

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 SACRAMENTO ADVOCACY and
12 CATHERINE BARANKIN,

13 Respondents.

FPPC No. 11/0427

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

22 In this case, Respondents Sacramento Advocacy and Catherine Barankin violated the Political
23 Reform Act as described in Exhibit I, which is incorporated by reference as though fully set forth herein.
24 Exhibit I is a 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 \$22,500 against Respondents Sacramento Advocacy and Catherine Barankin. This penalty is payable to
11 the "General 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 Catherine Barankin, a qualified lobbyist, and Sacramento Advocacy, Ms. Barankin's lobbying firm. Ms. Barankin established Sacramento Advocacy in or around 1977 and Sacramento Advocacy effectively became a lobbying firm in 1981. According to the California Secretary of State's electronic filing system, Respondents have been filing Lobbyist Reports (Form "615") and Reports of Lobbying Firms (Form "625") since, at least, 1995. As is common industry practice, Respondents typically filed the Report of Lobbyist Employer (Form "635") on behalf of each of their clients.

Throughout the 2009/2010 legislative session and the 2011/2012 session to date, Respondents have represented numerous clients in various capacities. Respondents' client list includes: the California Industrial Hygiene Council ("CIHC"; FPPC Case No. 10/0361), California Collaboration for Youth ("CCY"; FPPC Case No. 10/0362), National Administrative Services ("NAS"; FPPC Case No. 10/0365), State Public Affairs Committee – Junior Leagues of California ("SPAC"; FPPC Case No. 10/0366), Wildlife Center of San Diego ("WC"; FPPC Case No. 10/0367), Hollywood Entertainment Museum ("HEM"; FPPC Case No. 10/0370), California State Alliance of YMCA's ("CSAY"; FPPC Case No. 10/0681), and California Coalition for Counselor Licensure ("CCCL"; FPPC Case No. 11/0671).

Respondents failed to timely file nine 615s and 625s from July 1, 2010 through September 30, 2012. The required reports were filed on average 275 days late, eventually reporting a total of \$556,215 for the period. Further, Respondents failed to file their clients' 635s from October 1, 2009 through September 30, 2012, with slight variations from client to client. Respondents have accepted responsibility for these non-filings and the Enforcement Division is submitting separate Default documents for CIHC, CCY, SPAC, WC, and CSAY.

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 Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for July 1, 2010 through September 30, 2010 (Due November 1, 2010), in violation of Government Code Sections 86113, 86114, 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.

- COUNT 2: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for October 1, 2010 through December 31, 2010 (Due January 31, 2011), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 3: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for January 1, 2011 through March 31, 2011 (Due May 2, 2011), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 4: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for April 1, 2011 through June 30, 2011 (Due August 1, 2011), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 5: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for July 1, 2011 through September 30, 2011 (Due October 31, 2011), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 6: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for October 1, 2011 through December 31, 2011 (Due January 31, 2012), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 7: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for January 1, 2012 through March 31, 2012 (Due April 30, 2012), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 8: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for April 1, 2012 through June 30, 2012 (Due July 31, 2012), in violation of Government Code Sections 86113, 86114, 86117, and 84605.
- COUNT 9: Respondent failed to timely file a Lobbyist Report (Form 615) or Report Of Lobbying Firm (Form 625) for July 1, 2012 through September 30, 2012 (Due October 31, 2012), in violation of Government Code Sections 86113, 86114, 86117, and 84605.

**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 \$22,500. A certified 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

“Lobbyist” means any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. (Section 82039, Reg 18239.)

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

Lobbying Firm

“Lobbying firm” means any business entity, including an individual contract lobbyist, which meets either of the following criteria: (1) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist. (2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or administrative action. (Section 82038.5, Reg 18238.5.)

Duty to File Lobbyist Reports

A lobbyist shall complete and verify a periodic report which contains a report of all activity expenses by the lobbyist during the reporting period. (Section 86113.)

Duty to File Lobbying Firm Reports

Lobbying firms shall file periodic reports containing the full name, address, and telephone number of the lobbying firm; the full name, business address, and telephone number of each person who contracted with the lobbying firm for lobbying services, a description of the specific lobbying interests of the person, and the total payments, including fees and the reimbursement of expenses, received from the person for lobbying services during the reporting period; the total amount of payments received for lobbying services during the period; a periodic report completed and verified by each lobbyist in the lobbying firm pursuant to Section 86113; activity expenses incurred by the firm; any political contributions made by the filer; and any other information required by the Commission consistent with the purposes and provisions chapter six of the Act. (Section 86114, Regs 18613 and 18614.) Reports required by Section 86114 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).

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).

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.)

SUMMARY OF THE FACTS

At all relevant times, Respondent Barankin was the owner, lobbyist, and responsible officer for Respondent Sacramento Advocacy. From July 1, 2010 through September 30, 2012, Respondents failed to timely file the required Lobbyist Reports (Form 615) and Reports of Lobbying Firms (Form 625), in violation of Government Code Sections 86113, 86114, 86117, and 84605, as follows:

Count	Form	Reporting Period	Due Date	Actual Filing Date	Days Late	Amount Paid For Lobbying Services
1	615	7/1/10-9/30/10	11/01/2010	11/21/2012	752	N/A
1	625	7/1/10-9/30/10	11/01/2010	07/05/2011	246	\$55,911.14
2	615	10/1/10-12/31/10	01/31/2011	11/21/2012	661	N/A
2	625	10/1/10-12/31/10	01/31/2011	07/05/2011	155	\$72,279.39
3	615	1/1/11-3/31/11	05/02/2011	11/21/2012	570	N/A
3	625	1/1/11-3/31/11	05/02/2011	07/05/2011	64	\$69,380.63
4	615	4/1/11-6/30/11	08/01/2011	08/25/2011	24	N/A
4	625	4/1/11-6/30/11	08/01/2011	11/20/2012	477	\$52,114.78
5	615	7/1/11-9/30/11	10/31/2011	11/20/2012	386	N/A
5	625	7/1/11-9/30/11	10/31/2011	11/20/2012	386	\$60,222.78
6	615	10/1/11-12/31/11	01/31/2012	11/20/2012	294	N/A
6	625	10/1/11-12/31/11	01/31/2012	11/20/2012	294	\$60,427.85
7	615	1/1/12-3/31/12	04/30/2012	11/20/2012	204	N/A
7	625	1/1/12-3/31/12	04/30/2012	11/20/2012	204	\$66,863.22
8	615	4/1/12-6/30/12	07/31/2012	11/20/2012	112	N/A
8	625	4/1/12-6/30/12	07/31/2012	11/20/2012	112	\$58,109.67
9	615	7/1/12-9/30/12	10/31/2012	11/20/2012	20	N/A
9	625	7/1/12-9/30/12	10/31/2012	11/20/2012	20	\$60,905.82

CONCLUSION

This matter consists of nine counts of violating the Act, each of which carry a maximum administrative penalty of five thousand dollars (\$5,000), for a total of \$45,000. (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 to middle range of penalties.

In this matter, Respondents failed to timely file a total of 18 lobbying reports (615s and 625s). Further, as Respondents were also supposed to be filing 635s on behalf of their clients, 59 lobbyist employer reports went unfiled for an average of 250 days after each deadline. As a result, there was no disclosure of over \$500,000 in lobbying activity.

For each report that is not timely filed, the Secretary of State's Office ("SOS") typically sends two letters to the respondent reminding them of their filing obligations. As Respondents' address was the address on file with SOS for each of their clients, SOS also sent non-filer notices to Respondents about each of the clients' non-filings. In total, we have record of 108 letters sent from SOS to Respondents' address reminding them of their obligation to file the 615s, 625s, and 635s as required by the Act. Receiving no response, SOS referred each of the cases to the Enforcement Division. From there, the Enforcement Division then sent at least 36 pieces of correspondence to Respondents regarding their, and their clients, lack of compliance with the Act; 14 of which were sent to Respondents' address via certified mail.

Typically, this level of correspondence would denote a clear knowledge of filing obligations and a blatant disregard for the Commission's enforcement of the Act. However, after contacting Respondent Barankin at home, she contended she had neither heard about a single instance of non-filing nor received a single piece of correspondence from SOS or the Commission. She asserted that, in her 35 years of lobbying, had never had an issue with either SOS or the Commission. She further detailed that her son, Barrett Sizemore, has been responsible for completing and submitting the lobbying reports and receiving incoming mail since her previous office administrator passed away in 2009.

Within 24 hours of this conversation, Respondent Barankin had nearly all of the outstanding filings submitted and was in constant contact with the Enforcement Division in an attempt to rectify the situation. She accepted liability for all of the non-filing issues involving her clients as well. All outstanding reports have now been filed.

Other similar cases regarding failure to timely file lobbying reports in violation of Government Code Sections 86113, 86114, 86117, and 84605 approved by the Commission include:

- *In the Matter of Frank J. Molina and Strategic Solutions Advisors*, FPPC No. 09/0807. Respondents failed to file lobbying firm and lobbyist reports for a period of three years, failing to disclose over \$840,000 worth of lobbying activity, until the non-filing was brought to the attention of the Respondents by the Commission. Additionally, Respondents were responsible by contract and oral agreement to file lobbyist employer reports for several of their clients, but failed to file these reports either, leaving no record of the lobbying activity. Respondent Molina was a sophisticated party with no history of violating the Act. Penalty per relevant count: \$2,500. Approved by Commission November 2011.
- *In the Matter of PS Eco, Inc dba PS Enterprises and Joseph "Rick" Ruiz*, FPPC No.05/0881. Respondent failed to timely file lobbyist reports but were filed after FPPC contact showing no disclosable activity during relevant reporting periods. Penalty per 625: \$2,000. Penalty per 615: \$1,000. Total penalty per relevant count: \$3,000. Approved by Commission December 2008.
- *In the Matter of L. Scott Spahn & Assoc. and Leslie Scott Spahn*, FPPC No. 05/0436. Respondent failed to file paper and/or electronic quarterly lobbying firm reports. Penalty per quarter: \$1,000 for paper and \$1,000 for electronic filing when there was \$0 in lobbying activity during the quarter for a total of \$2,000; and \$1,200 for paper and \$1,200 for electronic filing when there was \$34,574 in lobbying activity during the quarter for a total of \$2,400.

PROPOSED PENALTY

Imposition of an administrative penalty in the amount of two thousand five hundred dollars (\$2,500) per count, for a total penalty of \$22,500, is recommended.