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

10
11 In the Matter of:

12 **EBAY, INC.,**

13
14
15 Respondent.

FPPC No. 15/1630

16 **STIPULATION, DECISION, AND ORDER**

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 respondent eBay, Inc. (Respondent), hereby agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly-scheduled meeting.

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

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

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by failing to
4 timely file lobbyist employer reports, in violation of Government Code Section 86117, and failing to
5 timely disclose campaign contributions on lobbyist employer reports, in violation of Sections 86116 and
6 86117, and Regulation 18616, as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by
7 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
8 matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing an administrative penalty in the amount of \$6,500.
11 Respondent submitted with this Stipulation a cashier's check in said amount, made payable to the
12 "General Fund of the State of California," as full payment of the administrative penalty that shall be held
13 by the State of California until the Commission issues its Decision and Order regarding this matter. The
14 parties agree that in the event the Commission refuses to accept this Stipulation, the check shall become
15 null and void, and within fifteen (15) business days after the Commission meeting at which the
16 Stipulation is rejected, all payments tendered by Respondent in connection with this Stipulation shall be
17 reimbursed to Respondent. Respondent further stipulates and agrees that in the event the Commission
18 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
19 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
20 consideration of this Stipulation.
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22
23 Dated: _____
24 Galena West, on behalf of the Enforcement Division
25 Fair Political Practices Commission

26 Dated: _____
27 _____ on behalf of
28 eBay, Inc.

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of eBay, Inc.,” FPPC No. 15/1630,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent eBay, Inc. (“eBay”) is a lobbyist employer. This case arose from a referral from the Secretary of State’s Office. Under the Political Reform Act (the “Act”),¹ a lobbyist employer is required to timely file quarterly reports disclosing the total amount of payments made for lobbying services and contributions made to candidates and committees, among other information. eBay violated the Act by failing to timely file lobbyist employer reports and failing to timely disclose contributions on its lobbyist employer reports.

SUMMARY OF THE LAW

An express purpose of the Act is to ensure that the activities and finances of lobbyists are disclosed so that improper influences are not directed at public officials.² To that end, a lobbyist employer must maintain accurate accounting and file a quarterly report with the Secretary of State that discloses the total amount of payments to each lobbying firm, the filer’s lobbying interests, activity expenses, and any candidate or committee contributions of \$100 or more made by the lobbyist employer.³ These reports must be filed during the month following each calendar quarter.⁴

In lieu of reporting candidate or committee contributions on a quarterly report, a lobbyist employer may incorporate a major donor statement by reference to its major donor committee name and identification number if the report has previously been filed with the Secretary of State.⁵ A major donor statement must be filed no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, if the major donor committee has made contributions during the six months prior to the closing date of the statement.⁶

SUMMARY OF THE FACTS

eBay has been a lobbyist employer since 2000. During the 2015–2016 legislative session, eBay’s lobbyist employer report for quarter 1 (January 1, 2015 through March 31, 2015) was electronically filed 299 days late on February 23, 2016. The report disclosed a \$25,500 payment for lobbying services and \$8,000 in contributions to four controlled committees supporting candidates for the California State Legislature.

eBay electronically filed its quarter 2 report (April 1, 2015 through June 30, 2015), which disclosed \$17,000 in lobbying activity, 207 days late on February 23, 2016. That report also incorporated by reference eBay’s major donor statement filed on July 30, 2015, which disclosed

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and 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, and all regulatory references are to this source.

² Section 81002, subd. (b).

³ Section 86116 and Regulation 18615.

⁴ Section 86117.

⁵ Section 86116, subd. (g), and Regulation 18616, subd. (e).

⁶ Section 84200.

\$19,500 in contributions to 16 controlled committees supporting candidates for the California State Legislature. According to eBay, the late filings in quarters 1 and 2 resulted from responsibility for the lobby filings being reassigned during a large-scale corporate transition that split eBay into two separate companies: eBay, Inc. and PayPal, Inc. eBay provided documentation indicating that it attempted to file its quarter 1 and 2 lobby reports incorrectly via paper filing instead of by electronic filing as required by law.

eBay electronically filed a lobbyist employer report for quarter 3 (July 1, 2015 through September 30, 2015) on February 23, 2016, which was 113 days late. On that report, eBay disclosed nine contributions ranging from \$500 to \$2,000, for a total of \$10,500 in contributions to eight candidates for the California State Legislature and one candidate for Secretary of State. eBay also reported \$12,750 in lobbying activity. eBay says it relied on a vendor to file its quarter 3 report, but the vendor never filed the report.

During the 2013–2014 legislative session, two of eBay’s quarterly lobbyist employer reports incorporated major donor statements by reference to disclose contributions made to state candidates. But, the major donor statements they referenced were not filed until after the lobbyist employer reports were filed, so the contributions were not timely disclosed. eBay’s quarter 1 lobbyist employer report (January 1, 2013 through March 31, 2013) was timely filed on April 30, 2013, but it referenced a major donor statement that was not filed until July 31, 2013. That major donor statement disclosed \$3,000 in contributions made during quarter 1. The quarter 7 lobbyist employer report (July 1, 2014 through September 30, 2014) was timely filed on October 31, 2014. However, \$2,600 in quarter 7 contributions were not disclosed on the lobbyist employer report or other campaign filings until the relevant major donor statement was filed on February 1, 2015.

Count 1: Failure to Timely a File Lobbyist Employer Report

eBay failed to timely file a lobbyist employer report for quarter 1 of the 2015–2016 legislative session, in violation of Section 86117.

Count 2: Failure to Timely a File Lobbyist Employer Report

eBay failed to timely file a lobbyist employer report for quarter 2 of the 2015–2016 legislative session, in violation of Section 86117.

Count 3: Failure to Timely a File Lobbyist Employer Report

eBay failed to timely file a lobbyist employer report for quarter 3 of the 2015–2016 legislative session, in violation of Section 86117.

Count 4: Failure to Timely Disclose Campaign Contributions

eBay failed to timely disclose campaign contributions on its lobbyist employer reports for quarters 1 and 7 of the 2013–2014 legislative session, in violation of Sections 86116 and 86117, and Regulation 18616.

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division 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 eBay, Inc. demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether, upon learning of the violation, the violator voluntarily filed amendments to provide full disclosure.

The Commission also considers penalties in prior cases involving similar violations. Recent similar cases include the following:

- *In the Matter of Lyft, Inc.*, FPPC No. 15/306. (Commission approved a stipulated decision on July 21, 2016.) The respondent failed to timely file five lobbyist employer reports, including one that reported \$6,700 in campaign contributions. Lyft's payments for lobbying activities during those quarters ranged from no activity to \$126,029 worth of activity. The Commission imposed a \$2,000 penalty per count for three counts, for a total penalty of \$6,000.
- *In the Matter of California-Hawaii State Conference of the NAACP*, FPPC No. 14/1350. (Commission approved a stipulated decision on March 17, 2016.) The respondent failed to timely file three lobbyist employer reports, which reported \$67,250 in payments for lobbying services. The Commission imposed a penalty of \$1,000 per count for three counts, for a total penalty of \$3,000.

Failure to timely file lobbyist employer reports disclosing campaign contributions and payments made for lobbying violates one of the Act's central purposes: that the activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials. In this case, eBay filed all reports, but three of the filings were made a significant period of time after the deadlines, and two timely filed reports did not include information about campaign contributions made during the report periods. Like the *Lyft* case, eBay's payments for lobbying and some of its campaign contributions were not publicly disclosed until almost 11 months after they were made. Further, eBay's timely filed lobbyist employer reports for quarters 1 and 7 of 2013-2014 legislative session failed to reflect \$5,600 in campaign contributions made during the period, so the public was denied notice of those contributions until approximately four months after each lobbyist employer report was due.

In mitigation, the information disclosed in eBay's late lobbyist employer reports was timely available to the public on the reports of the lobbying firm that received payments from eBay, the statements of candidates who received contributions from eBay, and, for one quarter, eBay's own major donor campaign statement.

In addition, eBay does not have a prior history of violating the act, eBay fully cooperated with the Enforcement Division's investigation, and the investigation did not reveal any evidence that eBay intended to conceal its activity or mislead the public. eBay asserts that the failure to timely file electronically for three quarters was inadvertent and due to the fact it was required to reassign responsibility for its lobby reporting during a period of corporate transition. eBay filed all late reports after learning that it had missed the filings and before the Enforcement Division contacted eBay regarding the matter.

Further, eBay's activity during quarters 1–3 is lower than the activity in comparable cases: eBay's three late-filed lobbyist employer reports disclosed \$39,950 in lobbying payments and \$38,450 in campaign contributions, while in the *Lyft* case, three late-filed lobbyist employer reports disclosed \$225,617 in total activity. In light of these mitigating factors, a lower penalty per count for Counts 1–3 as compared to the *Lyft* case is justified. With regard to Count 4, the two lobbyist employer reports were timely filed, unlike in other cases, but lacked disclosure of contributions made during the periods.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, a penalty of \$1,500 per count for Counts 1–3 and \$2,000 for Count 4, for a total penalty of \$6,500, is recommended.