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11 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**  
12 **STATE OF CALIFORNIA**  
13

14 In the Matter of:

FPPC No. 14/1079

STIPULATION, DECISION, and ORDER

15 PASADENA METRO BLUE LINE  
16 CONSTRUCTION AUTHORITY

17 &

18 HABIB F. BALIAN

19 Respondents.

20 **STIPULATION**

21 Complainant, the Fair Political Practices Commission, and Respondents, Habib F. Balian and  
22 Pasadena Metro Blue Line Construction Authority, hereby agree that this Stipulation will be submitted  
23 for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

24 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this  
25 matter and to reach a final disposition without the necessity of holding an additional administrative  
26 hearing to determine the liability of Respondents.

27 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
28 rights set forth in Government Code sections 83115.5, 11503, and 11523, and in California Code of  
Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to

1 personally appear 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 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing  
6 to timely file Reports of Lobbyist Employer (Form 635), in violation of Sections 86115, 86117, and  
7 84605 of the Government Code (3 counts), as described in Exhibit 1. Exhibit 1 is attached hereto and  
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of  
9 the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of  
12 Three Thousand Dollars (\$3,000). A cashier's check from Respondents in said amount, made payable to  
13 the "General Fund of the State of California," is submitted with this Stipulation as full payment of the  
14 administrative penalty, and shall be held by the State of California until the Commission issues its  
15 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to  
16 accept this Stipulation, it shall become null and void and within fifteen (15) business days after the  
17 Commission meeting at which the Stipulation is rejected all payments tendered by Respondents in  
18 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and  
19 agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the  
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,  
21 shall be disqualified because of prior consideration of this Stipulation.

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23 Dated: \_\_\_\_\_ Gary S. Winuk, on Behalf of the Enforcement Division  
24 Fair Political Practices Commission

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26 Dated: \_\_\_\_\_ Habib F. Balian, individually and on behalf of  
27 Pasadena Metro Blue Line Construction Authority

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**DECISION AND ORDER**

The foregoing Stipulation of the parties “In the Matter Pasadena Metro Blue Line Construction Authority” FPPC No. 14/1079, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: \_\_\_\_\_  
Jodi Remke, Chair  
Fair Political Practices Commission

## EXHIBIT 1

### INTRODUCTION

Respondents are Pasadena Metro Blue Line Construction Authority and Pasadena Metro Blue Line Construction Authority's Responsible Officer Habib F. Balian. Respondents employed Aaron Read & Associates, LLC, a lobbying firm in California, to lobby the California State Legislature. Respondents failed to timely file three lobbyist employer reports (Form 635) from October 1, 2013, through June 30, 2014. One report was filed 76 days late and Respondents have not submitted the other two reports. Over these three periods, Respondents made a total of \$79,200 in payments to Aaron Read & Associates, LLC, for lobbying activity.<sup>1</sup>

For the purposes of this Stipulation, Respondents' violations of the Political Reform Act (the "Act")<sup>2</sup> are as follows:

- COUNT 1: Respondents failed to timely file a Report of Lobbyist Employer (Form 635) for October 1, 2013, through December 31, 2013 (Due February 1, 2014), in violation of Government Code Sections 86115, 86117, and 84605.
- COUNT 2: Respondents failed to timely file a Report of Lobbyist Employer (Form 635) for January 1, 2014, through March 31, 2014 (Due April 30, 2014), in violation of Government Code Sections 86115, 86117, and 84605.
- COUNT 3: Respondents failed to timely file a Report of Lobbyist Employer (Form 635) for April 1, 2014, through June 30, 2014 (Due August 1, 2014), 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 ensure improper influences will not be directed at public officials by regulating the activities of lobbyists and requiring the disclosure of their finances. The Act, therefore, establishes a lobbyist employer, lobbying firm, and lobbyist reporting system designed to accomplish this purpose of disclosure.

#### **Lobbyist Employer**

"Lobbyist employer" means any person, other than a lobbying firm, who:

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<sup>1</sup> As Respondents have not submitted reports for two relevant periods, this figure is based on the reports filed by Aaron Read & Associates, LLC, which note the amount of payments made to them by Respondents for the missing periods.

<sup>2</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 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.

- (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.

**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. Government Code Section 86117.

**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 Sections 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 a Form 635 Report of Lobbyist Employer, covering January 1, 2014, through March 31, 2014. On June 3, 2014, and July 8, 2014, SOS sent written notice to Respondents that

they were in violation of the Political Reform Act because of their failure to timely and electronically file. On or about October 10, 2014, FPPC contacted Respondents and notified Christopher Lowe, Clerk for Respondents, of the violations.

Respondents failed to timely file their Form 635 for Quarters 4, 5, and 6 in violation of Government Code Sections 84605, 86115, and 86117. Although Respondents have not, at this time, submitted a Form 635 for quarters 5 or 6, Respondents' lobbying firm, Aaron Read & Associates, LLC, has reported the amounts it received from Respondents during those quarters. The FPPC is pursuing three counts of violating the Act for these three quarters. The amount reported is substantial and Respondents are sophisticated filers.

Qtr.	Dates	Due Date	Date Filed	Amount Reported	Days Late
4	October 1, 2013 - December 31, 2013	1/31/2014	7/31/2013	\$26,400	76
5	January 1, 2014 - March 31, 2014	4/30/2014	Not Filed	\$26,400	
6	April 1, 2014 - June 30, 2014	7/31/2014	Not Filed	\$26,400	
Average Days Late					76
Average Amount Reported					\$26,400

### COUNTS 1-3

#### **Failure to Timely File Required Lobbyist Employer Reports**

Respondents failed to timely file three Reports of Lobbyist Employer (Form 635), covering from October 1, 2013, through June 30, 2014. One report was filed 76 days late and Respondents have not submitted the other two reports. Over these three periods, Respondents made a total of \$79,200 in payments to Aaron Read & Associates, LLC, for lobbying activity.

### **CONCLUSION**

This matter consists of three counts of violating the Act, which each carry a maximum administrative penalty of five thousand dollars (\$5,000), for a potential total of fifteen thousand dollars (\$15,000).

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 Respondents 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 to ensure 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 regarding the amounts and nature of their 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 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 Sections 86115 and 86117 (eight counts). **Total Penalty: \$8,000.**
- *In the Matter of Brencourt Advisors, LLC*, FPPC No. 13/0122. Respondent Brencourt Advisors, LLC, a California lobbyist employer failed to timely file two Lobbyist Employer Reports between July 1, 2011, and December 31, 2011, disclosing \$125,000 in payments for lobbying services, an average of 57 days late, in violation of Government Code Sections 86115, 86117, and 84605 (two counts). **Total Penalty: \$2,000.**
- *In the Matter of Heineken USA*, FPPC No. 13/0823. Respondent Heineken USA, a California lobbyist employer, failed to timely file four Reports of Lobbyist Employer Reports (Form 635) between October 1, 2011, and December 31, 2012, disclosing total payments paid for lobbying services in the amount of \$49,000, in violation of Government Code Sections 86115, 86116, 86117, and 84605 (4 counts). **Total Penalty: \$4,000.**

In this case, Respondents failed to timely file three quarterly reports, which if filed would have disclosed \$79,200 over three quarters in payments to Aaron Read & Associates, LLC, for lobbying services, depriving the public of important information regarding Respondents' amount and nature of lobbying activity.

### **Aggravating Factors**

Respondent Pasadena Metro Blue Line Construction Authority is a sophisticated filer who has filed Reports of Lobbying Employer (Form 635) since 2000.

The amount and nature of lobbying activity to influence the California Legislature was substantial and not revealed until after the legislative session had ended, depriving opposing interests and the public of important information.

### **Mitigating Factors**

Respondents do not have a history of violating the Act and the failure to disclose does not appear deliberate or willful.

### **Recommendation**

Accordingly, the facts of this case justify the imposition of a total administrative penalty of \$3,000.