase price of the Property was $462,900. Mr. Mendoza paid a down payment of $23,465 and borrowed $439,435 in the form of first and second mortgage against the Property.

In 2009, Mr. Mendoza began having trouble making the mortgage payments. In order to avoid a foreclosure or short sale of the Property, Mr. Mendoza's accountant, Cecy Groom, agreed to invest in the Property. In early 2010, Mr. Mendoza agreed to sell 50% of the Property to Ms. Groom and two other investors, Beatriz Ricartti and Ambrose Fuerte. The parties entered into a written agreement that called for Ms. Groom and her group to pay a $15,000 down payment to Mr. Mendoza and agree to pay one half of all mortgage payments and other costs and expenses associated with the Property in exchange for receiving a 50% ownership interest in the Property. Ms. Groom ended up taking over for the other two investors when they stopped paying their share of the mortgages and Property expenses.

In December 2010, Mr. Mendoza sold his remaining interest in the Property to Shura Moreno. Mr. Moreno agreed to pay a $15,000 down payment for Mr. Mendoza's 50% ownership interest in the Property. Mr. Moreno also agreed to assume Mr. Mendoza's share of the mortgage and other payments owed on the Property.

The sales agreement for the Property called for Ms. Groom and Mr. Moreno to obtain financing to pay off the existing mortgages in Mr. Mendoza's name. At the time he transferred title to Ms. Groom and Mr. Moreno in November of 2012, the county assessor appraised the Property at $255,000 while the outstanding balance for the two mortgages on the Property was approximately $418,616.

On his 2010 Form 700, Mr. Mendoza reported receiving gross income of $10,001 to $100,000 from Mr. Moreno for the sale of the Property. He also reported receiving gross income of $1,001 to $10,000 from Beatriz Ricarti and Michelle Groom (Ms. Groom's daughter) for the sale of the Property. Upon the end of his Assembly term in 2012, Mr. Mendoza filed a leaving office Form 700 dated December 2, 2012. On it Mr. Mendoza disclosed receiving $1,000 to $10,000 in gross income from both Ms. Groom and Mr. Moreno for the sale of the Property. Even if the amount of gross income from the sale of the Property reported on the Form 700s in 2010 and 2012 are combined, it significantly understates the gross income received from the sale of the Property given that the purchasers agreed to assume mortgage debt of approximately $418,616 as part of the purchase agreement.

Given the amount of debt Ms. Groom and Mr. Moreno agreed to assume to acquire the Property, they paid significantly more for the Property than its appraised value. While this could be a basis to conclude that Mr. Mendoza received more than full consideration for the Property, the FPPC did not find sufficient evidence to conclude that the sale was anything other than a legitimate, 'arms-length deal' between the parties. That being the case, there is insufficient evidence to conclude that Mr. Mendoza received a gift under the Act in connection with the sale of the Property as alleged in the complaint.

But Mr. Mendoza significantly underreported the amount of gross income he received from the sale of the Property on his Form 700s. In actuality, he received total gross income of approximately $448,000 for the sale of the Property between the down payments and the debt Ms. Groom and Mr. Moreno agreed to assume in purchasing the Property.

Despite this violation of the Act, the FPPC has decided to issue Mr. Mendoza a warning letter rather than impose a fine. While Mr. Mendoza underreported the amount of income he received from the sale of the Property, he did disclose the sale and the identity of the purchasers. This significantly reduces the harm caused by the violation because it provides the public with significant, although not complete, information about the transaction.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. The warning letter resolution does not provide your client with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If he wishes to avail himself of these proceedings by requesting that his case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

If you need forms or a manual, or guidance regarding your obligations, please call the Commission's Toll-Free Advice Line at 1-866-275-3772 or visit our website at www.fppc.ca.gov.

Please feel free to contact me at (916) 323-6302 with any questions you may have regarding this letter.

Sincerely,

[redacted]

Dave Bainbridge
Senior Commission Counsel
Enforcement Division