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

12 In the Matter of:

FPPC No. 13/497

13 Broad & Gusman, LLP and Barry Broad

STIPULATION, DECISION, and ORDER

14 Respondents.

15 **STIPULATION**

16 Complainant, the Fair Political Practices Commission, and Respondents Broad & Gusman, LLP
17 and Barry Broad hereby agree that this Stipulation will be submitted for consideration by the Fair
18 Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of Respondents.

22 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
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1 the hearing as a hearing officer, and to have the matter judicially reviewed.

2 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
3 to timely file their Quarter 7 (July 1, 2012 – September 30, 2012) Lobbying Firm Report, in violation of
4 Section 86114 of the Government Code (1 count) as described in Exhibit 1. Exhibit 1 is attached hereto
5 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
6 of the facts in this matter.

7 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
8 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
9 Two Thousand, Five Hundred Dollars (\$2,500). A cashier’s check from Respondents in said amount,
10 made payable to the “General Fund of the State of California,” is submitted with this Stipulation as full
11 payment of the administrative penalty, and shall be held by the State of California until the Commission
12 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
13 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
14 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
15 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
16 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
17 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
18 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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20 Dated: _____ Gary S. Winuk, on Behalf of the Enforcement Division
21 Fair Political Practices Commission

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23 Dated: _____ Barry Broad, individually and on behalf of Broad &
24 Gusman, LLP

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Broad & Gusman, LLP and Barry
3 Broad,” FPPC No. 13/497, including all attached exhibits, is hereby accepted as the final decision and
4 order of the Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____
9 Ann Ravel, Chair
10 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondents are Broad & Gusman, LLP and Responsible Officer for Broad & Gusman, LLP, Mr. Barry Broad. Broad & Gusman, LLP is a Lobbying Firm in California with multiple lobbyists. Respondents failed to timely file their Quarter 7 (July 1, 2012 – September 30, 2012) Lobbying Firm Report (Form 625). The Report was not filed until April 23, 2013, making it 174 days late. The Report included a total of \$220,408.04 in activity for the period.

For the purposes of this Stipulation, Respondents' violation of the Political Reform Act (the "Act")¹ is as follows:

COUNT 1: Respondents failed to timely file a Lobbying Firm Report (Form 625) for July 1, 2012 – September 30, 2012 (Due October 31, 2012), in violation of Government Code Section 86114.

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. The Act therefore establishes a lobbyist employer, lobbying firm and lobbyist reporting system designed to accomplish this purpose of disclosure.

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

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.

business entity receives compensation is for the purpose of influencing legislative or administrative action. Government Code 82038.5.

Duty to File Lobbying Firm Reports

Lobbying firms shall file periodic reports containing all of the following: (1) The full name, address, and telephone number of the lobbying firm. (2) 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. (3) The total amount of payments received for lobbying services during the period. (4) A periodic report completed and verified by each lobbyist in the lobbying firm pursuant to Section 86113. (5) Each activity expense incurred by the lobbying firm including those reimbursed by a person who contracts with the lobbying firm for lobbying services. A total of all activity expenses of the lobbying firm and all of its lobbyists shall be included. Government Code Section 86114

Reports required by Sections 86114 shall be filed during the month following each calendar quarter. The period covered shall be from 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, and except that the period covered shall not include any information reported in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire legislative session to date. Government Code Section 86117.

SUMMARY OF THE FACTS

Respondent Barry Broad is the Responsible Officer for Respondent Broad & Gusman, LLP. Broad & Gusman, LLP has several clients including Comcast Corporation, Medco Health Solutions, Inc., American Bail Coalition, and Jockeys' Guild, Inc. Respondent Broad & Gusman regularly receives over \$200,000 for lobbying services per quarter.

Respondent Broad & Gusman received \$220,408.04 in payments for lobbying services from July 1, 2012 through September 30, 2012.

Despite qualifying as a lobbying firm under the Political Reform Act (the "Act"), Respondents did not file the quarterly reporting statement as a lobbying firm as required from July 1, 2012 through September 30, 2012, and failed to do so until April 23, 2013 (174 days after the required deadline).

COUNT 1

(Failure to File Required Lobbying Firm Report)

Respondents Barry Broad and Broad & Gusman, LLP failed to timely file the required quarterly lobbying firm report for the July 1, 2012 – September 30, 2012 reporting period, in violation of Government Code Sections 86114.

CONCLUSION

This matter consists of 1 count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000) per count.

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 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 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

FACTORS IN AGGRAVATION

The public harm was substantial. In this case, Respondents failed to timely file a required Lobbying Firm statement (Form 625). Once Form 625 was ultimately filed, the activity totaled \$220,408.04 indicating substantial public harm.

FACTORS IN MITIGATION

Respondents have no history of violating the Act. Respondents also filed the late Lobbying Firm Report before intervention by the FPPC.

Recent penalties approved by the Commission concerning violations of Section 86114 include:

In the Matter of Frank J. Molina and Strategic Solutions Advisors, FPPC No. 09/807. In November 2011, the Commission approved fines for \$2,500 per count for failing to timely file twelve quarterly lobbyist and lobbying firm reports for the January 1, 2007 through December 31, 2009 reporting periods.

In the Matter of Sacramento Advocacy, FPPC No. 11/427. In December 2012, the Commission approved fines of \$2,500 per count for failing to file nine consecutive quarterly lobbying reports. In all, over \$500,000 of lobbying activity was not timely reported. The respondents did not cooperate with the investigation, but in the end filed most of the delinquent reports.

In the Matter of Michael Endicott, FPPC No. 11/639. In February 2013, the Commission approved fines of \$3,500 per count for failing to file seven consecutive quarterly lobbying firm reports. In total, over \$72,000 of lobbying activity was not timely reported.

PENALTY

The facts of this case, including the aggravating and mitigating factors discussed above justify imposition of a total administrative penalty of \$2,500.