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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 MANUEL LOPEZ,

13 Respondent.

FPPC No. 12/540

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Manuel Lopez hereby agree that this Stipulation will be submitted for consideration by the
18 Fair Political Practices Commission at its next regularly scheduled meeting.

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

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Manuel Lopez, in
2 his capacity as Deputy Director of the Administrative Services Division of the California Department of
3 Parks and Recreation, made two governmental decisions in which he had a financial interest, in violation
4 of Government Code section 87100 (2 counts).

5 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
6 is a true and accurate summary of the facts in this matter.

7 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
8 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
9 of \$7,000. One or more cashier's checks or money orders totaling said amount—to be paid to the
10 General Fund of the State of California—is/are submitted with this Stipulation as full payment of the
11 administrative penalty described above, and same shall be held by the State of California until the
12 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
13 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
14 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
15 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
16 further stipulates and agrees that in the event the Commission rejects the Stipulation and a full

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1 evidentiary hearing before the Commission becomes necessary, neither any member of the Commission,
2 nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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5 Dated: _____

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

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9 Dated: _____

10 Manuel Lopez, Respondent

11 **DECISION AND ORDER**

12 The foregoing Stipulation of the parties “In the Matter of Manuel Lopez,” FPPC No. 12/540,
13 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
14 Practices Commission, effective upon execution below by the Chair.

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16 IT IS SO ORDERED.

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18 Dated: _____

19 Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Manuel Lopez was the Deputy Director of the Administrative Services Division of the California Department of Parks and Recreation (the “Department”).

Under the Political Reform Act (the “Act”)¹, public officials, including employees of state agencies, are prohibited from making, participating in making, or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

For purposes of this Stipulation, Respondent’s violations of the Act are set forth as follows:

Count 1: In approximately June 2011, Respondent Manuel Lopez, in his capacity as Deputy Director of the Administrative Services Division of the California Department of Parks and Recreation, implemented a leave buyback program for certain employees of the Department, including himself. Pursuant to California Code of Regulations, title 2, section 599.744, the program was a prohibited use of Department funds because it was not authorized by the California Department of Personnel Administration. Under the program, Respondent cashed out 350 hours of his own leave time in exchange for a payment from his division’s 2010-2011 fiscal year budget in the amount of approximately \$19,134.50. In this way, Respondent made a governmental decision in which he had a financial interest in violation of Section 87100.

Count 2: In approximately August 2011, Respondent Manuel Lopez, in his capacity as Deputy Director of the Administrative Services Division of the California Department of Parks and Recreation, cashed out an additional 174 hours of his own leave time in exchange for a payment from his division’s 2011-2012 fiscal year budget in the amount of approximately \$9,512.58. In this way, Respondent made a governmental decision in which he had a financial interest in violation of Section 87100.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation.

¹ The 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.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to prevent conflicts of interest by public officials. (Sections 81001, subd. (b), and 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Conflicts of Interest

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are several analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a state agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. (Section 87100 and Regulation 18700.) A public official makes a governmental decision when he obligates or commits his agency to any course of action. (Regulation 18702.1, subd. (a)(3).)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has an economic interest in his or her personal finances if they are increased or decreased by the decision. (Regulations 18703.5 and 18704.5.)

² The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

Fourth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) A financial effect on a public official's personal finances is material if it is at least \$250 in any 12-month period. Although there is an exception where the financial effect is in the form of a government salary, this exception does not apply where less than all employees of the agency in the same job classification/position are affected. (See Regulation 18705.5, subds. (a) and (b).)

Fifth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are "reasonably foreseeable" at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

SUMMARY OF THE FACTS

As stated above, at all relevant times, Respondent Manuel Lopez was the Deputy Director of the Administrative Services Division of the California Department of Parks and Recreation.

Count 1

According to Respondent, during the 2010-2011 fiscal year, several employees in the Administrative Services Division were carrying excess leave time (over 640 hours) and were required to come up with a plan in order to reduce their hours. Respondent was concerned that productivity would be affected if the employees took vacation to reduce their accumulated leave time. Based upon input from his subordinates (including Jason Summers and Paris Jackson, Chief Personnel Officer and Assistant Personnel Officer, respectively), Respondent decided to implement a leave buyback program for certain employees of the Department, including himself.

Pursuant to California Code of Regulations, title 2, section 599.744, the program was a prohibited use of Department funds because the program was not authorized by the California Department of Personnel Administration, which had suspended leave buyback programs indefinitely due to California's budget situation. However, Respondent maintains that he did not know about this prohibition, and he believed it was acceptable to implement the leave buyback program in question because he was aware of other leave buyback programs that had been implemented in the past.

When Respondent implemented the leave buyback program, one of the restrictions was that participants needed to make their requests quickly so that payouts could be made from surplus funds in the Administrative Services Division's 2010-2011 fiscal year budget.

At first, the program only was made available to Administrative Services Division employees with excess hours, but at some point, the program was opened up to others who could

show a hardship. The program was a division specific program and was not made available to the agency as a whole.

One of Respondent's subordinates, Paris Jackson, Assistant Personnel Officer, helped implement the program. She directed her staff to "key in" the requested buyback hours as overtime hours.

Approximately 56 employees sold leave time under the program, including Respondent, who cashed out 350 hours of his own leave time in exchange for a payment from the Department's 2010-2011 fiscal year budget in the amount of approximately \$19,134.50.

As an employee of the California Department of Parks and Recreation, Respondent was a public official. As a public official, Respondent's implementation of the leave buyback program described above amounted to using his official position to make a governmental decision in which he had reason to know that he had a financial interest. The governmental decision had a material financial effect on Respondent's personal finances insofar as Respondent received \$19,134.50. This result was reasonably foreseeable since Respondent knew or should have known that he was eligible to participate in the program and that he had hundreds of hours to cash out.³

In acting as described above, Respondent committed one violation of Section 87100.

Count 2

With respect to the leave buyback program described in Count 1, the program only was in effect for the 2010-2011 fiscal year. However, in approximately August 2011, Respondent cashed out an additional 174 hours of his own leave time in exchange for a payment from his division's 2011-2012 fiscal year budget in the amount of approximately \$9,512.58. (Also, one other person was allowed to cash out leave.)

Respondent maintains that he did this because he had received a letter from the IRS stating that he owed back taxes, and he considered this to be a financial hardship. Also, Respondent maintains that he checked with his subordinate personnel officers (Mr. Summers and Ms. Jackson) and was told that it was acceptable for him to sell additional hours.

For reasons similar to those discussed in connection with Count 1 above, this was a conflict of interest.

In this way, Respondent committed a second violation of Section 87100.

³ Although there is an exception regarding conflicts of interest where the financial effect is in the form of a government salary, this exception does not apply where less than all employees of the agency in the same job classification/position are affected. (See Regulation 18705.5, subd. (b).) In this case, the exception does not apply because the buyback program was a division specific program and was not offered to the agency as a whole.

CONCLUSION

This matter consists of two counts. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed is \$10,000. (See Section 83116, subd. (c).)

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Counts 1 and 2, one of the most recent stipulations involving a violation of Section 87100 imposed a penalty in the high range. (See *In the Matter of Andres Herrera*, FPPC No. 12/26, approved Dec. 13, 2012 [\$3,500 penalty imposed against city councilman who voted on a matter that benefitted source of over-the-limit gift].)

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that the governmental decision was made on the basis of the public official's financial interest. In this case, Respondent implemented a prohibited leave buyback program and sold hundreds of hours of his own leave time for thousands of dollars during the 2010-2011 fiscal year. Then, during the next fiscal year, he made a decision to sell even more of his leave time.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$3,500 per count is justified. A higher penalty is not being sought because Respondent cooperated with the Enforcement Division of the Fair Political Practices

Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondent does not have a history of violating the Act. Additionally, Respondent maintains that he believed the buyback program was consistent with past buyback programs that had been implemented, but he now acknowledges that he should not have implemented the program. Also, the compensation that Respondent received under the program was for unused leave time that he had accrued. The leave time was his own time that he could have used to take time off from work, and upon separation from employment, he would have been entitled to a lump sum payout for any of the unused leave time.

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$7,000 is recommended.