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

12 In the Matter of:

13 Brencourt Advisors, LLC

14 Respondents.

FPPC No. 13/0122

STIPULATION, DECISION, and ORDER

15 **STIPULATION**

16 Complainant, the Fair Political Practices Commission, and Respondent Brencourt Advisors, LLC
17 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
18 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 Respondent.

22 Respondent 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 Respondent's 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 Respondent violated the Political Reform Act by failing to
3 timely file required lobbyist employer reports, in violation of Sections 86115, 86117, and 84605 of the
4 Government Code (2 counts) as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by
5 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
6 matter.

7 Respondent agree to the issuance of the Decision and Order, which is attached hereto.

8 Respondent also agree to the Commission imposing an administrative penalty in the total amount of two
9 thousand dollars (\$2,000). A cashier's check from Respondent in said amount, made payable to the
10 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
11 administrative penalty, and 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 stipulate and
16 agree 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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20 Dated: _____ Gary S. Winuk, on Behalf of the Enforcement Division
21 Fair Political Practices Commission

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23 Dated: _____ Richard Bani, on behalf of Brencourt Advisors, LLC
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Brencourt Advisors, LLC,” FPPC No.
3 13/0122, including all attached exhibits, is hereby accepted as the final decision and order of the Fair
4 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: _____

_____ Ann Ravel, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondents are Brencourt Advisors, LLC and its lobbyists Alan J. Andreini and Alan J. Andeini, Jr. Brencourt Advisors employed Andreini and Andreini, Jr. to lobby CalPERS to invest with Brencourt Advisors. Respondents failed to timely and electronically file Reports of Lobbyist Employer (Form 635) and Lobbyist Reports (Form 615), respectively, for Quarters 3 and 4 of the 2011-2012 legislative session. The reports were an average of 57 days late and reported \$125,000 over the two quarters.

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

COUNT 1: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for July 1, 2011 through September 30, 2011 (Due October 31, 2011), in violation of Government Code Sections 86115, 86117, and 84605.

COUNT 2: Respondent failed to timely file a Report of Lobbyist Employer (Form 635) for October 1, 2011 through December 31, 2011 (Due January 31, 2012), in violation of Government Code Sections 86115, 86117, and 84605.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (b), is to regulate the activities of lobbyists and for their finances to be disclosed so 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 Employer

"Lobbyist employer" means any person, other than a lobbying firm, who: (a) Employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or (b) Contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action. Government Code Section 82039.5.

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.

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. Government Code Section 82039.

Duty to File Report of Lobbyist Employer

A lobbyist employer and anyone who directly or indirectly makes payments to influence legislative or administrative action of five thousand dollars (\$5,000) or more in any calendar quarter must file quarterly statements. Government Code Section 86115.

The quarterly statements should contain: the name, business address, and telephone number of the lobbyist employer or other person filing the report; the total amount of payments to each lobbying firm; the total amount of all payments to lobbyists employed by the filer; a description of the specific lobbying interests of the filer; a periodic report completed and verified by each lobbyist employed by a lobbyist employer pursuant to Section 86113; each activity expense of the file; the date, amount, and the name of the recipient of any contribution of one hundred dollars (\$100) or more made by the filer to an elected state officer, a state candidate, or a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support the officer or candidate; the total of all other payments to influence legislative or administrative action including overhead expenses and all payments to employees who spend 10 percent or more of their compensated time in any one month in activities related to influencing legislative or administrative action; any other information required by the commission consistent with the purposes and provisions of this chapter. Government Code Section 86116.

Reporting requirements begin on the first day of the calendar quarter in which the filer registered. Reports must be filed during the month following each calendar quarter.² Government Code Section 86117.

Duty to File Lobbying Reports

A lobbyist shall complete and verify a periodic report which contains: (1) A report of all activity expenses by the lobbyist during the reporting period; and (2) A report of all contributions of one hundred dollars (\$100) or more made or delivered by the lobbyist to any elected state

² 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. California Code of Regulations Section 18116 (a).

officer or state candidate during the reporting period. A lobbyist shall provide the original of his or her periodic report to his or her lobbyist employer or lobbying firm within two weeks following the end of each calendar quarter. Government Section 86113.

Liability of Responsible Officers

Any persons with filing or reporting obligations under the Political Reform Act who violate the Act, purposely or negligently cause any other person to violate the Act, or aid and abet any other person in violation of the Act may be held liable under its provisions. If two or more persons are responsible for any violation, they shall be jointly and severally liable. Government Code Section 83116.5, 91006.

SUMMARY OF THE FACTS

This case was referred to the Fair Political Practices Commission Enforcement Division (FPPC) by the California Secretary of State Political Reform Division (SOS) for failure to electronically file Form 635 Report of Lobbyist Employer, covering April 1, 2012 through June 30, 2012.

After Quarter 5 of the 2011-2012 legislative session, Brencourt and its lobbyists stopped filing required forms. On August 28, 2012 and October 10, 2012, SOS sent written notice to Brencourt that it was in violation of the Political Reform Act because of failure to timely and electronically file. No action has been taken by the FPPC.

Brencourt Advisors, LLC (Brencourt) was a multi-million dollar hedge fund. Brencourt first filed as a Lobbyist Employer in January 2011 for the 2011-2012 session. According to filings for the first five quarters, Brencourt was meeting with an Investment Officer at CalPERS to encourage investment with Brencourt. In September 2012, Brencourt announced it would liquidate its assets and return money to clients, planning to wind down by the end of 2012.

Qtr.	Dates	Due Date	Date Filed	Amount Reported	Days Late
3	July 1, 2011-September 30, 2011	10/31/2011	1/6/2012	\$62,500	67
4	October 1, 2011-December 31, 2011	1/31/2012	3/18/2012	\$62,500	47
Average Days Late					57

COUNTS 1-2

Failure to Timely File Required Lobbyist Employer Reports

Respondents failed to timely file four Reports of Lobbyist Employer (Form 635), covering from July 1, 2011 through December 31, 2011. The required reports were filed on average 57 days late, eventually reporting a total of \$125,000 for the periods.

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count for a total of ten thousand dollars (\$10,000).

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 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.

The Enforcement Division has considered failure to properly report lobbying activity to be a serious violation of the Act as it violates one of its 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 Respondent regarding the amounts and nature of lobbying activity.

Other similar cases regarding a violation of Section 86115, 86117, and 84605 that have recently been approved by the Commission include:

- *In the Matter of Wildlife Center and Lindy O'Leary*, FPPC No.10/367 (Default Decision). Respondent Wildlife Center, a California lobbyist employer, and Respondent O'Leary, Wildlife Center's Responsible Officer, failed to timely file five Lobbyist Employer Reports (Form 635) between October 1, 2009 and December 31, 2010, failing to disclose total payments made for lobbying services in the amount of \$65,910.76, in violation of Government Code Section 86115, 86117, and 84605 (5 counts). **Total Proposed Penalty: \$5,000**
- *In the Matter of Deloitte Consulting LLP*, FPPC No. 10/0506. Respondent Deloitte Consulting LLP, a California lobbyist employer, failed to timely file eight lobbyist Employer Reports (Form 635) between January 1, 2008 and December 31, 2009, failing to disclose total payments made for lobbying services in the amount of \$122,500, in violation of Government Code Section 86115 and 86117 (eight counts). **Total Proposed Penalty: \$8,000**
- *In the Matter of Sullivan Solar Power and Daniel Sullivan*, FPPC No. 12/0834. Respondent Sullivan Solar Power, a California lobbyist employer, and Respondent Daniel Sullivan, Sullivan Solar Power's Responsible Officer, failed to timely file four Lobbyist Employer Reports (Form 635) between October 1, 2011 and September 30, 2012, failing to disclose total payments made for lobbying services in the amount of

\$90,000, in violation of Government Code Section 86115 and 86117 (four counts). **Total Proposed Penalty: \$4,000**

In this case, Respondent failed to timely file two quarterly reports, which disclosed \$125,000 in payments to lobby CalPERS, depriving the public of important information regarding Respondents' amount and nature of lobbying activity.

Aggravating Factors

Brencourt Advisors, LLC was a multi-million dollar hedge fund. Even though Brencourt first registered as a lobbyist employer in 2011, it was otherwise a sophisticated filer with the resources to determine its obligations under the Act. Brencourt spent over \$500,000 in California without fulfilling these obligations, therefore this behavior appears negligent.

\$125,000 spent to influence CalPERS was reported late. CalPERS is responsible for managing the retirement and health benefits for millions of Californians. This makes disclosure of the amount and nature of lobbying activity directed towards CalPERS especially important to the public. Many Californians have a financial interest in where CalPERS makes its investments and disclosure of entities with whom CalPERS might invest is essential for public accountability.

Mitigating Factors

Brencourt Advisors, LLC does not have a history of violations of the Act and the failure to disclose does not appear deliberate or willful.

Recommendation

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$2,000.

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