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

10
11 In the Matter of:

12 **JEFF MILLER**

13 Respondent.

FPPC No. 14/255

14 **STIPULATION, DECISION, AND ORDER**

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16
17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondent Jeff Miller
19 (Respondent) hereby agree that this Stipulation will be submitted for consideration by the Fair Political
20 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 by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondent.

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by receiving
4 a gift arranged by a lobbying firm in violation of Government Code section 86204 all as described in
5 Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
6 Exhibit 1 is a true and accurate summary of the facts in this matter.

7 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
8 Respondent also agrees to the Commission imposing an administrative penalty in the total amount of
9 One Thousand Dollars (\$1,000). Respondent submitted with this Stipulation a cashier's check in said
10 amount, made payable to the "General Fund of the State of California," as full payment of the
11 administrative penalty that shall be held by the State of California until the Commission issues its
12 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
13 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
14 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
15 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
16 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
17 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
18 shall be disqualified because of prior consideration of this Stipulation.

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21 Dated: _____
22 Gary S. Winuk, on behalf of the Enforcement Division
23 Fair Political Practices Commission

24
25 Dated: _____
26 Jeff Miller

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Jeff Miller,” FPPC No. 14/255,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Vice Chair.

5
6 IT IS SO ORDERED.

7
8 Dated: _____ Sean Eskovitz, Vice Chair
9 Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Jeff Miller (“Respondent”) was a state Assembly Member from 2008 to 2012. The Political Reform Act of 1974 (the “Act”)¹ prohibits a state legislator from receiving a gift arranged by a registered lobbyist or lobbying firm. Respondent violated the Act by receiving a gift of tickets to a San Francisco Forty Niners football game that was arranged by a lobbying firm.

For the purposes of this Stipulation, Respondent’s violation of the Act is as follows:

COUNT 1: Respondent knowingly received a gift arranged by lobbying firm Sloat Higgins Jensen & Associates in violation of Section 86204.

SUMMARY OF THE LAW

Gifts by Lobbyists

It is unlawful for a lobbyist, or lobbying firm, to make gifts to a legislator aggregating more than ten dollars in a calendar month, or to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person if the lobbyist or lobbying firm is registered to lobby the legislature. (Sections 86203 and 86201.)

Receiving Unlawful Gifts from Lobbyists

Under Section 86204, it is unlawful for a person to knowingly receive a gift that is arranged by a lobbying firm in violation of Section 86203.

SUMMARY OF THE FACTS

Respondent served in the state Assembly from 2008 through 2012. In November, 2011, Respondent received two tickets to a San Francisco Forty Niners (“Forty Niners”) football game. The Forty Niners gave the tickets to Respondent at no cost. At Respondent’s request, the lobbying firm Sloat Higgins Jensen & Associates arranged the gift by contacting the Forty Niners in order to obtain the tickets for Respondent. At that time, the Forty Niners were a client of Sloat Higgins Jensen & Associates, which was registered to lobby the Assembly. Respondent reported receiving the gift of the tickets from the Forty Niners on his 2011 Statement of Economic Interest.

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 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.

On February 20, 2014, the Fair Political Practices Commission (“Commission”) approved a stipulation, decision and order in which Sloat Higgins Jensen & Associates, and its principal officer Kevin Sloat, admitted to arranging the gift of the tickets from the Forty Niners to Respondent in violation of Section 86203, amongst other violations.

COUNT 1
(Receipt of Unlawful Gift)

Respondent knowingly received a gift from the Forty Niners arranged by lobbying firm Sloat Higgins Jensen & Associates in violation of Section 86204.

CONCLUSION

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

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 Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 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 the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

The Commission has not considered any cases recently involving violations of Section 86203. But receipt of an unlawful gift from a lobbying firm is analogous to a violation of Section 89503 for accepting a gift over the applicable limit. Penalties for accepting a gift over the limit in violation of Section 89503 vary significantly depending on the circumstances. For minor gift violations, a streamline fine of \$200 to \$400 is common. For examples, see *In the Matter of Raymond Buenaventura*, FPPC No. 13/815; *In the Matter of Jean L. Goebel*, FPPC No. 13/1204; and *In the Matter of Michael Kathleen Self*, FPPC No. 13/1203. In each of these cases, the respondent reported receiving the gift over the limit on his/her SEI. The Commission approved streamline stipulations for each of the respondents at its January 16, 2014 meeting.

In more egregious cases, the Commission has imposed penalties of \$2,000 for receiving a gift over the limit. Such a penalty is common in cases where the respondent does not report the gift on his/her SEI, or when the gift resulted in a conflict of interest violation. For example, in May 2013, the Commission imposed fines in two cases involving unreported gifts that exceeded gift limits. *In re Richard Hovden*, FPPC No. 13/239 (“*Hovden*”) and *In re Marc Richardson*, FPPC No. 12/029 (“*Richardson*”) both concerned officials with the Recreation and Parks Department of the City of Santa Rosa who received gifts in the form of free golf rounds and related items from the company that operated a city-owned golf course. Neither respondent

timely reported the gifts on his SEIs, and in both cases the amount of the gifts exceeded the gift limit. Further, in the *Richardson* case, the respondent negotiated a contract extension and an amendment to that contract with the golf course company resulting in a conflict of interest violation. The respondents in *Hovden* and *Richardson* each paid a penalty of \$2,000 for accepting gifts over the limit, amongst other violations. Similarly, *In the Matter of Shaun Coyne*, FPPC No. 12/768 (Commission approved a default decision on February 20, 2014) involved a respondent who received gifts over the limit from a software company who contracted with his agency. Respondent did not timely report the gifts on his SEI. This resulted in a penalty of \$2,000 for accepting gifts over the limit, as well as penalties for failing to disclose the gifts and conflict of interest.

A primary purpose of the Act is the regulation of lobbyists to prevent improper influence on public officials. (Section 81002, subd. (b).) Consistent with this stated purpose, the limits on gifts from lobbyists are more restrictive than the provisions for gifts from other persons because gifts from, or arranged by, a lobbyist/lobbying firm presumably present a greater threat of improper influence. So a fine comparable to the streamline fines mentioned above for violations of Section 89503 is not adequate in this case involving a violation of Section 86204. However, unlike those cases mentioned above where the respondents did not timely report receiving the gift over the limit on their SEIs, Respondent did timely report receiving the tickets from the Forty Niners on his SEI. Therefore, a penalty between the two sets of comparable cases is appropriate.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,000 is recommended.

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