

1 GARY S. WINUK
Chief of Enforcement
2 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
3 Sacramento, CA 95814
Telephone: (916) 322-5660

4 Attorney for Complainant
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7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA
9

10 In the Matter of

11 WILDLIFE CENTER and LINDY
12 O'LEARY,

13 Respondents.

FPPC No. 10/0367

14 DEFAULT DECISION AND ORDER

(Gov. Code, §§ 11506 and 11520)

15 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
16 Order for consideration at its next regularly scheduled meeting.

17 Respondents Wildlife Center and Lindy O'Leary have been provided an opportunity to seek
18 advice by an attorney of their choosing as to their rights to a probable cause hearing and administrative
19 hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws, and
20 they have chosen to waive all such rights to a probable cause hearing and administrative hearing and to
21 allow this matter to proceed to a default decision.

22 In this case, Respondents Wildlife Center and Lindy O'Leary violated the Political Reform Act as
23 described in Exhibit I, which is incorporated by reference as though fully set forth herein. Exhibit I is a
24 true and accurate summary of the law and evidence in this matter.

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1 This Default Decision and Order is submitted to the Commission to obtain a final disposition of
2 this case.

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4 Dated: _____

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

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8 **ORDER**

9 The Commission issues this Default Decision and Order and imposes an administrative penalty of
10 \$5,000 against Respondents Wildlife Center and Lindy O'Leary. This penalty is payable to the "General
11 Fund of the State of California."

12 IT IS SO ORDERED, effective upon execution below by the Chairman of the Fair Political
13 Practices Commission at Sacramento, California.

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15 Dated: _____

16 Ann Ravel, Chair
17 Fair Political Practices Commission

EXHIBIT I

INTRODUCTION

Respondents are Wildlife Center and Lindy O'Leary, Wildlife Center's responsible officer. Respondents employed Sacramento Advocacy, a Lobbying Firm in California with a single lobbyist, Catherine Barankin, to lobby the California State Legislature. Respondents failed to timely file five lobbyist employer reports (Form 635) from October 1, 2009 through December 31, 2010. The required reports were filed on average 441 days late, eventually reporting a total of \$65,910.76 for the period.

For the purposes of this Default Decision and Order, Respondents' violations of the Political Reform Act (the "Act")¹ are as follows:

- COUNT 1: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for October 1, 2009 through December 31, 2009 (Due February 1, 2010), in violation of Government Code Sections 86115, 86117, and 84605.
- COUNT 2: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for January 1, 2010 through March 31, 2010 (Due April 30, 2010), in violation of Government Code Sections 86115, 86117, and 84605.
- COUNT 3: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for April 1, 2010 through June 30, 2010 (Due August 2, 2010), in violation of Government Code Sections 86115, 86117, and 84605.
- COUNT 4: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for July 1, 2010 through September 30, 2010 (Due November 1, 2010), in violation of Government Code Sections 86115, 86117, and 84605.
- COUNT 5: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for October 1, 2010 through December 31, 2010 (Due January 31, 2011), in violation of Government Code Sections 86115, 86117, and 84605.

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.

**DEFAULT PROCEEDINGS UNDER
THE ADMINISTRATIVE PROCEDURE ACT**

When the Enforcement Division of the Fair Political Practices Commission (the “Commission”) determines that the Act has likely been violated, it may, under the Administrative Procedure Act (the “APA”),² formulate and issue a decision by settlement pursuant to an agreement of the parties, without conducting an adjudicative proceeding. (Section 11415.60(a).) The APA also provides that a respondent may waive a right conferred on the person by the administrative adjudication provisions of the APA. (Section 11415.40.)

While discussing settlement options, Respondents were informed of all charges set forth herein and were provided an opportunity to consult with an attorney of their choosing about their rights under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. Respondents have agreed to waive their right to a Probable Cause Conference and/or Administrative Hearing with the full understanding that, by doing so, the Enforcement Division will proceed with this default recommendation to the Commission, which, if approved by the Commission, will result in Respondents being held jointly and severally liable for the full penalty amount of \$5,000. A copy of Respondents’ written waiver in this regard is submitted herewith as Exhibit A-1 and incorporated herein by reference as if in full.

In this situation, the Commission may take action based upon the Respondents’ express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the Respondents. (Section 11520, subd. (a).)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (b), is that the activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials. To that end, the Act sets forth a comprehensive lobbyist, lobbying firm, and lobbyist employer reporting system. The following reflects the Act as it was in effect at the time of the relevant violations:

Lobbyist Employer

“Lobbyist employer” means any person, other than a lobbying firm, who: (a) Employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or (b) Contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

travel expense, for the purpose of influencing legislative or administrative action.” (Section 82039.5.)

Duty to File Lobbyist Employer Reports

Pursuant to Government Code 86115 and 86116, all lobbyist employers and/or any person who directly or indirectly makes payments to influence legislative or administrative action of five thousand dollars (\$5,000) or more in value in any calendar quarter are required to periodic reports containing: the name, business address, and telephone number of the lobbyist employer or other person filing the report; the total amount of payments to each lobbying firm; the total amount of all payments to lobbyists employed by the filer; a description of the specific lobbying interests of the filer; a periodic report completed and verified by each lobbyist employed by a lobbyist employer pursuant to Section 86113; each activity expense of the filer; the date, amount, and the name of the recipient of any contribution of one hundred dollars (\$100) or more made by the filer to an elected state officer, a state candidate, or a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support the officer or candidate. Reports required by Section 86116 shall be filed during the month following each calendar quarter³ covering the first day of January of each new biennial legislative session through the last day of the calendar quarter prior to the month during which the report is filed. (Section 86117.)

Duty to File Online or Electronically

Lobbyists and lobbying firms required, pursuant to Chapter 6 (commencing with Section 86100), to file statements, reports, or other documents are to file online or electronically with the Secretary of State under penalty of perjury. (Section 84605.)

³ The filing deadlines are as follows: April 30 for the January, February and March reporting period; July 31 for the April, May and June reporting period; October 31 for the July, August and September reporting period; January 31 for the October, November and December reporting periods. In the event the filing deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. Reg 18116 (a).

SUMMARY OF THE FACTS

At all relevant times, Respondent Wildlife Center was a California lobbyist employer, Respondent O'Leary was the responsible officer for Wildlife Center, and Sacramento Advocacy was lobbying on their behalf. Respondents failed to timely file the required Reports of Lobbyist Employers (Form 635), in violation of Government Code Sections 86115, 86117, and 84605, as follows:

Count	Reporting Period	Due Date	Actual Filing Date	Days Late	Amount Paid for Lobbying Services
1	10/1/09-12/31/09	02/01/2010	10/17/2011	623	\$15,584.76
2	1/1/10-3/31/10	04/30/2010	10/17/2011	535	\$20,326.00
3	4/1/10-6/30/10	08/02/2010	10/17/2011	441	\$10,000.00
4	7/1/10-9/30/10	11/01/2010	10/17/2011	350	\$5,000.00
5	10/1/10-12/31/10	01/31/2011	10/17/2011	259	\$15,000.00
Total:					\$65,910.76

CONCLUSION

This matter consists of five counts of violating the Act, each of which carry a maximum administrative penalty of five thousand dollars (\$5,000), for a total of \$25,000. (Section 83116, subd. (c).) However, 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:

- (1) the seriousness of the violations;
- (2) the presence or lack of intent to deceive the voting public;
- (3) whether the violation was deliberate, negligent, or inadvertent;
- (4) whether the Respondent demonstrated good faith in consulting with Commission staff;
- (5) whether there was a pattern of violations; and
- (6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The failure to timely file lobbying reports violates one of the Act's central purposes: that the activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials. The public harm inherent in these violations is that the public is deprived of important and timely information from the Respondents regarding the amounts and nature of lobbying activity. The typical administrative penalty for failing to timely file these reports has been in the low range of penalties.

In this matter, Respondents failed to timely file a total of five lobbyist employer reports, failing to file until the non-filing was brought to the attention of Respondents by the FPPC. As a result, there was no timely disclosure of \$65,910.76 in lobbying payments, depriving the public of information on a significant amount of lobbying activity.

However, Respondents had an agreement with Catherine Barankin and Sacramento Advocacy that required Ms. Barankin to file the Respondents' lobbyist employer reports. As all correspondence regarding the failures to file were sent to Ms. Barankin's office, Respondents were unaware of any issues and did not independently verify whether the filings were actually being completed. Ms. Barankin has accepted full responsibility for the non-filings.

In April of 2011, the Commission approved four similar cases regarding violation of Sections 86115, 86117, and 84605. (*See* Deloitte Consulting, FPPC No. 10/0506; Soboba Band of Luiseno Indians, FPPC No. 10/0606; Santa Ynez Band of Chumash Indians, FPPC No. 10/0607; and Tule River Indian Tribe, FPPC No. 10/0608.) Each of these cases involved the failure to file a number of lobbyist employer reports which deprived the public of information on a significant amount of lobbying activity. Each of the respondents had a contract and/or an oral agreement with their lobbyist, Frank J. Molina, that required Mr. Molina to complete the required filings. Mr. Molina did not file Respondents' statements, and Respondents did not verify whether Mr. Molina had, in fact, filed them. Penalty per relevant count: \$1,000.

PROPOSED PENALTY

Imposition of an administrative penalty in the amount of one thousand dollars (\$1,000) per count, for a total penalty of \$5,000, is recommended.