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

10  
11 In the Matter of:

12 AB&I FOUNDRY, A DIVISION OF  
13 MCWANE, INC.,

14 Respondent.

FPPC Case No. 15/74

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
17 Respondent AB&I Foundry, a division of McWane, Inc. hereby agree that this Stipulation will be  
18 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled  
19 meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
21 matter and to reach a final disposition without the necessity of holding an administrative hearing to  
22 determine the liability of Respondent pursuant to Government Code section 83116.

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

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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 as set forth in  
4 Exhibit 1, which is a true and accurate summary of the facts in this matter—and which is incorporated by  
5 reference as though fully set forth herein.

6 Respondent agrees to the issuance of the Decision and Order, which is attached hereto. Also,  
7 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of  
8 \$100,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General  
9 Fund of the State of California—is/are submitted with this Stipulation as full payment of the  
10 administrative penalty described above, and same shall be held by the State of California until the  
11 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the  
12 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business  
13 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by  
14 Respondent in connection with this Stipulation shall be reimbursed to Respondent.

15 Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation  
16 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the

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1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
2 Stipulation.

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5 Dated: \_\_\_\_\_  
6 Galena West, Chief of Enforcement  
Fair Political Practices Commission

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9 Dated: \_\_\_\_\_  
10 Kurt Winter, General Manager, on behalf of Respondent  
AB&I Foundry, a division of McWane, Inc.

11 **DECISION AND ORDER**

12 The foregoing Stipulation of the parties “In the Matter of AB&I Foundry, a division of McWane,  
13 Inc.,” FPPC Case No. 15/74, including all attached exhibits, is hereby accepted as the final decision and  
14 order of the Fair Political Practices Commission, effective upon execution below by the Chair.

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16 IT IS SO ORDERED.

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18 Dated: \_\_\_\_\_  
19 Joann Remke, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

In 2015, proactive efforts by the Enforcement Division detected a pattern of activity that led to the opening of this case—which turned into a joint investigation and prosecution with the City of Oakland Public Ethics Commission.

McWane, Inc. is a large manufacturer of iron water works and plumbing products. One of its divisions is AB&I Foundry, which is headquartered in Oakland, California. For ease of reference, AB&I Foundry, a division of McWane, Inc., simply is referred to as AB&I. (McWane acquired AB&I Foundry in 2006.)

The Political Reform Act (the “Act”)<sup>1</sup> prohibits laundered campaign contributions. This case involves 37 laundered campaign contributions by AB&I through 17 officers/employees (and their spouses) to four Oakland mayoral candidates and two city council candidates from 2012 through 2014. The total amount of these contributions was \$23,900. At the time, Oakland’s local contribution limit was \$700.<sup>2</sup>

This stipulation is related to a separate stipulation, which will be considered by the Oakland Public Ethics Commission on July 5, 2016 (or as soon thereafter as the matter may be scheduled). While the Oakland stipulation involves the penalty to be imposed for AB&I’s violation of the city’s local contribution limit, this FPPC stipulation involves the penalty to be imposed for AB&I’s campaign money laundering.

### SUMMARY OF THE LAW

#### **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.<sup>3</sup> For this reason, the Act is to be construed liberally to accomplish its purposes.<sup>4</sup>

One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully

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<sup>1</sup> 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.

<sup>2</sup> The Oakland Campaign Reform Act includes contribution limits, which are subject to a cost of living adjustment each year by the City Clerk. (Oakland Municipal Code, § 3.12.050.) In 2012 and 2014, the applicable contribution limit was \$700.

<sup>3</sup> Section 81001, subdivision (h).

<sup>4</sup> Section 81003.

informed and improper practices are inhibited.<sup>5</sup> Along these lines, the Act includes a comprehensive campaign reporting system—and the true sources of campaign contributions may not be concealed.<sup>6</sup> Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>7</sup>

### **Prohibition Against Campaign Money Laundering**

No campaign contribution may be made in the name of another person.<sup>8</sup> This prohibition helps keep the public informed as to the actual sources of campaign contributions—and helps to prevent circumvention of campaign contribution limits. When a person makes a contribution on behalf of another, that person’s intermediary relationship with the actual donor must be disclosed to the recipient of the contribution—and the recipient’s campaign filings must disclose both the intermediary and the actual donor.<sup>9</sup>

### **SUMMARY OF THE FACTS**

In connection with Oakland’s 2012 and 2014 elections for city council and mayor, a local contribution limit was in effect, which prohibited AB&I from contributing more than \$700 to each candidate.

However, AB&I circumvented this limit by offering to reimburse certain individuals for making contributions in their own names to various candidates. These individuals—who agreed to serve as undisclosed intermediaries for AB&I—were company officers/employees and their spouses. AB&I collected contribution checks from the intermediaries. Each check was in the amount of \$700 (with only a few exceptions). Each intermediary was fully reimbursed by AB&I for his or her contribution. Generally, after AB&I collected the checks for a particular candidate, the company would provide the checks to the candidate’s committee. Usually, AB&I would include a contribution check of its own, often in the amount of \$700.

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<sup>5</sup> Section 81002, subdivision (a).

<sup>6</sup> Sections 84200, et seq. and 84301.

<sup>7</sup> Section 81002, subdivision (f).

<sup>8</sup> Section 84301.

<sup>9</sup> Section 84302.

In this way, AB&I made approximately 37 contributions in the names of 17 intermediaries to the following six committees (not counting contributions that AB&I made in its own name):

<b>Recipient</b>	<b>Total</b>
De La Fuente for City Council 2012	\$6,300
Joe Tuman for Mayor 2014	\$6,300
Desley Brooks [for City Council 2014]	\$2,100
Re-Elect Mayor Quan 2014	\$2,100
Parker for Oakland Mayor 2014	\$2,500
Kaplan for Oakland Mayor 2014	\$4,600
<b>Total: \$23,900</b>	

Desley Brooks won her election. The other candidates were unsuccessful.

The laundered contributions were reported on campaign statements filed by the candidates. However, the individual intermediaries were reported as the contributors. AB&I was not identified as the actual source of the contributions. AB&I maintains that its employees were unaware of the requirements of the Act.

Kurt Winter, AB&I Foundry’s General Manager, was responsible for approving the advance/reimbursement checks for the intermediaries. Winter maintains that the candidates were not informed about the company’s reimbursements, and no direct evidence was found to establish that the candidates or their agents knew about the reimbursements.

## **VIOLATIONS**

### **Counts 1-20**

The contributions to De La Fuente for City Council 2012 (which are noted in the chart above) consisted of nine separate contributions that were made through nine different intermediaries (Allan Boscacci, Patricia Boscacci, Michael Olvera, Michael Lowe, Dave Robinson, Richard Watson, Kurt Winter, Clifford Wixson, and William Woehlke).

The contributions to the 2014 committees (which are noted in the chart above) consisted of 28 separate contributions that were made through 14 different intermediaries (Sofya Elterman, Zeydi Gutierrez, Robin Henningsen (under “Robin Mangum”), David Janney, Don Keenan, Michael Lowe, Kevin McCullough, Michael Olvera, Monica Perez, Dave Robinson, Nancy Tavares, Richard Watson, Kurt Winter, and Clifford Wixson).

Some intermediaries were involved in both election cycles; others only were involved in one. A total of 17 different intermediaries were involved in both cycles. The number of intermediaries involved in the 2012 cycle (9)—plus the number involved in the 2014 cycle (14)—is 23. For settlement purposes, 20 counts are being charged.

In making these contributions as described above, AB&I committed 20 violations of Section 84301.

### PROPOSED PENALTY

This matter consists of 20 counts. The maximum penalty that may be imposed is \$5,000 per count. Thus, the maximum penalty that may be imposed is \$100,000.<sup>10</sup>

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>11</sup> Additionally, the Commission considers penalties in prior cases with comparable violations.

Making a campaign contribution in the name of another is one of the most serious violations of the Act. It deceives the public as to the true source of contributions, and in this case, Oakland's local contribution limit was circumvented.

Recent stipulations show that the Commission views these types of cases as warranting the maximum penalty of \$5,000 per count. However, where there are significant mitigating circumstances, and where the respondent fully cooperates with the Enforcement Division, the Commission has approved of some flexibility with respect to the number of counts that are charged—relative to the number of contributions made.

For example, *In the Matter of Dakshin Indian Restaurant, LLC, dba Anjappar Chittinad Indian Restaurant*; FPPC Case No. 15/75 (approved Dec. 17, 2015), the Commission considered a campaign money laundering case where a restaurant made contributions in the names of various individuals (who acted as secret intermediaries) to two candidates in a city election where there was a contribution limit of \$250. In this way, 12 contributions totaling \$3,000 were laundered. The stipulation charged six counts, and the Commission approved the maximum penalty of \$5,000 per count—for a total penalty of \$30,000. Mitigating circumstances, which justified charging six counts instead of 12 counts, were noted to include the following:

- ❖ The respondent provided full cooperation when contacted by Enforcement, immediately admitting that the violations occurred and disclosing other violations that were not yet discovered.
- ❖ There was no history of prior violations of the Act.
- ❖ The involved parties were not politically sophisticated.

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<sup>10</sup> See Section 83116, subdivision (c).

<sup>11</sup> Regulation 18361.5, subdivision (d).

- ❖ There appeared to be an absence of intent to deceive the public and a lack of understanding as to the illegality of the reimbursements.

In the current case, AB&I fully cooperated with Enforcement to the same extent that was noted in *Dakshin*. This included immediate admission that the violations occurred—and disclosure of other violations that were not yet discovered.

Also, in the current case, the foundry's General Manager, Kurt Winter, explained that he approved the contributions and reimbursements as part of a community outreach effort. He maintains that he was not trying to deceive the public, and he did not appreciate the illegality of the reimbursements. This is similar to the mitigating circumstances that were noted in *Dakshin*.

However, in other respects, there are less mitigating circumstances in the current case.

For example, AB&I Foundry has some reason to be familiar with campaign finance laws. It was fined \$400 for failure to file a major donor campaign statement in 2000, and it was fined \$1,500 for failure to file a late contribution report in 2002.<sup>12</sup> Also, the foundry is a division of McWane, Inc., which is one of the world's largest manufacturers of iron water works and plumbing products (founded circa 1921). These facts are consistent with a somewhat higher level of political sophistication than was attributed to the restaurant in the *Dakshin* case. However, McWane maintains that it immediately ordered the foundry to stop its practices in 2014 when it learned about the contributions and reimbursements that Winter was approving. Also, McWane conducted its own internal review and shared the results of that review with the Enforcement Division.

Something else to consider is the fact that the violations in the current case were part of a pattern/scheme that took place over two election cycles from 2012 through 2014. Over this span of time, there would have been ample opportunity for the involved parties to consider and reflect upon the propriety of their actions. In contrast, *Dakshin* involved a single election cycle in a single calendar year.

If one count were charged for each contribution in this case, there would be 37 counts with a maximum penalty of \$185,000. This would not be an unreasonable amount to seek at an administrative hearing. However, for settlement purposes, a reduced penalty is warranted—especially considering AB&I's full cooperation with Enforcement as described above.

In the *Dakshin* case, one count was charged for every two laundered contributions. In the current case, 20 counts are being charged for 37 laundered contributions. This is a slightly higher ratio than what was applied in *Dakshin*, which is warranted in light of the differences described above between this case and the *Dakshin* case and the significantly higher amount of laundered contributions that resulted. Also, this number of counts roughly is related to the number of intermediaries that were involved. Charging 20 counts yields a maximum penalty of \$100,000, and this is the agreed upon penalty that is recommended in this case.

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<sup>12</sup> FPPC Case Nos. 01/136 and 02/781.

A higher penalty is not being sought because this is a joint prosecution with the Oakland Public Ethics Commission—and that agency may impose an additional penalty for violation of Oakland’s local contribution limit.

### **CONCLUSION**

For the foregoing reasons, a penalty in the amount of \$5,000 per count is recommended for Counts 1 through 20—for a total administrative penalty in the amount of \$100,000.