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

10
11 In the Matter of:

FPPC Case No. 15/1133

12 NO ON GOVERNMENT WASTE, NO
ON MEASURE B, MAJOR FUNDING
13 BY MANWIN USA; DIANE DUKE;
FROYTAL SERVICES LIMITED; and
14 MINDGEEK USA INCORPORATED
F.K.A. MANWIN USA, INC.

STIPULATION, DECISION AND ORDER

15 Respondents.
16

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents No on Government Waste, No on Measure B, Major Funding by Manwin USA; Diane
20 Duke; Froytal Services Limited; and MindGeek USA Incorporated (formerly known as Manwin USA,
21 Inc.) hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
22 Commission at its next regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
24 matter and to reach a final disposition without the necessity of holding an administrative hearing to
25 determine the liability of Respondents 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 Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to

1 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 As described in Exhibit 1, it is further stipulated and agreed that Respondents were involved in
6 activity that resulted in several violations of the Political Reform Act. Exhibit 1, which is attached hereto
7 and incorporated by reference as though fully set forth herein, is a true and accurate summary of the facts
8 in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
10 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
11 \$61,500, of which Respondents Diane Duke and No on Government Waste, No on Measure B, Major
12 Funding by Manwin USA are jointly and severally liable for \$32,000, Respondent MindGeek USA
13 Incorporated (formerly known as Manwin USA, Inc.) is liable for \$24,500, and Respondent Froytal
14 Services Limited is liable for \$5,000. One or more cashier's checks or money orders totaling said
15 amount—to be paid to the General Fund of the State of California—is/are submitted with this Stipulation
16 as full payment of the administrative penalty described above, and same shall be held by the State of
17 California until the Commission issues its Decision and Order regarding this matter. The parties agree
18 that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and
19 within fifteen business days after the Commission meeting at which the Stipulation is rejected, all
20 payments tendered by Respondents in connection with this Stipulation shall be reimbursed to
21 Respondents.

22 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
23 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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4 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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8 Dated: _____

Diane Duke, individually and on behalf of No on
Government Waste, No on Measure B, Major Funding
by Manwin USA, Respondents

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12 Dated: _____

Andrew Herman, authorized representative of Froytal
Services Limited and MindGeek USA Incorporated
(formerly known as Manwin USA, Inc.), Respondents

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14
15 **DECISION AND ORDER**

16 The foregoing Stipulation of the parties “In the Matter of No on Government Waste, No on
17 Measure B, Major Funding by Manwin USA; Diane Duke; Froytal Services Limited; and MindGeek
18 USA Incorporated f.k.a. Manwin USA, Inc.,” FPPC Case No. 15/1133, including all attached exhibits, is
19 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
20 execution below by the Chair.

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22 **IT IS SO ORDERED.**

23
24 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

This case arose from a sworn complaint that was received by the Commission in July 2015. Previously, this matter came before the Federal Election Commission, but after reaching a deadlock under federal law, that agency closed the case in April 2015. However, this closure had no effect on the applicability of California’s Political Reform Act (the “Act”)¹ in the current case.

In the election held on November 6, 2012, Measure B was approved by the voters of Los Angeles County. The measure requires producers of adult films in Los Angeles County to obtain a public health permit—and the actors are required to use condoms while engaged in sex acts.

During that election year, the committee known as “No on Government Waste, No on Measure B, Major Funding by Manwin USA” was a primarily formed ballot measure committee. Diane Duke was the committee treasurer and principal officer.

Also in 2012, Froytal Services Limited was a foreign business entity incorporated under Cyprus law. Its principal place of business was in Nicosia, Cyprus, and its economic interest was in the adult film industry. (For ease of reference, Froytal Services Limited is referred to as Froytal.)

That same year, Manwin USA, Inc. was incorporated under Delaware law and registered in California as an out-of-state corporation. Its economic interest was in the adult film industry as well. (Currently, Manwin USA, Inc. is known as MindGeek USA, Incorporated—but for ease of reference, it is referred to as Manwin USA.) Manwin USA maintains that its principal place of business was in Burbank, California.

Froytal and Manwin USA both were subsidiaries of Manwin Licensing International S.A.R.L., a Luxembourg-based internet video and online advertising conglomerate, which specialized in pornography. Manwin International was managed by Fabian Thylmann—who also was Froytal’s administrator/corporate officer. At no time was Thylmann a citizen of the United States—nor was he a lawfully admitted permanent resident.

This case involves multiple violations of the Act, including unlawful contributions from foreign principals in connection with a local ballot measure, failure to comply with ballot measure committee name requirements regarding disclosure of the economic interest of major donors of \$50,000 or more, and campaign reporting violations.

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¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

SUMMARY OF THE LAW

The violations in this case occurred in 2012 (and early 2013). For this reason, all legal references and discussions of law pertain to the Act's provisions as they existed at that time.

Prohibition Against Contributions from Foreign Principals in Connection with Ballot Measures

The Act includes restrictions to guard against the influence of foreign money in connection with state and local ballot measures. For example, foreign principals are prohibited from making contributions in connection with the qualification, support of, or opposition to any state or local ballot measure.² Also, the Act prohibits the acceptance of such contributions.³

The definition of "foreign principal" includes any business entity organized under the laws of or having its principal place of business in a foreign country.⁴ Additionally, for purposes of the law, a domestic subsidiary of a foreign corporation is deemed to be a "foreign principal" if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation—who is neither a citizen of the United States nor a lawfully admitted permanent resident of the United States.⁵

Definition of Primarily Formed Ballot Measure Committee

The Act defines a "committee" to include any person who receives contributions totaling \$1,000 or more in a calendar year.⁶ This type of committee commonly is referred to as a recipient committee. A recipient committee that is formed or exists primarily to support or oppose a ballot measure is referred to as a primarily formed ballot measure committee.⁷

Ballot Measure Committee Name Requirements:

Mandatory Disclosure of the Economic Interest of Major Donors of \$50,000 or More

Any primarily formed ballot measure committee must name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major donors of \$50,000 or more in any reference to the committee required by law, including campaign filings and advertisements.⁸ This identification must include any ascertainable economic interest that exists that is likely to be affected by the ballot measure.⁹

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² Section 85320, subdivision (a).

³ Section 85320, subdivision (b).

⁴ Section 85320, subdivision (c)(3).

⁵ Section 85320, subdivision (c)(4).

⁶ Section 82013, subdivision (a).

⁷ Section 82047.5, subdivision (b).

⁸ Section 84504, subdivisions (a) and (c); Regulation 18450.3.

⁹ Regulation 18450.3, subdivision (b)(1).

Definition of Major Donor Committee

Any person who directly or indirectly makes contributions of \$10,000 or more during a calendar year is a major donor committee.¹⁰ (This is not to be confused with the Act's use of similar terminology to describe major donors of \$50,000 or more for purposes of ballot measure committee name requirements, as described above.)

Difference Between Monetary and In-Kind/Non-Monetary Contributions

The most common type of contribution results in the payment of money to a candidate or committee. Such contributions are referred to as "monetary contributions," but sometimes a contribution of goods or services is made to a candidate or committee—rather than an outright payment to the candidate or committee. Such contributions are referred to as "in-kind" or "non-monetary" contributions. The terms "in-kind" and "non-monetary" are interchangeable.¹¹

Mandatory Filing of Late Contribution Reports within 24/48 Hours

At the core of the Act's campaign reporting system is the requirement that committees must file campaign statements and reports for certain reporting periods and by certain deadlines.¹²

For example, each committee that makes or receives a late contribution, must file a late contribution report within 24 hours of making or receiving the contribution.¹³ A "late contribution" includes a contribution aggregating \$1,000 or more that is made to or received by a primarily formed ballot measure committee before an election, but after the closing date of the last campaign statement that was required to be filed before the election.¹⁴ This period of time before the election is referred to as the late contribution reporting period. In connection with the general election that was held on November 6, 2012, the late contribution reporting period was October 21 through November 5, 2012.

In the case of a late contribution that is an in-kind or non-monetary contribution, the normal 24 hour reporting deadline is extended to 48 hours, but only with respect to reporting *receipt* of the contribution; reporting the *making* of such a contribution is subject to the normal 24 hour deadline.¹⁵

As for the place of filing, primarily formed ballot measure committees and major donor committees that are formed to support or oppose a single county ballot measure are required to file their campaign statements and reports with the county elections official.¹⁶

¹⁰ Section 82013, subdivision (c).

¹¹ See Section 84203.3 as compared to Regulation 18421.1, subdivision (f).

¹² Sections 84200, et seq.

¹³ Section 84203, subdivisions (a) and (b).

¹⁴ Section 82036.

¹⁵ Sections 84203, subdivisions (a) and (b); and 84203.3, subdivision (b).

¹⁶ Sections 82027.5, subdivisions (a) and (c); and 84215, subdivision (c).

Mandatory Reporting of Contributions and Expenditures

Campaign statements are required to disclose certain information about receipts and expenditures, including the following information regarding contributions that are received:¹⁷

- ❖ the total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received;
- ❖ the total amount of contributions received during the period from persons who gave a cumulative amount of \$100 or more, along with the following additional information about each such contributor:
 - the contributor's full name;
 - his or her street address;
 - his or her occupation;
 - the name of his or her employer, or if self-employed, the name of the business;
 - the date and amount received for each contribution received during the period, and if the contribution is a loan, the interest rate for the loan; and
 - the cumulative amount of contributions.

The above disclosure requirements pertain to campaign statements. For contributions of \$1,000 or more that are made or received during the late reporting period (which was the last 16 days before the election in 2012), a different type of filing, known as a late contribution report, is required. With respect to the required contents of late contribution reports, committees that make or receive late contributions must report as follows:¹⁸

- ❖ The recipient must report:
 - his or her full name and street address;
 - the date and amount of the late contribution;
 - whether the contribution was made in the form of a loan;
 - the full name of the contributor; and
 - the contributor's street address, occupation, and the name of the contributor's employer, or if self-employed, the name of the business.
- ❖ The contributor must report:
 - his or her full name and street address;
 - the full name and street address of the recipient;
 - the ballot measure number or letter if the recipient is a committee primarily formed to support or oppose a ballot measure; and

¹⁷ Section 84211, subdivisions (a), (c) and (f).

¹⁸ Section 84203, subdivision (a).

- the date and amount of the late contribution.

Joint and Several Liability of the Committee, Treasurer, and Principal Officer

It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁹ Also, the principal officer of a committee bears primary responsibility for approval of the political activity of the committee.²⁰ The treasurer and principal officer may be held jointly and severally liable, along with the committee, for violations committed by the committee.²¹

SUMMARY OF THE FACTS

Measure B was approved by Los Angeles County voters on November 6, 2012 (when it received approximately 56.96% of the vote). It requires producers of adult films in Los Angeles County to obtain a public health permit—and the actors are required to use condoms while engaged in sex acts.

That year, the No on B committee was a primarily formed ballot measure committee. Duke was the committee treasurer and principal officer.

Also in 2012, Froytal was a foreign business entity incorporated under Cyprus law. Its principal place of business was in Nicosia, Cyprus, and its economic interest was in the adult film industry.

That same year, Manwin USA was incorporated under Delaware law and registered in California as an out-of-state corporation. Its economic interest was in the adult film industry as well, and Manwin USA maintains that its principal place of business was in Burbank, California.

Froytal and Manwin USA were subsidiaries of Manwin International, a Luxembourg-based internet video and online advertising conglomerate, which specialized in pornography. Manwin International was managed by Thylmann—who also was Froytal's administrator/corporate officer. At no time was Thylmann a citizen of the United States—nor was he a lawfully admitted permanent resident.

On or about September 13, 2012, Froytal made a contribution in the amount of \$75,000 to the No on B committee.

On or about October 10, 2012, Duke and the No on B committee filed a pre-election campaign statement for the reporting period of January 1 through September 30, 2012. However, in the filing, they failed to report that Froytal was the true source of the contribution; rather, they reported that Manwin USA was the true source of the contribution. By the end of the reporting period, the committee had spent nearly all of its available funds, including the contribution from Froytal.

¹⁹ Sections 81004, 84100, and Regulation 18427.

²⁰ Regulation 18402.1.

²¹ Sections 83116.5 and 91006.

On or about October 15, 2012, a consultant for the No on B committee by the name of Sue Burnside sent an email to Duke. The subject of the email was: “Donation from Manwin,” and the email read:

Okay the lawyer did not hesitate for one moment!

Even if the parent company is abroad, as long as they have a USA company and that is where the check come [sic] from we are 100% legal.

If it actually came from the parent company we can return the check or in this case the money and get a check from a USA company. . . .

(When asked which lawyer she spoke with, Burnside could not recall.)

The next day, on or about October 16, 2012, Manwin USA made a contribution to the No on B committee in the amount of \$150,000. By virtue of making this contribution, Manwin USA became a major donor committee with filing obligations.

Duke and the No on B committee then refunded \$75,000 to Froytal, and on or about October 26, 2012, they amended the last campaign filing to reflect that the true source of the contribution in the amount of \$75,000 was in fact Froytal—not Manwin USA.

Thereafter, Manwin USA made the following additional contributions to the No on B committee:

Date	Amount	Description
10/29/12	\$1,400.00	non-monetary contribution (bus rental deposit)
10/29/12	\$6,225.00	non-monetary contribution (bus rental balance)
10/30/12	\$30,000.00	monetary contribution
10/31/12	\$50,000.00	monetary contribution
11/01/12	\$7,068.75	non-monetary contribution (bus wrap opposing Measure B)
11/02/12	\$360.00	non-monetary contribution (bus rental additional cost)
11/02/12	\$339.26	non-monetary contribution (bus wrap additional decal)
11/05/12	\$22,000.00	monetary contribution
11/06/12	\$900.00	non-monetary contribution (additional costs relating to bus rental and wrap)

The total amount contributed by Manwin USA to the No on B committee in 2012 was approximately \$268,293. This was in addition to the initial sum of \$75,000 that was contributed by Froytal (but later refunded).

As of the end of 2012, total reported receipts and expenditures for the No on B committee were approximately \$716,868 and \$694,437, respectively. The committee terminated in 2013.

VIOLATIONS

Counts 1-11: Making and Acceptance of Unlawful Contributions from Foreign Principals in Connection with a Ballot Measure

For purposes of this settlement, it is undisputed that Froytal was a foreign principal because it was a corporation organized under the laws of Cyprus—with a principal place of business in Nicosia, Cyprus.²² Also, it is undisputed that Manwin USA was a foreign principal (under Section 85320) as well. It was a domestic subsidiary of Manwin International, a Luxembourg-based conglomerate, which was managed by Thylmann—who also was Froytal’s administrator/corporate officer. At no time was Thylmann a citizen of the United States—nor was he a lawfully admitted permanent resident. However, he was the primary decision maker with respect to the contributions that are at issue in this case.²³

Count 1: Froytal’s \$75,000 Contribution of September 13, 2012

As noted above, on or about September 13, 2012, Froytal, a foreign principal, made a contribution in the amount of \$75,000 to the No on B committee—in violation of Section 85320, subdivisions (a) and (c), which prohibit the making of contributions by foreign principals in connection with ballot measures.

Count 2: Manwin USA’s \$150,000 Contribution of October 16, 2012

As noted above, on or about October 16, 2012, Manwin USA, a foreign principal (under Section 85320 by virtue of the fact that Thylmann, a foreign national, participated in the decision), made a contribution to the No on B committee in the amount of \$150,000—in violation of Section 85320, subdivisions (a) and (c), which prohibit the making of contributions by foreign principals in connection with ballot measures.

Count 3: Manwin USA’s \$30,000 Contribution of October 30, 2012

As noted above, on or about October 30, 2012, Manwin USA, a foreign principal (under Section 85320 by virtue of the fact that Thylmann, a foreign national, participated in the decision), made a contribution to the No on B committee in the amount of \$30,000—in violation of Section 85320, subdivisions (a) and (c), which prohibit the making of contributions by foreign principals in connection with ballot measures.

Count 4: Manwin USA’s \$50,000 Contribution of October 31, 2012

As noted above, on or about October 31, 2012, Manwin USA, a foreign principal (under Section 85320 by virtue of the fact that Thylmann, a foreign national, participated in the decision), made a contribution to the No on B committee in the amount of \$50,000—in violation

²² See Section 85320, subdivision (c)(3), which provides that a “foreign principal” includes any business entity organized under the laws of *or* having its principal place of business in a foreign country.

²³ See Section 85320, subdivisions (c)(3) and (4).

of Section 85320, subdivisions (a) and (c), which prohibit the making of contributions by foreign principals in connection with ballot measures.

Count 5: Manwin USA's \$22,000 Contribution of November 5, 2012

As noted above, on or about November 5, 2012, Manwin USA, a foreign principal (under Section 85320 by virtue of the fact that Thylmann, a foreign national, participated in the decision), made a contribution to the No on B committee in the amount of \$22,000—in violation of Section 85320, subdivisions (a) and (c), which prohibit the making of contributions by foreign principals in connection with ballot measures.

Count 6: Manwin USA's Non-Monetary Contributions of \$16,293

As noted above, between approximately October 29 and November 6, 2012, Manwin USA, a foreign principal (under Section 85320 by virtue of the fact that Thylmann, a foreign national, participated in the decision), made approximately six non-monetary contributions to the No on B committee, which totaled approximately \$16,293. These contributions were for expenses relating to a bus rental and a political wrap opposing Measure B. In this way, Manwin USA violated Section 85320, subdivisions (a) and (c), which prohibit the making of contributions by foreign principals in connection with ballot measures.

Count 7: Acceptance of Froytal's \$75,000 Contribution of September 13, 2012

Regarding the contribution from a foreign principal that is the subject of Count 1, Duke and the No on B committee accepted the contribution on or about September 13, 2012—in violation of Section 85320, subdivision (b), which prohibits the acceptance of contributions from foreign principals in connection with ballot measures.

Count 8: Acceptance of Manwin USA's \$150,000 Contribution of October 16, 2012

Regarding the contribution from a foreign principal that is the subject of Count 2, Duke and the No on B committee accepted the contribution on or about October 16, 2012—in violation of Section 85320, subdivision (b), which prohibits the acceptance of contributions from foreign principals in connection with ballot measures.

Count 9: Acceptance of Manwin USA's \$30,000 Contribution of October 30, 2012

Regarding the contribution from a foreign principal that is the subject of Count 3, Duke and the No on B committee accepted the contribution on or about October 30, 2012—in violation of Section 85320, subdivision (b), which prohibits the acceptance of contributions from foreign principals in connection with ballot measures.

Count 10: Acceptance of Manwin USA's \$50,000 Contribution of October 31, 2012

Regarding the contribution from a foreign principal that is the subject of Count 4, Duke and the No on B committee accepted the contribution on or about October 31, 2012—in violation

of Section 85320, subdivision (b), which prohibits the acceptance of contributions from foreign principals in connection with ballot measures.

Count 11: Acceptance of Manwin USA's \$22,000 Contribution of November 5, 2012

Regarding the contribution from a foreign principal that is the subject of Count 5, Duke and the No on B committee accepted the contribution on or about November 5, 2012—in violation of Section 85320, subdivision (b), which prohibits the acceptance of contributions from foreign principals in connection with ballot measures.

Count 12: False Reporting of the True Source of a Contribution

Regarding the contribution from Froytal that is the subject of Count 1, Duke and the No on B committee reported the contribution on a pre-election campaign statement for the reporting period of January 1 through September 30, 2012, which was filed on or about October 10, 2012. However, in the filing, they failed to report that Froytal was the true source of the contribution; rather, they reported that Manwin USA was the true source of the contribution. In this way, Duke and the No on B committee violated Section 84211, subdivision (f), which requires identification of the actual sources of contributions.

Count 13: Non-Disclosure of Economic Interest of Major Donors

As noted above, on or about September 13, 2012, Froytal made a contribution in the amount of \$75,000 to the No on B committee. Due to the size of this contribution, after the contribution was made, the No on B committee was required to change its name and identify itself using a name or phrase that clearly identified the economic interest of Froytal. The economic interest of Froytal was the adult film industry. However, Duke and the committee never changed the committee name to reflect this economic interest (nor identify Froytal as a major donor). The closest they came was on or about October 5, 2012, when they changed the name of the committee (with the filing of a statement of organization) from “No on Government Waste” to “No on Government Waste, No on Measure B, major funding by Manwin USA.” (The Enforcement Division received a sworn complaint regarding the No on B committee’s failure to disclose Froytal as a major donor. The committee was advised that since the contribution was returned, the Enforcement Division would not look into the issue further at that time, but the committee should be aware of the rules.)

There were three problems with this name change. First, the phrase, “major funding by Manwin USA,” was incorrect because Manwin USA had not made any contributions to the committee at the time of the name change. Rather, as noted in Count 12, the committee’s major financial backer—at first—was Froytal. Second, even though this problem was cured when Froytal’s contribution was refunded and Manwin USA became the committee’s major financial backer (beginning on or about October 16, 2012, when Manwin USA proceeded to provide over 38% of the funding for the committee), the committee name still did not reflect that the committee was receiving “major funding from the adult film industry,” as required by law. (The economic interests of both Froytal and Manwin USA were in the adult film industry.) Third, this error regarding the committee name carried over into its advertising disclosures, and the

committee spent hundreds of thousands of dollars on advertisements, including radio and television.

In this way, Duke and the No on B committee violated Section 84504, subdivisions (a) and (c), which require ballot measure committees to be named and to identify themselves using a name or phrase that clearly identifies the economic or other special interest of their major donors of \$50,000 or more.

Counts 14-16: Failure to File Late Contribution Reports

Count 14: Making of Non-Monetary Contributions (\$16,293) During Late Reporting Period

Regarding Manwin USA's non-monetary contributions to the No on B committee during the late reporting period (totaling approximately \$16,293), which are the subject of Count 6, Manwin USA was required to report the making of these contributions by filing late contribution reports within 24 hours, but it failed to do so—in violation of Section 84203, subdivisions (a) and (b).

Count 15: Receipt of Non-Monetary Contributions (\$16,293) During Late Reporting Period

Regarding Manwin USA's non-monetary contributions to the No on B committee during the late reporting period (totaling approximately \$16,293), which are the subject of Count 14, Duke and the No on B committee were required to report receipt of these contributions by filing late contribution reports within 48 hours, but they failed to do so—in violation of Sections 84203, subdivisions (a) and (b), and 84203.3, subdivision (b).

Count 16: Making of Contribution (\$22,000) of November 5, 2012

Regarding Manwin USA's contribution in the amount of \$22,000 to the No on B committee on or about November 5, 2012, which is the subject of Count 5, Manwin USA was required to report the making of this contribution by filing a late contribution report within 24 hours, but it failed to do so—in violation of Section 84203, subdivisions (a) and (b).

PROPOSED PENALTY

This matter consists of 16 counts. The maximum penalty that may be imposed is \$5,000 per count.²⁴ (Count 13 is a notable exception, which is discussed in more detail below.) Thus, the maximum penalty that may be imposed is \$80,000.

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

²⁴ See Section 83116, subdivision (c).

pattern; and (e) whether the violator has a prior record of violations.²⁵ Additionally, the Commission considers penalties in prior cases with similar violations.

Counts 1 through 11 involve violations of Section 85320. This statute prohibits the making of contributions by foreign principals in connection with state and local ballot measures, and it prohibits the acceptance of such contributions.

There are no known prosecutions of Section 85320. This appears to be a case of first impression, but these types of violations are serious—with great potential for public harm. California’s ballot measure process is a powerful means of shaping California law, and it is designed to serve the interests of the people of California—not the interests of foreign principals.

Regarding Counts 1 and 7 (which involved the making and acceptance of an unlawful contribution from Froytal in the amount of \$75,000), Duke and the No on B committee improperly reported that Manwin USA—and not Froytal—was the true source of the contribution. Whereas Froytal clearly appeared to be a foreign principal because of its foreign address in Cyprus, Manwin USA appeared not to be a foreign principal because it was a domestic subsidiary in the United States. The misidentification of the actual donor helped obscure violation of Section 85320. (However, the improper reporting was corrected with an amendment that was filed approximately 11 days before the election.)

Also, this was aggravated by the committee name change. In this regard, prior to receiving the contribution from Froytal that is the subject of Counts 1 and 7, the No on B committee was named “No on Government Waste.” On October 5, 2012, the committee changed its name on its filings to “No on Government Waste, No on Measure B, major funding by Manwin USA.” However, at that time, the committee had not received any contributions from Manwin USA. Rather, the major funding was from Froytal. Manwin USA did not become a major source of funding until later in October (which also is when the committee refunded Froytal’s contribution).

Duke maintains that she mistakenly viewed Froytal and Manwin USA as the same company. She was familiar with Froytal because it had paid membership fees to the Free Speech Coalition (Duke’s employer) on behalf of Manwin USA—and she was accustomed to treating Manwin USA as the member, even when Froytal paid the fees. Furthermore, there is no evidence that Duke or the committee intended to conceal the involvement of a foreign principal. Rather, this mistake appears to have been something less than deliberate concealment—albeit more than an inadvertent oversight. Nevertheless, the misreporting deprived the public of information regarding the actual source of the contribution. Under these circumstances, and in light of the relatively sizable amount of the contribution (more than 10% of the No on B committee’s reported receipts for the year), a penalty in the amount of \$5,000 per count is warranted for Counts 1 and 7.

²⁵ Regulation 18361.5, subdivision (d).

Regarding Counts 2 through 4 and 8 through 10, the contributions from Manwin USA to the No on B committee properly were reported, and there is no evidence of concealment. Also, there is evidence to suggest that the parties were attempting to comply with California law by refunding the initial contribution to Froytal—and by thereafter accepting contributions from a domestic subsidiary. Additionally, Manwin USA was a domestic subsidiary, had interests in the outcome of the election, and Manwin USA maintains that it could have contributed in the absence of the involvement of Thylmann—who has since left the company. For these reasons, a reduced penalty in the amount of \$3,500 per count is recommended for Counts 2 through 4 and 8 through 10.

Counts 5 and 11 involve a contribution from Manwin USA in the amount of \$22,000, which comprised less than 4% of the No on B committee's reported receipts that year. In most respects, the circumstances relating to Counts 5 and 11 are similar to the circumstances relating to Counts 3, 4, 9, and 10. However, there is one notable exception, which justifies a higher penalty. The public was deprived of some disclosure around the time of the election because Manwin USA failed to report the making of the contribution on a late contribution report (although Duke and the No on B committee did report receipt of the contribution on a late contribution report). Under these circumstances, a penalty in the amount of \$4,500 per count is recommended for Counts 5 and 11.

Count 6 involves non-monetary contributions from Manwin USA in the amount of \$16,293, which comprised less than 3% of the No on B committee's reported receipts that year. These contributions were required to be reported on late contribution reports filed before the election by both Manwin USA and the No on B committee, but they were not. Also, although Manwin USA did report them on its 2012 year-end semi-annual filing, Duke and the No on B committee failed to do so. For these reasons, a penalty in the amount of \$5,000 is recommended for Count 6.

Regarding Count 12 (false reporting of the true source of a contribution), the public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding political contributions and expenditures. The harm is even greater when the public is deprived of information before an election that has the potential to affect how votes are cast. Recently, the Commission approved a settlement that imposed the maximum penalty for this type of violation. See *In the Matter of Reginald Byron Jones-Sawyer Sr. and Reginald Jones-Sawyer for Assembly 2012*, FPPC Case No. 14/22 (approved Jun. 19, 2014), where a penalty in the amount of \$5,000 was imposed against a candidate for the California State Assembly who falsely reported that he was the source of a personal loan in the amount of \$50,000 to his own committee—when in fact, his significant other was the true source of funds. In that case, and in the current case, the false reporting occurred on a campaign statement that was filed before the election. In both cases, the false reporting concealed related violations—circumvention of campaign contribution limits in the comparable case discussed above, and circumvention of Section 85320's prohibition against contributions from foreign principals in the current case. However, in the current case, Duke and the No on B committee filed an amendment before the election to correct the reporting error. Also, they refunded the money to Froytal before the election (albeit after spending most of it). Under these circumstances, a reduced penalty in the amount of \$4,500 for Count 12 is warranted.

Count 13 involves failure to disclose—as part of the No on B committee name—that the adult film industry provided major funding for the committee. The obligation to change the committee name in this regard arose on or about September 13, 2012, when the committee accepted \$75,000 from Froytal. From that point forward, the name of the committee for purposes of all campaign statements, reports, and advertisement disclosures should have reflected that the committee received major funding from the adult film industry. However, this disclosure never was provided, and the public was deprived of important, time-sensitive information that it was entitled to have before the election.

There are different ways to charge for this type of violation. One way would be to charge a separate count for each campaign statement, report, and advertisement where the wrong committee name was used. In this regard, the Act provides that administrative fines may be imposed for up to three times the cost of each advertisement, including placement costs.²⁶ Another way would be to charge a single count in recognition of the fact that the other potential counts flow from a single mistake.

Recently, the Commission approved a settlement imposing a penalty in the mid-range for multiple advertising disclosure violations that were charged as a single count. See *In the Matter of Yes on Prop. 47, Californians for Safe Neighborhoods and Schools, Sponsored by Vote Safe, a Project of the Advocacy Fund*, FPPC Case No. 14/1204 (approved Nov. 20, 2014), where a penalty in the amount of \$2,500 was imposed against a ballot measure committee that failed to disclose its name and its two highest donors of \$50,000 or more in two video advertisements. The stipulation noted that the maximum penalty that could be imposed was \$5,000 per count, and the cost of the advertisements was not taken into account for purposes of seeking treble damages.

Also, the Commission approved a settlement imposing a similar penalty *In the Matter of Southern California Taxpayers Association, Sponsored by and with Major Funding from Milan REI IV, LLC, Barrett Garcia, and Ann Garrett*, FPPC Case No. 12/782 (approved Nov. 20, 2014). In that case, a ballot measure committee paid for 750 lawn signs, but the signs did not include the required “paid for by” language. Although it was noted that the maximum penalty could be as high as \$23,089 (three times the cost of the signs)—treble damages were found to be excessive, and a penalty of \$2,500 was imposed.

Additionally, *In the Matter of Yes on Proposition B*, FPPC Case No. 10/932 (approved Jan. 28, 2011), a ballot measure committee failed to provide written “paid for by” language in a television advertisement for a sufficient length of time, and the committee name did not include the economic or other special interest of the top two major donors to the committee. Treble damages were deemed to be inappropriate, and applying the more commonly used maximum penalty of \$5,000 per count, the Commission imposed a penalty in the amount of \$2,000 against the committee.

In the current case, the committee spent hundreds of thousands of dollars on radio and television advertisements. For settlement purposes, treble damages would be excessive—

²⁶ Section 84510.

especially considering that the committee terminated in 2013, this was a 2012 election, the committee lost (when the ballot measure passed), and the parties are cooperating by agreeing to an early settlement and readily providing information. Also, Count 13 does not involve a complete omission of information about the No on B committee's major financial backer. After Froytal's contribution was refunded and Manwin USA made its first sizable contribution (of \$150,000 in mid-October), the committee name of "No on Government Waste, No on Measure B, Major Funding by Manwin USA" was inclusive of all the required information except the disclosure that Manwin USA's economic interest was the adult film industry. The comparable cases discussed above involved advertising violations where it was difficult or impossible to tell which committee paid for the advertisements—whereas here, you could identify the committee, and the major funder, but not the economic interest. Under these circumstances, instead of imposing treble damages, a penalty in the amount of \$5,000 is recommended for Count 13.

Counts 14 through 16 involve failure to file late contribution reports. As noted above (for Count 12), the public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding political contributions and expenditures. The harm is even greater when the public is deprived of information before an election, such as the contents of late contribution reports, because such information has the potential to affect how votes are cast.

Recently, the Commission approved a settlement that imposed a penalty in the mid-range for this type of violation. See *In the Matter of Salud O. Carbajal, Salud Carbajal for Supervisor 2012, and David Peri, Treasurer*, FPPC Case No. 14/851 (approved Apr. 16, 2015), where a penalty in the amount of \$2,000 per count was imposed against a candidate for county supervisor who failed to timely file three different late contribution reports. (The contributions in question totaled approximately \$5,000 for the first report, \$5,500 for the second report, and \$1,000 for the third.)

In the current case, a higher penalty is warranted for Counts 14 and 15 because they involved more money and the contributions were spread out over multiple days, which means multiple reports were required to be filed. However, in the case of Count 16, even though more money was involved, a higher penalty is not warranted because receipt of the contribution was timely reported before the election by the No on B committee—so there was at least some disclosure for the public. For this reason, a penalty in the amount of \$2,500 per count is recommended for Counts 14 and 15—and a penalty in the amount of \$2,000 is recommended for Count 16.

The total recommended penalty for Counts 1 through 16 is \$61,500. A higher penalty is not being sought (and civil prosecution is not being recommended) because:

- the parties do not have a history of prior violations of the Act;
- they are cooperating with the Enforcement Division by agreeing to an early settlement in a case that otherwise would require extensive litigation/discovery in other countries;
- the No on B committee terminated in 2013; and
- this was a 2012 election, and the committee lost when the ballot measure passed.

CONCLUSION

For the foregoing reasons, the following agreed upon penalty is recommended:

Count	Description	Statute	Respondents	Penalty
1	Unlawful Contribution by Foreign Principal	85320(a) and (c)	Froytal	\$5,000
2	Unlawful Contribution by Foreign Principal	85320(a) and (c)	Manwin USA	\$3,500
3	Unlawful Contribution by Foreign Principal	85320(a) and (c)	Manwin USA	\$3,500
4	Unlawful Contribution by Foreign Principal	85320(a) and (c)	Manwin USA	\$3,500
5	Unlawful Contribution by Foreign Principal	85320(a) and (c)	Manwin USA	\$4,500
6	Unlawful Non-Monetary Contributions by Foreign Principal	85320(a) and (c)	Manwin USA	\$5,000
7	Acceptance of Unlawful Contribution from Foreign Principal	85320(b)	Duke and No on B	\$5,000
8	Acceptance of Unlawful Contribution from Foreign Principal	85320(b)	Duke and No on B	\$3,500
9	Acceptance of Unlawful Contribution from Foreign Principal	85320(b)	Duke and No on B	\$3,500
10	Acceptance of Unlawful Contribution from Foreign Principal	85320(b)	Duke and No on B	\$3,500
11	Acceptance of Unlawful Contribution from Foreign Principal	85320(b)	Duke and No on B	\$4,500
12	False Reporting re: True Source of Contribution	84211(f)	Duke and No on B	\$4,500
13	Ballot Measure Committee Name Requirement, Non-Disclosure of Economic Interest of Major Donors	84504(a) and (c)	Duke and No on B	\$5,000
14	Failure to File Late Contribution Report	84203(a) and (b)	Manwin USA	\$2,500
15	Failure to File Late Contribution Report	84203(a) and (b) 84203.3(b)	Duke and No on B	\$2,500
16	Failure to File Late Contribution Report	84203(a) and (b)	Manwin USA	\$2,000
Total:				\$61,500