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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: MERCURY PUBLIC AFFAIRS Respondent.	FPPC Case No. 16/463 STIPULATION, DECISION AND ORDER

INTRODUCTION

Respondent Mercury Public Affairs ("Mercury") is a lobbying firm. The Political Reform Act (the "Act"),[1] prohibits a lobbying firm from giving a gift valued at over $10 to a State legislator if the lobbying firm lobbies the legislature. The Act also requires a lobbying firm to report all expenses it incurs that benefit a State legislator. Mercury violated the Act by making a gift valued at over $10 to a State senator and failing to report the full amount of an expense that benefited the State senator.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed in 2013.

[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 enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.[2] For this reason, the Act is to be construed liberally to accomplish its purposes.[3] One purpose of the Act is to prevent improper influence by lobbyists over public officials by regulating the activities of lobbyists and requiring disclosure of their financial activity.[4] Another stated purpose of the Act is to provide adequate enforcement mechanisms so the Act will be vigorously enforced.[5]

Gifts by Lobbying Firms

A lobbying firm may not make gifts to a State legislator aggregating more than $10 in a calendar month if the lobbying firm lobbies the legislature.[6] A gift from a lobbying firm to the spouse of an official is considered a gift to the official.[7]

Activity Expenses

An activity expense is an expense incurred or payment made by a lobbying firm that benefits an elected State official, or a member of the immediate family of an elected State official.[8] A lobbying firm must disclose each activity expense incurred by the lobbying firm during a calendar quarter on the lobbying firm's quarterly lobbying report.[9]

SUMMARY OF THE FACTS

Mercury paid for a dinner that occurred in April 2013 that State Senator Ron Calderon and his wife attended. Fabian Nunez, a non-lobbyist partner of Mercury, attended the dinner on behalf of Mercury. Four other persons attended the dinner as well, none of whom were elected officials or associated with Mercury. The total cost of the dinner for the entire group was $1,108.66.

Mercury's lobbying firm report for quarter 2 of the 2013-2014 legislative session filed on July 30,

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[2] § 81001, subd. (h).
[3] § 81003.
[4] §81002, subd. (b).
[5] § 81002, subd. (f).
[6] §86203.
[7] Reg. 18943, subd. (c)(2)(A).
[8] §86111, subd. (a).
[9] §86114, subd. (a)(5).

2013 reported the dinner as an activity expense with a benefit of $100 to Senator Calderon. This amount reflected the approximate cost of Senator Calderon's dinner. It did not include the cost of his wife's dinner. Senator Calderon reported the $100 dinner as a gift from Mercury on his 2013 Annual Statement of Economic Interests.

Mercury was randomly selected for an audit by the Franchise Tax Board ("FTB") for the 2013-2014 legislative session.. The FTB audit identified Mercury's reported over-the-limit gift to Senator Calderon for the cost of his and his wife's dinner, as well as the resulting underreported activity expense, but concluded Mercury was otherwise in substantial compliance with the Act.

VIOLATIONS

Count 1: Gift over the limit

Mercury made a gift valued at $200 to Senator Calderon in violation of section 86203.

Count 2: Failure to fully disclose activity expense

Mercury failed to report as an activity expense on its lobbying firm report for quarter 2 of the 2013-2014 legislative session Senator Calderon's wife's dinner, which had a value of $100, in violation of section 86114, subdivision (a)(5).

PROPOSED PENALTY

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of $5,000 per count and $10,0000 total.

In determining the appropriate penalty for a 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 context of the factors set forth in Regulation 18361.5, subdivision (d): 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 Commission also considers penalties in prior cases involving similar violations. Regarding Count 1, the violation here is analogous to a public official receiving gifts over-the-limit from nonlobbying sources.[10] For instance, *In the Matter of David "Chico" Fuentes*, FPPC No. 12/586, concerned a local elected official who accepted a $1,000 from a towing company. At the time, the gift limit was $420. The gift was given to the official's son but attributed to the official. Upon learning of the gift, the official bought down the gift below the limit and reported the gift on his SEI. The Commission imposed a penalty of $2,000 for the violation on August 21, 2014.

Mercury's $200 gift to Senator Calderon, while not extravagant, significantly exceeded the gift limit. A central purpose of the Act is to prevent improper influence by lobbyists and the Act's strict gift limit on lobbying firms is intended to effectuate that purpose. But like the *Fuentes* case, there was disclosure of the gift to Calderon by Mercury, which significantly reduces the public harm. Further, the fact that Mercury reported half of the gift to Senator Calderon on its lobbying firm report indicates it did not intend to conceal its activity from the public. But since the lobbing firm gift limit is $10, the factor by which Mercury exceeded the gift limit in this case compared to the *Fuentes* case justifies a moderately larger penalty even though the gift had a lower value. Thus, a penalty of $3,000 is recommended for Count 1.

Regarding Count 2, the only recent prior case involving a failure to report activity expenses is *In the Matter of California Correctional Peace Officers Association*, FPPC No. 13/1268. In that case, the respondent, a lobbyist employer, failed to report gifts it made to State legislators as activity expenses on its lobbyist employer reports. The unreported gifts occurred over three reporting periods. The total amounts not reported were approximately $3,400, $2,450, and $18,750. The Commission imposed a penalty $1,500 per report period.

While the violation in Count 2 does not concern a large sum of money, it creates potential for a lobbying firm to exert influence over an elected official. In mitigation, Mercury did report Senator Calderon's dinner as an activity expense but failed to include the value of his wife's dinner. Thus, a penalty of $1,000 is recommended for Count 2.

The total recommended administrative penalty in this case is $4,000.

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[10] See §89503.

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Mercury Public Affairs hereby agree as follows:

1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.

2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent pursuant to Section 83116.

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

5. Respondent agrees to the issuance of the decision and order set forth below. Also, Respondent agrees to the Commission imposing against it an administrative penalty in the amount of $4,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding this matter.

6. If the Commission refuses to approve this stipulation—then this stipulation shall become null and void, and within fifteen business days after the Commission meeting at which the stipulation is rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing

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

7. The parties to this agreement may execute their respective signature pages separately. A copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax or as a PDF email attachment is as effective and binding as the original.

Dated: ___________________

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Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: ___________________

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Lance Olson, Esq.
on behalf of Mercury Public Affairs, Respondent

The foregoing stipulation of the parties "In the Matter of Mercury Public Affairs," FPPC Case No. 16/463 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: ____________________

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Joann Remke, Chair
Fair Political Practices Commission