

1 GARY S. WINUK  
2 Chief of Enforcement  
3 GALENA WEST  
Commission Counsel IV  
**4 FAIR POLITICAL PRACTICES COMMISSION**  
5 428 J Street, Suite 620  
Sacramento, CA 95814  
Telephone: (916) 322-5660

6 Attorneys for Complainant

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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10

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12 In the Matter of ) FPPC No. 11/850  
13 )  
14 CALIFORNIA STRATEGIES LLC, JASON ) STIPULATION, DECISION and  
15 KINNEY, RUSTY AREIAS, AND WINSTON ) ORDER  
16 HICKOX, )  
17 Respondents. )

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19 Complainant Fair Political Practices Commission, and Respondents California Strategies LLC,  
20 Jason Kinney, Rusty Areias, and Winston Hickox agree that this Stipulation will be submitted for  
21 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this  
23 matter as to California Strategies LLC and each of its individual partners and to reach a final disposition  
24 without the necessity of holding an administrative hearing to determine the liability of Respondents,  
25 pursuant to Section 83116 of the Government Code.

26 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
27 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1  
through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,  
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the  
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge  
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondent California Strategies LLC violated the  
5 Political Reform Act by failing to register as a lobbying firm, in violation of Sections 86100, subdivision  
6 (b), and 86101, of the Government Code (1 count); failing to file quarterly lobbying firm reports during  
7 calendar year 2012, in violation of Sections 86114 and 86117 of the Government Code (1 count); and  
8 failing to maintain records to support the information required to be disclosed on lobbying reports, in  
9 violation of Section 86110 of the Government Code (1 count). Respondent Jason Kinney qualified as a  
10 lobbyist but failed to complete and file the Lobbyist Certification Statement, in violation of Section  
11 86100, subdivision (a), of the Government Code (2 counts); and failed to file quarterly lobbyist reports,  
12 in violation of Government Code 86113 (2 counts). Respondent Rusty Areias qualified as a lobbyist in  
13 2012 but failed to complete and file the Lobbyist Certification Statement, in violation of Section 86100,  
14 subdivision (a), of the Government Code (1 count); and failed to file quarterly lobbyist reports, in  
15 violation of Government Code 86113 (1 count). Respondent Winston Hickox qualified as a lobbyist in  
16 2012 but failed to complete and file the Lobbyist Certification Statement, in violation of Section 86100,  
17 subdivision (a), of the Government Code (2 counts); and failed to file quarterly lobbyist reports, in  
18 violation of Government Code 86113 (2 counts). All counts are described in Exhibit 1, which is  
19 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and  
20 accurate summary of the facts in this matter.

21 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
22 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount  
23 of: Respondent California Strategies LLC: Ten Thousand Five Hundred Dollars (\$10,500); Respondent  
24 Jason Kinney: Twelve Thousand Dollars (\$12,000); Respondent Rusty Areias: Six Thousand Dollars  
25 (\$6,000); and Respondent Winston Hickox: Twelve Thousand Dollars (\$12,000). A cashier's check(s)  
26 from Respondents in said amount, made payable to the "General Fund of the State of California," is  
27 submitted with this Stipulation as full payment of the administrative penalty, to be held by the State of  
28 California until the Commission issues its decision and order regarding this matter. The parties agree

1 that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and  
2 within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all  
3 payments tendered by Respondents in connection with this Stipulation shall be reimbursed to  
4 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the  
5 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any  
6 member of the Commission, nor the Executive Director, shall be disqualified because of prior  
7 consideration of this Stipulation.

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10 Dated: \_\_\_\_\_

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12 Gary Winuk, Enforcement Chief,  
on behalf of the  
Fair Political Practices Commission

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15 Dated: \_\_\_\_\_

16 \_\_\_\_\_  
17 Camden S. McFee, on behalf of  
18 Respondent California Strategies LLC

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21 Dated: \_\_\_\_\_

22 \_\_\_\_\_  
23 Jason Kinney, Respondent

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26 Dated: \_\_\_\_\_

27 \_\_\_\_\_  
28 Rusty Areias, Respondent

29 Dated: \_\_\_\_\_

30 \_\_\_\_\_  
Winston Hickox, Respondent

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2                   **DECISION AND ORDER**

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4     The foregoing Stipulation of the parties “In the Matter of California Strategies LLC, Jason  
5     Kinney, Rusty Areias, and Winston Hickox,” FPPC No. 11/850, including all attached exhibits, is  
6     hereby accepted as the final decision and order of the Fair Political Practices Commission, effective  
7     upon execution below by the Chairman.

8                   **IT IS SO ORDERED.**

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10      Dated: \_\_\_\_\_

11                   Ann Ravel, Chair  
12                   Fair Political Practices Commission

## **EXHIBIT 1**

### **INTRODUCTION**

Respondent California Strategies LLC (“Respondent Cal Strategies”) is a full-service public strategy firm dealing with topics including California’s political, regulatory, legislative, and media environment. Respondent Cal Strategies has a sister government relations and advocacy firm, California Strategies & Advocacy LLC (“Cal Advocacy”), which is a registered lobbying firm located in California and shares the same corporate structure. At all relevant times, Respondents Jason Kinney (“Respondent Kinney”), Rusty Areias (“Respondent Areias”), and Winston Hickox (Respondent Hickox”) were partners and principals of Respondent Cal Strategies.

The corporate structure of the two entities is set up so that Cal Advocacy can provide lobbying services required by Respondent Cal Strategies clients and Respondent Cal Strategies can provide expertise needed to advise Cal Advocacy clients on particular topics. In this case, three partners of Cal Strategies qualified as lobbyists under the Political Reform Act (the “Act”)<sup>1</sup> for their actions with relation to three Cal Advocacy clients, causing Cal Strategies to be required to register as a lobbying firm and those three partners to register as lobbyists. In addition, the three partners and the firm were required to file quarterly reports reporting this activity. Despite qualifying as a lobbying firm and lobbyists under the Act, Respondents did not timely register or file quarterly reporting statements as either a lobbying firm or lobbyists as required.

For the purposes of this stipulation, Respondents’ violations of the Act are stated as follows:

#### **Respondent California Strategies LLC** **(Counts 1 - 3)**

- COUNT 1:** Respondent California Strategies LLC failed to register as a lobbying firm for the calendar year 2012 within 10 days of qualifying, in violation of Sections 86100, subdivision (b), and 86101 of the Government Code.
- COUNT 2:** Respondent California Strategies LLC failed to file Reports of Lobbying Firm for the calendar year 2012, in violation of Sections 86114 and 86117 of the Government Code.
- COUNT 3:** Respondent California Strategies LLC failed to maintain the detailed accounts, records, bills, and receipts necessary to prepare and support the information required to be disclosed on lobbying reports for the calendar year 2012, in violation of Section 86110 of the Government Code.

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<sup>1</sup> 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.

**Respondent Jason Kinney**  
**(Counts 4 - 7)**

- COUNT 4:** Respondent Jason Kinney qualified as a lobbyist in 2012 but failed to file the required lobbyist certification statement, in violation of Section 86100, subdivision (a), of the Government Code.
- COUNT 5:** Respondent Jason Kinney failed to file Lobbyist Reports for the calendar year 2012, in violation of Section 86113 of the Government Code.
- COUNT 6:** Respondent Jason Kinney qualified as a lobbyist in 2013 but failed to file the required lobbyist certification statement, in violation of Section 86100, subdivision (a), of the Government Code.
- COUNT 7:** Respondent Jason Kinney failed to file Lobbyist Reports for the calendar year 2013, in violation of Section 86113 of the Government Code.

**Respondent Rusty Areias**  
**(Counts 8 & 9)**

- COUNT 8:** Respondent Rusty Areias qualified as a lobbyist in 2012 but failed to file the required lobbyist certification statement, in violation of Section 86100, subdivision (a), of the Government Code.
- COUNT 9:** Respondent Rusty Areias failed to file Lobbyist Reports for the calendar year 2012, in violation of Section 86113 of the Government Code.

**Respondent Winston Hickox**  
**(Counts 10 - 13)**

- COUNT 10:** Respondent Winston Hickox qualified as a lobbyist in 2012 but failed to file the required lobbyist certification statement, in violation of Section 86100, subdivision (a), of the Government Code.
- COUNT 11:** Respondent Winston Hickox failed to file Lobbyist Reports for the calendar year 2012, in violation of Section 86113 of the Government Code.
- COUNT 12:** Respondent Winston Hickox qualified as a lobbyist in 2013 but failed to file the required lobbyist certification statement, in violation of Section 86100, subdivision (a), of the Government Code.
- COUNT 13:** Respondent Winston Hickox failed to file Lobbyist Reports for the calendar year 2013, in violation of Section 86113 of the Government Code.

## SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (b) is to ensure that the activities and finances of lobbyists are disclosed, so that improper influences are not directed at public officials. To that end, the Act sets forth a legal framework that requires registration and reporting by individuals and entities that make or receive payments for the purpose of influencing legislative or administrative action. “Influencing legislative or administrative action” means supporting, promoting, influencing, modifying, opposing, or delaying any legislative or administrative action. (Section 82032.) “Legislative action” includes the drafting, introduction, consideration, modification, enactment, or defeat of any bill, report, nomination, or other matter by the Legislature. (Section 82037.) “Administrative action” includes the proposal, drafting, development, enactment, or defeat by any state agency of any rule or regulation. (Section 82002.)

### **Lobbying Firm**

One feature of the lobbyist reporting system is that any person who qualifies as a “lobbying firm” is required to file periodic reports containing information about the lobbying activities being conducted. (Section 86114.) Section 82038.5 defines a lobbying firm, in part, as any person where :

“(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.” (Section 82038.5, subd. (a).)

Section 86100 requires lobbying firms to register with the Secretary of State. Section 86101 requires this registration be completed within 10 days of qualifying as a lobbying firm.

Section 86114, subdivision (a), requires registered lobbying firms to file a quarterly report with the Secretary of State, disclosing the firm’s clients, payments received from each client, the firm’s activity expenses, and any contributions of \$100 or more made by the lobbying firm.<sup>2</sup> Sections 86117 and 86118 require lobbying firms to file these reports with the Secretary of State four times per calendar year by the end of the month following each calendar quarter. A lobbying firm may end its filing obligations by filing a termination or withdrawal statement with the Secretary of State.

### **Lobbyist**

Section 82039 defines a “lobbyist” as an individual who receives \$2,000 or more in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal

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<sup>2</sup> Although lobbying firms are responsible for attaching a completed and verified report by each lobbyist in the lobbying firm, since electronic filing became available for lobbyists and lobbying firms in 2010, these forms are filed directly with the Secretary of State’s office electronically.

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 86100, subdivision (a), states that “individual lobbyists shall prepare lobbyist certifications . . . for filing with the Secretary of State as part of the registration of the lobbying firm in which the lobbyist is a partner, owner, officer, or employee or as part of the registration of the lobbyist employer by which the lobbyist is employed.” Section 86103 specifies the lobbyist certification requirements. The requirement is partially met by preparing the Lobbyist Certification Statement and providing it to the lobbying firm for filing with the Secretary of State.

Section 86113, subdivision (a), requires registered lobbyists to complete and verify a quarterly report. This report must contain specified information about the activity expenses of the lobbyist and about contributions of \$100 or more made or delivered by the lobbyist to any elected state officer or state candidate, during the period covered by the report. Lobbyists file these reports with the Secretary of State four times per calendar year by the end of the month following each calendar quarter.

### **Duty to Maintain and Retain Records**

To ensure accurate lobbying reporting, Section 86110 imposes a mandatory duty on each lobbyist, lobbying firm, and lobbyist employer to maintain detailed accounts, records, bills and receipts that are necessary to expedite the performance of all obligations imposed by the Act. This requirement, as further stated by Regulation 18610, includes a duty to maintain “a journal or other form of record showing all activity expenses incurred or paid by the lobbyist and all monetary and non-monetary contributions of \$25 or more made or delivered by the lobbyist to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers.” (Regulation 18610, subd. (a).) Subdivision (b) describes the original source documentation required to be kept for every “activity expense which must be reported by the lobbyist,” which includes receipts, invoices and cancelled checks. Each expenditure’s documentation must include: (1) The full name of the payee; (2) The full name and official position of each elective state official, legislative official, agency official, state candidate or member of the immediate family of one of these individuals who was a beneficiary; (3) The total number of all beneficiaries; (4) A description of the goods or services or other consideration for which the expenditure was made or incurred; (5) The date and total amount of the transaction; and (6) The amount of the expenditure attributable to each beneficiary.”

In addition, all monetary contributions of \$25 or more made or delivered by the lobbyist to state candidates or elected state officers, or made to committees controlled by or primarily formed to support such candidates or officers shall be supported by cancelled checks or other bank records. Records of monetary and non-monetary contributions of \$25 or more must include: (1) The full name of the payee; (2) The full name of the recipient of the contribution if other than the payee; (3) In the case of a non-monetary contribution, a description of the goods or services or other consideration provided; and (4) The amount and date of the contribution. (Regulation 18610, subd. (c).)

## SUMMARY OF THE FACTS

Cal Strategies is a statewide public policy consulting firm, while its affiliated company, Cal Advocacy, is a Sacramento-based lobbying firm. Members of Cal Strategies are frequently retained to work as policy or communications advisors with clients of the affiliated Cal Advocacy firm. During the identified two year period, three partners of Cal Strategies who were retained as policy or communications consultants crossed over the line which separates policy consultants from lobbyists. Consequently, as a result of their actions, three partners of Respondent Cal Strategies received payments from clients of Cal Advocacy to attempt to influence legislative or administrative action over the course of two years. As a result, Respondent Cal Strategies failed to: (1) register as a lobbying firm; (2) file quarterly lobbying firm reports during calendar year 2012; and (3) maintain records to support the information required to be disclosed on lobbying reports. In addition, Respondent Kinney failed to: (1) register as a lobbyist; and (2) file quarterly lobbyist reports during calendar years 2012 and 2013. Respondent Areias failed to: (1) register as a lobbyist; and (2) file quarterly lobbyist reports during calendar year 2012. Respondent Hickox failed to: (1) register as a lobbyist; and (2) file quarterly lobbyist reports during calendar years 2012 and 2013.

### Respondent California Strategies LLC (Counts 1 - 3)

#### COUNT 1 **Failure to Register as a Lobbying Firm**

In part, the lobbying provisions of the Act require an individual who receives \$2,000 or more in economic consideration in a calendar month 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 to register as a lobbyist and file quarterly reports disclosing specified information about their lobbying activities. Section 82038.5 defines a lobbying firm, in part, as any business entity that receives or becomes entitled to receive any compensation 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.” (Section 82038.5, subd. (a).) Respondent Cal Strategies qualified as a lobbying firm when its partners, Respondents Kinney, Areias, and Hickox, qualified as lobbyists under the Act by attempting to influence legislative or administrative action on behalf of clients in 2012. Section 86100 requires lobbying firms to register with the Secretary of State and Section 86101 requires this registration be completed within 10 days of qualifying as a lobbying firm.

Respondent Cal Strategies failed to register in 2012 within 10 days of qualifying as a lobbying firm by filing a Lobbying Firm Registration Statement, in violation of Sections 86100, subdivision (b), and 86101 of the Government Code.

**COUNT 2**  
**Failure to File Reports of a Lobbying Firm**

As a lobbying firm, Respondent Cal Strategies was required to file quarterly Reports of Lobbying Firm with the Secretary of State disclosing the firm's clients, payments received from each client, the firm's activity expenses, and any contributions of \$100 or more made by the lobbying firm for each quarter in calendar year 2012.

Respondent California Strategies LLC failed to file quarterly Reports of Lobbying Firm for the calendar year 2012, in violation of Sections 86114 and 86117 of the Government Code.

**COUNT 3**  
**Failure to Maintain Records**

As a lobbying firm, Respondent Cal Strategies was required to maintain the detailed account, records, bills and receipts necessary to prepare and support the information required to be disclosed on lobbying reports for the calendar year 2012.

Respondent California Strategies LLC failed to maintain records necessary to prepare and support the information required to be disclosed on Reports of Lobbying Firm for the calendar year 2012, in violation of Section 86110 of the Government Code.

**Respondent Jason Kinney**  
**(Counts 4 - 7)**

**COUNTS 4 & 6**  
**Failure to Register as a Lobbyist**

Section 82039 defines a "lobbyist" as an individual who receives \$2,000 or more in a calendar month 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. In 2012 and 2013, Respondent Jason Kinney was paid \$2,000 or more in a calendar month by Focil - MB, Managed by Mission Bay Development Group ("Focil") to provide advice regarding real estate development. During the course of his representation of Focil, Respondent Kinney attempted to influence legislation by communicating directly with members of the California Legislature. As a result, Respondent Kinney qualified as a lobbyist under the Act. As a lobbyist, Respondent Kinney was required to prepare a lobbyist certification for filing with the Secretary of State as part of the registration requirements of the lobbying firm. (Section 86113 subd. (a).)

Respondent Jason Kinney qualified as a lobbyist in 2012 and 2013 but failed to complete and file the Lobbyist Certification Statements, in violation of Section 86100, subdivision (a), of the Government Code (2 counts).

COUNTS 5 & 7  
**Failure to File Lobbyist Reports**

Section 86113, subdivision (a), requires lobbyists to complete and verify a quarterly report. This report must contain specified information about the activity expenses of the lobbyist and about contributions of \$100 or more made or delivered by the lobbyist to any elected state officer or state candidate, during the period covered by the report. Lobbyists file these reports with the Secretary of State four times per calendar year by the end of the month following each calendar quarter. Respondent Kinney failed to file these quarterly reports reporting his lobbying activity on behalf of Focil for the calendar years 2012 and 2013.

Respondent Jason Kinney failed to file quarterly Lobbyist Reports for the calendar years 2012 and 2013, in violation of Section 86113 of the Government Code (2 counts).

Respondent Rusty Areias  
(Counts 8 & 9)

COUNT 8  
**Failure to Register as a Lobbyist**

Section 82039 defines a “lobbyist” as an individual who receives \$2,000 or more in a calendar month 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. In 2012, Respondent Rusty Areias was paid \$2,000 or more in a calendar month by Kaiser Ventures, LLC and its affiliate Kaiser Eagle Mountain, LLC (“Kaiser Eagle Mountain”) to provide advice regarding a mining project. During the course of his representation of Kaiser Eagle Mountain, Respondent Areias attempted to influence legislation by communicating directly with a member of the California Legislature. As a result, Respondent Areias qualified as a lobbyist under the Act. As a lobbyist, Respondent Areias was required to prepare a lobbyist certification for filing with the Secretary of State as part of the registration requirements of the lobbying firm. (Section 86113 subd. (a).)

Respondent Rusty Areias qualified as a lobbyist in 2012 but failed to complete and file the Lobbyist Certification Statement, in violation of Section 86100, subdivision (a), of the Government Code.

COUNT 9  
**Failure to File Lobbyist Reports**

Section 86113, subdivision (a), requires lobbyists to complete and verify a quarterly report. This report must contain specified information about the activity expenses of the lobbyist and about contributions of \$100 or more made or delivered by the lobbyist to any elected state officer or state candidate, during the period covered by the report. Lobbyists file these reports with the Secretary of State four times per calendar year by the end of the month following each calendar quarter. Respondent Rusty Areias failed to file these quarterly

reports reporting his lobbying activity on behalf of Kaiser Eagle Mountain for the calendar year 2012.

Respondent Rusty Areias failed to file quarterly Lobbyist Reports for the calendar year 2012, in violation of Section 86113 of the Government Code.

**Respondent Winston Hickox**  
**(Counts 10 - 13)**

**COUNTS 10 & 12**  
**Failure to Register as a Lobbyist**

Section 82039 defines a “lobbyist” as an individual who receives \$2,000 or more in a calendar month 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. In 2012 and 2013, Respondent Winston Hickox was paid \$2,000 or more in a calendar month by CE2 - Carbon Capital, LLC (“CE2”) to provide advice regarding financing and development of carbon emissions reductions projects. During the course of his representation of CE2, Respondent Hickox attempted to influence administrative action by communicating directly with members of the Air Resources Board. As a result, Respondent Hickox qualified as a lobbyist under the Act. As a lobbyist, Respondent Hickox was required to prepare a lobbyist certification for filing with the Secretary of State as part of the registration requirements of the lobbying firm. (Section 86113 subd. (a).)

Respondent Winston Hickox qualified as a lobbyist in 2012 and 2013 but failed to complete and file the Lobbyist Certification Statements, in violation of Section 86100, subdivision (a), of the Government Code (2 counts).

**COUNTS 11 & 13**  
**Failure to File Lobbyist Reports**

Section 86113, subdivision (a), requires lobbyists to complete and verify a quarterly report. This report must contain specified information about the activity expenses of the lobbyist and about contributions of \$100 or more made or delivered by the lobbyist to any elected state officer or state candidate, during the period covered by the report. Lobbyists file these reports with the Secretary of State four times per calendar year by the end of the month following each calendar quarter. Respondent Winston Hickox failed to file these quarterly reports reporting his lobbying activity on behalf of CE2 for the calendar years 2012 and 2013.

Respondent Winston Hickox failed to file quarterly Lobbyist Reports for the calendar years 2012 and 2013, in violation of Section 86113 of the Government Code (2 counts).

**CONCLUSION**

This matter consists of three counts of violating the Act against Respondent Cal Strategies, four counts of violating the Act against Respondent Kinney, two counts of violating the Act against Respondent Areias, and four counts of violating the Act against

Respondent Hickox, which carry a maximum possible administrative penalty of five thousand dollars (\$5,000) per violation.

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 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 typical penalty for failure to file the necessary lobbying firm and lobbyist documents with the Secretary of State's office varies depending on the circumstances of the case. This activity violates one of the Act's central purposes - 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 Respondents, such as the identity of the person ultimately seeking to influence legislative or administrative action and the amount of money expended by that person to influence such action. The typical administrative penalty for failing to file lobbyist and lobbying firm statements has been in the low to middle range of penalties.

In this matter, Respondent Cal Strategies failed to register as a lobbying firm and Respondents Kinney, Areias and Hickox failed to register as lobbyists over a two year period. During this time, no disclosure of their lobbying activity occurred. Respondents failed to file lobbying firm quarterly reports for the firm and lobbyist quarterly reports for one partner disclosing payments received for lobbying for one year. In addition, two other partners failed to file lobbyist reports for two years. This lack of disclosure continued until the non-filing was brought to the attention of Respondent Cal Strategies by the FPPC and Respondent Cal Strategies hired an external law firm to perform an audit of the firm. Respondents contend that they were under the mistaken belief that all lobbying activity was being performed for each of the three clients through the sister company, Cal Advocacy, which had registered as a lobbying firm for each of the clients.

Respondents failed to disclose \$67,500 of lobbying payments and activity for 2012 and \$16,500 for 2013, depriving the public of information regarding a significant amount of lobbying activity. Respondents are sophisticated parties who have extensive experience working with appointed and elected officials. They are a former Legislator, Cabinet-level official and senior Gubernatorial staffer. Additionally, the firm itself contains numerous former high-ranking government officials. As a result, the firm clearly should have known that such lobbying activity needed to be reported and the firm was required to be registered as a lobbying firm. In mitigation, Respondents have no history of violating the Act, have strengthened internal controls in response to these violations, have revised the current practices of the organization, and cooperated with the FPPC in bringing this matter to a

conclusion. In addition, Cal Advocacy will amend its 2013 lobbying reports to reflect the activities of Respondents Kinney and Hickox.

Failure to Register as a Lobbying Firm and a Lobbyist: Failure to register as a lobbyist and a lobbying firm has only been prosecuted by the Commission once in recent history. In the matter of *Norman Davis*, No. 08/296 (approved by the Commission on August 12, 2010), Respondent failed to register as a lobbyist and a lobbying firm and file three quarterly reports disclosing his activity. His employer timely filed Lobbyist Employer Reports, which both the employer and the Respondent thought was sufficient to meet the requirements. Respondent was fined \$2,500 for the failing to register with an additional fine for his failure to file quarterly reports. In this case, the parties are more sophisticated and should have known that their activities constituted lobbying. In addition, when a firm is not registered as a lobbying firm, there is no increased scrutiny from the public that results from being registered to lobby. Therefore, a fine of \$3,000 is recommended for each individual lobbyist's failure to complete the lobbyist certification requirements to make it known that they were lobbying and a fine of \$4,500 is recommended for Respondent Cal Strategies for the systematic failure in not preventing this undisclosed activity from occurring.

Failure to File Required Lobbying Firm and Lobbyist Reports: The typical penalty for failure to timely file lobbying firm reports varies depending on the circumstances of the case. In the *Frank J. Molina and Strategic Solutions Advisors* case, No. 09/807 (approved by the Commission on November 10, 2011), Respondents failed to file lobbying firm and lobbyist reports for a period of three years not disclosing over \$840,000 worth of lobbying payments and activity and failed to file until the non-filing was brought to the attention of the Respondents by the FPPC. In that case, each report was charged per quarter at a fine of \$2,500 per report for a total fine of \$30,000. Since the current case has less activity but is being charged per year rather than per quarter, a penalty at the higher end of the penalty range in the amount of \$3,000 per count is appropriate.

Failure to Maintain and Retain Lobbying Records: Although there are not any recent examples of violations of recordkeeping requirements for lobbying organizations, a typical administrative penalty for failing to maintain and retain campaign records has been on the low to middle portion of the penalty range, depending on the circumstances. Failing to maintain and retain records makes it difficult to determine the lobbying activity of the entity and ascertain the accuracy of the activity reported. In this matter, Respondent failed to maintain and retain lobbying activity records for 2012. For comparison, a recent fine approved by the Commission was in the *Judith L. Dunlap, et al.* case, No. 10/208 (approved by the Commission on November 10, 2011), Respondents failed to maintain campaign records for multiple committees. In that case, Respondents were fined \$2,000. Lobbyist and lobbying firms' records differ in that separate bank accounts are not kept to permit an auditor to establish what money came in and went out and for what purpose. Without records supporting lobbying activity, a paper trail is difficult to establish. Therefore, the current case where records were not maintained for 2012 justifies a higher fine of \$3,000 as recommended.

## PROPOSED PENALTY

After review of the facts of this case, including consideration of the factors of Regulation 18361.5, and the factors discussed above, it is respectfully submitted that imposition of the following penalties are recommended:

<b>Respondent</b>	<b>Count</b>	<b>Proposed Fine</b>	<b>Total Fine</b>
Respondent California Strategies LLC	Count 1	\$4,500	\$10,500
	Count 2	\$3,000	
	Count 3	\$3,000	
Respondent Jason Kinney	Count 4 & 6	\$3,000 per count	\$12,000
	Count 5 & 7	\$3,000 per count	
Respondent Rusty Areias	Count 8	\$3,000	\$6,000
	Count 9	\$3,000	
Respondent Winston Hickox	Count 10 & 12	\$3,000 per count	\$12,000
	Count 11 & 13	\$3,000 per count	
			\$40,500

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$40,500.

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