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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 15/1226
13)
14 NIDIA BAUTISTA,)
15) STIPULATION, DECISION and
16) ORDER
17)

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Nidia Bautista agree that this Stipulation will be submitted for consideration by the Fair
20 Political Practices 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 the Respondent, pursuant to Section 83116 of the Government Code.

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

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

4 It is further stipulated and agreed that Nidia Bautista violated the Political Reform Act by
5 failing to timely file her 2013 annual statement of economic interests, in violation of Sections 87300
6 and 87302, subdivision (b) of the Government Code (1 count) and failing to timely file her 2014 annual
7 statement of economic interests, in violation of Sections 87300 and 87302, subdivision (b) of the
8 Government Code (1 count). These counts are described in Exhibit 1, which is attached hereto and
9 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
10 the facts in this matter.

11 Nidia Bautista agrees to the issuance of the Decision and Order, which is attached hereto. Nidia
12 Bautista also agrees to the Commission imposing upon her an administrative penalty in the amount of
13 \$2,200. A cashier's check from Nidia Bautista in said amount, made payable to the "General Fund of
14 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
15 to be held by the State of California until the Commission issues its decision and order regarding this
16 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
17 become null and void, and within fifteen (15) business days after the Commission meeting at which the
18 Stipulation is rejected, all payments tendered by Nidia Bautista in connection with this Stipulation shall
19 be reimbursed to Nidia Bautista. Nidia Bautista further stipulates and agrees that in the event the
20 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes
21 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified
22 because of prior consideration of this Stipulation.

23
24 Dated: _____
25 Galena West, Chief of Enforcement
26 Fair Political Practices Commission

27
28 Dated: _____
Nidia Bautista, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Nidia Bautista,” FPPC No. 15/1226,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Nidia Bautista is currently an Assistant Consultant with the California State Senate, having assumed office in March of 2013. As an Assistant Consultant with the California State Senate, Bautista is a “designated employee” as defined in the Political Reform Act (the “Act”)¹ and in the Conflict of Interest Code for the California State Senate.²

This matter arose from a non-filer referral received by the Enforcement Division from the Technical Assistance Division (“TAD”), the filing office for the California State Senate. Bautista violated the Act by failing to timely file a 2013 Annual and 2014 Annual Statement of Economic Interests (“SEI”).

SUMMARY OF THE LAW

One of the express purposes of the Act 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.³ The Act therefore establishes an economic interest reporting system designed to accomplish this purpose of disclosure.

In furtherance of this purpose, every state and local agency must adopt and promulgate a conflict of interest code. The requirements of an agency’s conflict of interest code have the force of law, and any violation of those requirements is deemed a violation of the Act.⁴

An agency’s conflict of interest code must specifically designate the positions within the agency that are required to file statements of economic interests, disclosing reportable investments, business positions, interests in real property, and sources of income.⁵ The persons who are to be designated in an agency’s conflict of interest code are the officers, employees, members, and consultants of the agency whose position with the agency entails making, or participating in making, governmental decisions that may foreseeably have a material effect on one or more of the person’s economic interests.⁶

An agency’s conflict of interest code must require, among other things, every designated employee of the agency to file an annual SEI, at a time specified in the agency’s conflict of interest code, for each year that the employee remains in office, disclosing his or her reportable economic interests during the preceding calendar year.⁷

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² Section 82019, subdivision (a).

³ Section 81002, subdivision (c).

⁴ Section 87300.

⁵ Section 87302, subdivision (a).

⁶ Section 82019, subdivision (a), and Section 87302.

⁷ Section 87302, subdivision (b).

The applicable Conflict of Interest Code for the California State Senate (“Conflict of Interest Code”) requires that each designated employee file annual SEIs disclosing the person’s reportable economic interests including investments, interests in real property, and sources of income. Pursuant to the applicable Conflict of Interest Code, an Assistant Consultant is a designated position.

SUMMARY OF THE FACTS

Nidia Bautista is currently an Assistant Consultant with the California State Senate. She assumed office on March 29, 2013. As an Assistant Consultant with the California State Senate, Bautista was required to file a 2013 Annual Statement of Economic Interests (“SEI”) by the April 1, 2014 due date, and a 2014 Annual SEI by the April 1, 2015 due date. In the months following the SEI deadline, Bautista received several letters from TAD explaining her continued duty to file her delinquent 2013 and 2014 annual SEIs. Bautista has now filed the 2013 Annual and 2014 Annual SEIs.

VIOLATIONS

Count 1: Failure to Timely File Annual Statement of Economic Interests

As an Assistant Consultant with the California State Senate, Nidia Bautista failed to timely file her 2013 annual statement of economic interests, in violation of Sections 87300 and 87302, subdivision (b) of the Government Code.

Count 2: Failure to Timely File Annual Statement of Economic Interests

As an Assistant Consultant with the California State Senate, Nidia Bautista failed to timely file her 2014 annual statement of economic interests, in violation of Sections 87300 and 87302, subdivision (b) of the Government Code.

CONCLUSION

This matter consists of two counts, which carries a maximum possible administrative penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in the 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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether respondent voluntarily amended.

The Commission also considers penalties in prior cases involving similar violations. Another similar case involving the failure to disclose economic interests that has been recently approved by

the Commission includes:

- *In the Matter of Alfonso Perez*; FPPC No. 13/844. In this matter, Perez, as a Commissioner on the San Francisco Entertainment Commission, failed to timely file his 2012 Statement of Economic Interests. Perez had previously paid a streamline penalty for failure to file his 2011 Statement of Economic Interests. The Commission approved settlement of this case, with a \$1,000 penalty, on October 16, 2014.

Bautista was previously fined for failure to file an assuming office statement in connection with the assistant consultant position, in a streamline stipulation approved on November 14, 2013. As in the *Perez* case, Bautista failed to file annual SEIs, despite having recently paid a streamline fine for the same prior violation. Failure to timely file an SEI deprives the public of important information about a public official's economic interests and has the potential to conceal conflicts of interest.

Bautista cooperated fully with the investigation and filed her delinquent SEIs after contact by enforcement.

PROPOSED PENALTY

After review of the facts of this case, including consideration of the factors of Regulation 18361.5, the imposition of a penalty of \$2,000 for Counts 1 and 2, and \$200 for the fines assessed by the filing officer, for a total penalty of \$2,200, is recommended.