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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11
12 In the Matter of) FPPC No. 13/1128
13)
14 McKay Carney,) STIPULATION, DECISION and
15) ORDER
16 Respondent.)
17)

18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent McKay Carney, 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 Respondent, pursuant to Section 83116 of the Government Code.

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 Sections 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. It is further
3 stipulated and agreed that Respondent McKay Carney violated the Political Reform Act by
4 impermissibly making non-monetary contributions to elected officials for whom she was registered to
5 lobby, in violation of Section 85702 of the Government Code (1 count). All counts are described in
6 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein.
7 Exhibit 1 is a true and accurate summary of the facts in this 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, to be held by the State of California until the Commission issues its decision and
13 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
14 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
15 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
16 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
17 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
18 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
19 disqualified because of prior consideration of this Stipulation.

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Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

McKay Carney,
Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of McKay Carney” FPPC No. 13/1128, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

1 **EXHIBIT 1**

2 **INTRODUCTION**

3 This case is the result of a California Franchise Tax Board (“FTB”) audit referral (the
4 “Referral”). The Referral concerns respondent McKay Carney (“Respondent Carney”), a lobbyist for
5 the lobbying firm of Manatt, Phelps & Phillips, LLP (“Manatt”). At all times relevant to this matter,
6 Respondent Carney was registered to lobby the State Legislature and the Executive Branch. The
7 Referral indicates that Respondent Carney used her personal credit card to advance payment for
8 refreshments provided at three fundraising events held at the Offices of Manatt for elected officials she
9 was registered to lobby. Following the events, Manatt reimbursed Respondent Carney for her
10 contributions, but not for a period of time ranging from 10 days to up to two years after the events were
11 held.

12 By providing refreshments purchased with her own personal funds at three fundraising events,
13 Respondent Carney impermissibly made three non-monetary contributions to the three elected officials
14 for which the fundraising events were held. Respondent Carney’s reimbursement was consistent with
15 Manatt’s then-procedure concerning reimbursement of lobbyists for non-monetary contributions made at
16 fundraising events for elected officials. There was no evidence to establish that the elected officials for
17 whom the fundraisers were held were aware of this arrangement.

18 For the purposes of this Stipulation, Respondent’s violations of the Political Reform Act (the
19 “Act”) ¹ are stated as follows:

20 **COUNT 1:** Respondent McKay Carney, a lobbyist registered to lobby the State Legislature and
21 Executive Branch, impermissibly made three non-monetary contributions to three
22 corresponding elected officials she was registered to lobby, in accordance with Manatt,
23 Phelps & Phillips, LLP’s then-procedure concerning reimbursement of lobbyists for
24 contributions made at fundraising events for elected officials, in violation of Section
25 85702 of the Government Code.
26

27 ¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to
28 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.

1
2 **SUMMARY OF THE LAW**

3 **Definitions and Registration Requirements**

4 A lobbyist is an individual who is paid to communicate with any state official or legislator for
5 the purpose of influencing legislative or administrative action. (Section 82039, subd. (a).) A lobbying
6 firm is a business entity that receives compensation for the purpose of influencing legislative or
7 administrative action on behalf of another person where a partner or employee of the entity is a lobbyist.
8 (Section 82038.5.) Lobbyists and lobbying firms must register with the Secretary of State and identify
9 the branches of government and agencies that the lobbyists attempt to influence. (Sections 86100 and
10 86104.)

11 **Prohibition on Lobbyist Contributions**

12 A lobbyist is prohibited from making a contribution to an elected state officer or candidate for
13 elected state office if that lobbyist is registered to lobby the government agency for which the candidate
14 is seeking election or the government agency of the elected state officer. (Section 85702.) A
15 contribution is any payment made for political purposes for which full and adequate consideration is not
16 made to the donor. (Section 82015; Regulation 18215.) A contribution is deemed to be made from a
17 lobbyist's personal funds or assets when the contribution is made from assets which are the personal
18 property of the lobbyist. (Regulation 18572, subd. (a)(1).)

19
20 **SUMMARY OF THE FACTS**

21 This case is the result of a California Franchise Tax Board (“FTB”) audit referral (the
22 “Referral”). The Referral concerns McKay Carney (“Respondent Carney”), a lobbyist for the lobbying
23 firm of Manatt, Phelps & Phillips, LLP (“Manatt”). At all times relevant to this matter, Respondent
24 Carney was registered to lobby the State Legislature and Executive Branch.

25 The Referral indicates that Respondent Carney used her personal funds to pay for refreshments
26 provided at three fundraising events held at the Offices of Manatt for elected officials Respondent
27 Carney was registered to lobby. Following the events, Manatt reimbursed Respondent Carney for her
28 contributions. By providing refreshments free of charge at the three fundraising events, Respondent

1 Carney made three impermissible non-monetary contributions to the three elected officials for which the
2 fundraising events were held.

3 Records collected by FTB indicate that Manatt reimbursed Respondent Carney for two of the
4 three non-monetary contributions within fourteen (14) days of when the contributions were made.
5 However, Manatt reimbursed the third non-monetary contribution, valued at \$210.49, in two separate
6 payments. Manatt provided the first reimbursement payment of \$112.31 on May 24, 2011 – fourteen
7 (14) days after the contribution was made. Manatt provided the second reimbursement payment for the
8 remaining balance of \$98.18 on June 13, 2013 – over two (2) years after the contribution was made.
9 The investigation conducted by the Fair Political Practices Commission Enforcement Division (the
10 “Enforcement Division”) in this matter indicated that the delay in reimbursement was due to an
11 inadvertent administrative error on the part of Manatt. Further information regarding the contributions
12 is provided in the table below:

Date of Event	Amount Paid by Lobbyist	Elected Official	Location of Event	Total Cost of Event	Date of Reimbursement(s)
5/10/11	\$210.49	Attorney General Kamala Harris	Office of Manatt, Phelps, & Phillips, LLP	\$2,178	5/24/11 (\$112.31) 6/13/13 (\$98.18)
6/29/11	\$209.32	Senator Curren Price	Office of Manatt, Phelps, & Phillips, LLP	\$747	7/13/11
5/7/12	\$85.27	Lieutenant Governor Gavin Newsome	Office of Manatt, Phelps, & Phillips, LLP	\$1,177	5/17/12
Total	\$505.08				

22 All three of the contributions were reported as non-monetary contributions from Manatt on the
23 respective candidate’s campaign statements. None of the campaign statements reported Respondent
24 Carney as an intermediary.

25 Manatt has now implemented a new policy prohibiting lobbyists from using their personal funds
26 to advance payment for fundraising events.
27
28

1 **COUNT 1**

2 **The Making of Impermissible Non-Monetary Contributions to Elected Officials**

3 At all times relevant to this matter, Respondent Carney was a lobbyist employed by Manatt and
4 registered to lobby the State Legislature and Executive Branch. As a lobbyist registered to lobby the
5 State Legislature and Executive Branch, Respondent was barred from making contributions to any
6 elected officials and/or candidates running for elected office in the State Legislature or Executive
7 Branch. By paying for refreshments provided at fundraising events for one elected official in the State
8 Legislature and two elected officials in the Executive Branch, Respondent Carney made three non-
9 monetary contributions to public officials she was registered to lobby, in violation of Section 85702 of
10 the Government Code.

11 **CONCLUSION**

12 This matter consists of one count, which carries a maximum possible administrative penalty of
13 Five Thousand Dollars (\$5,000).

14 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
15 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
16 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
17 considers the facts and circumstances of the violation in context of the factors set forth in Regulation
18 18361.5, subdivision (d)(1)-(6): 1) the seriousness of the violations; 2) the presence or lack of intent to
19 deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether
20 the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a
21 pattern of violations; and 6) whether the Respondent, upon learning of a reporting violation, voluntarily
22 filed amendments to provide full disclosure.

23 One of the central purposes of the Act is to strictly regulate the activities of lobbyists and
24 disclose their finances so that improper influences will not be directed at public officials. (Section
25 81002, subd. (b).) Making contributions to elected officials that one is registered to lobby is a serious
26 violation of the Act. Such conduct can result in an elected official making decisions based on the
27 interest of a lobbyist's clients, instead of, and potentially in conflict with, the interests of the public.
28

1 Here, Respondent Carney made three non-monetary contributions totaling approximately
2 \$505.08 to three elected officials for whom she was registered to lobby. Although the Commission has
3 not recently prosecuted any comparable cases with similar facts, these type of violations are serious in
4 nature as the Act directly prohibits contributions from lobbyists to elected state officials to prevent even
5 the appearance of corruption.. However, the circumstances present in this case greatly mitigated the
6 public harm resulting from the violations, which results in the Enforcement Division recommending a
7 fine at the lowest penalty level of \$1,000. Mitigating factors include: (1) the low monetary value of the
8 contributions; (2) the fact that there is no evidence that the elected officials receiving the contributions
9 considered Respondent Carney to be the true source of the contributions; and (3) that the violations were
10 inadvertent. In further mitigation, Manatt concedes that Respondent Carney was acting in accordance
11 with Manatt’s established reimbursement procedure for non-monetary contributions made at political
12 fundraisers. As noted above, Manatt has since abandoned their prior reimbursement procedure and has
13 implemented a new policy prohibiting lobbyists from using their personal funds to advance costs for
14 fundraising events..

15 **PROPOSED PENALTY**

16 After consideration of the factors of Regulation 18361.5, including whether the behavior in
17 question was inadvertent, negligent or deliberate and the Respondent’s pattern of behavior, the
18 imposition of a penalty of One Thousand Dollars (\$1,000) is recommended.

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