

1 ANGELA J. BRERETON
Chief of Enforcement
2 CHRISTOPHER BURTON
Assistant Chief of Enforcement
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811

5 Telephone: (916) 322-5021
6 Email: cburton@fppc.ca.gov

7 Attorneys for Complainant
Fair Political Practices Commission, Enforcement Division

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11
12 In the Matter of:

13 ANDREW DO,

14 Respondent.

FPPC Case Nos. 16/510 and 18/648

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Andrew Do (“Do”) is a member of the Orange County Board of Supervisors, First District. Do is
18 also a member of the CalOptima Board of Directors. CalOptima is a county-organized health system that
19 administers health insurance programs for low-income children, adults, seniors, and people with
20 disabilities in Orange County. Its board members are appointed by the Orange County Board of
21 Supervisors.

22 During calendar years 2016 through 2018, CalOptima was seeking professional service contracts
23 for federal and state lobbyist representation. Various bids/proposals were submitted to CalOptima by
24 interested lobbying firms, and Do was involved in the selection proceedings. Some interested participants
25 had previously made campaign contributions to Do’s supervisor committee.

26 These cases involve violations of the disqualification and disclosure requirements of the Political
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1 Reform Act¹ with respect to certain types of government decisions in which campaign
2 contributors (of more than \$250) have a financial interest. Also, these cases involve failure to timely file
3 Form 803 behested payment reports—in 2015 and 2016—with respect to charitable payments of \$5,000
4 or more that were made by various donors at the behest of Do.

5 SUMMARY OF THE LAW

6 The Act and its regulations are amended from time to time. The violations in this case occurred
7 during calendar years 2015 through 2018. All legal references and discussions of law pertain to the Act’s
8 provisions as they existed at that time.

9 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

10 When enacting the Political Reform Act, the people of California found and declared that
11 previous laws regulating political practices suffered from inadequate enforcement by state and local
12 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
13 purposes.”³

14 One purpose of the Act is to curtail pay-to-play practices—and the appearance of such
15 practices—with respect to appointed members of boards and commissions who receive campaign
16 contributions from persons appearing before them (such as persons submitting bids on contracts and
17 applicants for permits/licenses). For this reason, the Act imposes limitations on such contributions. Also,
18 the Act includes disqualification and disclosure requirements for officials who receive over-the-limit
19 contributions of this nature.⁴

20 Another purpose of the Act is to ensure transparent reporting by elected officials with respect to
21 certain types of fundraising—where payments are made by donors at the behest of the officials. These
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25 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
26 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
are to this source.

27 ² Section 81001, subdivision (h).

28 ³ Section 81003.

⁴ See Section 84308. Also, see: <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/pay-to-play-contribution-restrictions.html>.

1 payments are a means by which donors may seek to gain favor with elected officials, and this type of
2 reporting serves to increase public awareness regarding potential attempts to influence in this manner.⁵

3 Yet another purpose of the Act is to provide adequate enforcement mechanisms so that the Act
4 will be “vigorously enforced.”⁶

5 **Pay-to-Play Restrictions**

6 The limitations on campaign contributions that are mentioned above—and the related
7 disqualification/disclosure requirements—are more commonly known as pay-to-play restrictions. These
8 restrictions apply to officers of some, but not all, state and local government agencies. For example, these
9 restrictions do not apply to an official who is elected to be a county supervisor, but if the supervisor is
10 appointed to act as a voting member of another agency, such as CalOptima (whose members are not
11 directly elected by the voters)—then the Act’s pay-to-play restrictions do apply.⁷

12 These restrictions are similar to the Act’s conflict of interest provisions. However, conflicts of
13 interest arise from financial interests—and as a matter of law—such financial interests do not include
14 campaign contributions. On the other hand, campaign contributions can and do trigger disqualification
15 under the Act’s pay-to-play restrictions, which are summarized below.

16 *Definitions*

17 For ease of reference, the term “officer” is used to describe an official who is subject to the Act’s
18 pay-to-play restrictions.

19 The term “party” means any person who files an application for, or is the subject of, a proceeding
20 involving a license, permit, or other entitlement for use.⁸

21 The term “participant” means any person who is not a party but who actively supports or opposes
22 a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has
23 a financial interest in the decision. A person actively supports or opposes a particular decision in a
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27 ⁵ See Section 82015, subdivision (b)(2)(B)(iii).

⁶ Section 81002, subdivision (f).

28 ⁷ Section 84308, subdivision (a)(3).

⁸ Section 84308, subdivision (a)(1).

1 proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person
2 before the agency, or otherwise acts to influence officers of the agency.⁹

3 The phrase “license, permit, or other entitlement for use” includes “all contracts (other than
4 competitively bid, labor, or personal employment contracts), and all franchises.”¹⁰

5 *Limitations on Contributions*

6 No officer may accept, solicit, or direct a contribution of more than \$250 from any party (or his or
7 her agent) or from any participant (or his or her agent) while a proceeding involving a license, permit, or
8 other entitlement for use is pending before the agency and for three months following the date a final
9 decision is rendered in the proceeding—if the officer knows or has reason to know that the participant
10 has a financial interest. This prohibition applies regardless of whether the officer accepts, solicits, or
11 directs the contribution for himself, or on behalf of any other officer, or on behalf of any candidate for
12 office, or on behalf of any committee.¹¹

13 A similar prohibition exists for parties, participants, and their agents—who may not contribute
14 more than \$250 to any officer while the license, permit, or other entitlement for use is pending before the
15 agency. This prohibition continues for three months following the date a final decision is rendered by the
16 agency in the proceeding.¹²

17 *Mandatory Disqualification*

18 No officer may make, participate in making, or in any way attempt to use his or her official
19 position to influence the decision in a proceeding involving a license, permit, or other entitlement for use
20 pending before the agency if the officer has willfully or knowingly received a contribution in an amount
21 of more than \$250 within the preceding 12 months from a party (or his or her agent) or from any
22 participant (or his or her agent)—if the officer knows or has reason to know that the participant has a
23 financial interest in the decision.¹³

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27 ⁹ See Section 84308, subdivision (a)(2).

28 ¹⁰ Section 84308, subdivision (a)(5).

¹¹ See Section 84308, subdivision (b).

¹² See the second sentence of Section 84308, subdivision (d).

¹³ See the second sentence of Section 84308, subdivision (c).

1 *Required Disclosure by Officer*

2 Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for
3 use pending before an agency, each officer who received a contribution within the preceding 12 months
4 in an amount of more than \$250 from a party or from any participant shall disclose that fact on the record
5 of the proceeding.¹⁴ The disclosure must be made at the beginning of a public hearing in a proceeding
6 involving the license, permit, or other entitlement for use—if a hearing is held. If there is no public
7 hearing, the disclosure must be entered into the written record of the proceeding.¹⁵

8 *Required Disclosure by Contributor*

9 A party to a proceeding before an agency involving a license, permit, or other entitlement for use
10 must disclose on the record of the proceeding any contribution in an amount of more than \$250 made
11 within the preceding 12 months by the party (or his or her agent) to any officer of the agency.¹⁶ This
12 disclosure must be made at the time the application is filed (or when the proceeding is otherwise
13 commenced). If the contribution is made at any stage of the proceeding after commencement, then the
14 disclosure must be made no later than 30 days after the contribution is made.¹⁷

15 **Required Filing of Behested Payment Reports**

16 Separate and distinct from campaign contributions and gifts, an elected officer (or his
17 staff/agents) may raise funds for a variety of causes. However, under certain circumstances, this type of
18 fundraising must be detailed in a report that is required to be filed by the officer. The purpose of this
19 reporting is to shed light on the transactions—in favor of the public’s right to know about the elected
20 officer’s role or involvement.¹⁸

21 The report that must be filed is known as a Form 803 behested payment report.

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25 ¹⁴ See the first sentence of Section 84308, subdivision (c).

26 ¹⁵ See Regulation 18438.8, subdivision (a).

27 ¹⁶ See the first sentence of Section 84308, subdivision (d).

28 ¹⁷ See Regulation 18438.8, subdivision (b).

¹⁸ Section 82015, subdivision (b)(2)(B)(iii); and Regulation 18215.3. See also *Peak* Advice Letter (A-12-094), page 3 (purpose of behested payment reporting is to capture reporting for payments that are not direct contributions to elected officials, but payments in which the public would have an interest, given the fundraising role/involvement of the officials [or their staff/agents].)

1 Generally, *any* payment from one individual or entity to another is subject to this reporting
2 requirement if it meets all three of the criteria described below:¹⁹

- 3 1. The payment was “made under the control or at the direction of, in cooperation,
4 consultation, coordination, or concert with, at the request or suggestion of, or with the
5 express, prior consent of the elected officer . . . *or his or her agent.*” (Regulation 18215.3,
6 subd. (a). Emphasis added.) This “includes personal solicitations by the elected officer,
7 but also encompasses less active roles,” such as where “an elected officer . . . has his or
8 her chief-of-staff solicit contributions. . . .” (*Peak Advice Letter (A-12-094)*, p. 4.) All
9 such payments are considered to be “made at the behest of” the elected officer—even
10 where the fundraising is carried out by the officer’s staff or agents.²⁰
- 11 2. Principally, the payment was made for legislative, governmental, or charitable purposes.
- 12 3. The payment was in the amount of \$5,000 or more—or the payment was one of multiple
13 payments from the same source in the same calendar year, which total \$5,000 or more, in
14 the aggregate.

15 *Any* payment that meets the above criteria must be reported on a Form 803 filed by the elected
16 officer with his agency—within 30 days of the date that the payment was made. In the case of multiple
17 payments from the same source in the same calendar year, the 30-day deadline to file the Form 803
18 begins on the earliest date when the payments add up to \$5,000 or more. Once the \$5,000 aggregate
19 threshold from a single source has been reached for a calendar year, each subsequent payment from that
20 source *for the rest of the calendar year* must be disclosed within 30 days of the making of the payment—
21 *regardless* of the amount of the payment.²¹

22 The Form 803 behested payment report is a public record, which must include the name and
23 address of the payor, the amount of the payment, the date of payment, the name and address of the payee,
24 a brief description of the goods or services provided or purchased (if any), and a description of the
25 specific purpose or event for which the payment or payments were made.²²

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¹⁹ Section 82015, subdivision (b)(2)(B)(iii) (Although there is an exception when the payor is a government agency, that exception is not applicable to the facts in this case.)

²⁰ Regulation 18215.3, subdivision (a).

²¹ See Section 82015, subdivision (b)(2)(B)(iii).

²² Section 82015, subdivision (b)(2)(B)(iii).

1 **SUMMARY OF THE FACTS**

2 In early 2015, Andrew Do was elected to the Orange County Board of Supervisors.

3 In April 2015, Do received a campaign contribution in the amount of \$900 from lobbyist James
4 McConnell. In October 2015, Do received another \$1,900 from McConnell.

5 On or about June 28, 2016, the Orange County Board of Supervisors appointed Do to be a
6 member of the CalOptima Board of Directors.

7 **CalOptima Federal Lobbyist Contract**

8 On or about August 9, 2016, Do received another contribution from McConnell in the amount of
9 \$1,900.

10 At the time, McConnell was providing CalOptima with federal lobbyist services, under a contract
11 that would be expiring on or about January 7, 2017 (this contract was not a competitively bid, labor, or
12 personal employment contract).

13 On or about September 8, 2016, CalOptima issued a request for proposal (RFP) with respect to a
14 new contract for federal lobbyist services (this was not to be a competitively bid, labor, or personal
15 employment contract). In response, CalOptima received six competing lobbyist proposals for the new
16 contract. One of the competitors was McConnell, who sought to renew his contract. CalOptima staff and
17 external experts reviewed the six proposals and ranked them into the top four semi-finalists. McConnell
18 was one of these semi-finalists.

19 On or about October 20, 2016, Do was informed via email as to the identities of the four semi-
20 finalists. Also, the email indicated that an ad hoc committee, which included Do, would interview and
21 score the semi-finalists. According to Do, CalOptima staff typically reviewed such finalists and
22 compared those finalists with contributors to any candidate or elected officials serving on the CalOptima
23 Board of Directors, and CalOptima Directors typically relied on staff to avoid participating in any
24 decisions affecting contributors to their campaigns. Do contends that CalOptima staff did not notify Do
25 of any conflict implicated by this decision.

26 At a meeting of the CalOptima Board of Directors, which was held on December 1, 2016, Do
27 voted (along with five other board members) to extend McConnell's current contract by up to six
28 months—during the pendency of the RFP process.

1 On or about January 6, 2017, the ad hoc committee interviewed the four semi-finalists, including
2 McConnell. McConnell was not selected by the ad hoc committee, so there was no vote to renew
3 McConnell's contract.

4 At a meeting of the CalOptima Board of Directors, which was held on February 2, 2017, Do
5 made a motion to approve the ad hoc committee's recommendation in favor of the Akin Gump firm. This
6 motion was seconded and carried by a unanimous vote (with one director noted as absent).

7 **CalOptima State Lobbyist Contract**

8 In December 2016, Christopher Townsend made a campaign contribution to Do in the amount of
9 \$1,900. Later that month, Townsend's wife also contributed \$1,900 to Do.

10 In March 2017, Mr. Townsend made an additional contribution to Do in the amount of \$2,000. In
11 April 2017, Mrs. Townsend did the same.

12 In August 2017, CalOptima issued an RFP for state lobbyist services (this was not to be a
13 competitively bid, labor, or personal employment contract). Two proposals were received in response to
14 the RFP. One of the proposals was from Mr. Townsend's lobbying firm, Townsend Public Affairs. The
15 other proposal was from a firm known as Edelstein Gilbert Robson & Smith.

16 In September 2017, the Chairman of the CalOptima Board of Directors formed an ad hoc
17 committee to interview the two lobbying firms and make recommendations to the full board. Do was
18 appointed to be one of the members of this ad hoc committee. According to Do, at this time, CalOptima
19 staff again did not notify Do of any conflict implicated by this decision.

20 After interviewing the firms, the ad hoc committee recommended that the Edelstein Gilbert firm
21 should be retained as the lead lobbying firm. A two-year contract was recommended at a cost of \$95,000
22 per year (with three one-year extension options).

23 Also, the ad hoc committee recommended that CalOptima should enter into a two-year contract
24 on an as-needed basis with Townsend Public Affairs at a cost of \$24,000 per year (subject to three one-
25 year extensions).

26 According to Do, after the ad hoc committee made its recommendations, Do independently
27 reviewed his campaign contributions and determined that Townsend's contributions represented a
28 potential violation of the pay-to-pay rules. Do then asked the CalOptima Chairman to remove the ad hoc

1 committee’s recommendations from consideration at the next Board of Directors meeting, and requested
2 that CalOptima restart the RFP process without his participation. The Chairman agreed to Do’s request
3 and announced the decision to restart the RFP process at the February 1, 2018 meeting of the CalOptima
4 Board of Directors.

5 **Behested Payments**

6 In 2015, shortly after his election to the Orange County Board of Supervisors, Do began assisting
7 with ongoing community efforts to place a public art project in Mile Square Park (the “Statue Project”),
8 with the help of his Deputy Chief of Staff, Tam “Nick” Lecong. The Statue Project included the
9 purchase, erection, and unveiling of various statues of historical figures, including a statue of Ronald
10 Reagan and a statue of General Tran Hung Dao.

11 In support of the Statue Project, various individuals and entities made payments aggregating
12 \$5,000 or more in a calendar year. Principally, these payments were made for legislative, governmental,
13 or charitable purposes. The majority of the payments were solicited and/or arranged by Lecong while
14 fundraising for the Statue Project. However, Lecong, as Do’s Executive Assistant/Deputy Chief of Staff,
15 became Do’s agent for the purpose of the behested payment reporting requirements by, for example,
16 providing regular fundraising updates to Do and asking Do for input on other Statue Project matters. The
17 behested payments are itemized in the chart below:

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Payment Date	Payor	Amount
6/5/15	Van Hanh Assembly DBA Chua Lien HOA	\$10,490
10/19/15	Tuyen LeCong	\$12,000
10/19/15	Nguoi Viet Daily News	\$37,950
12/7/15	Van Hanh Assembly DBA Chua Lien HOA	\$25,000
12/19/15	Dalat Supermarket	\$5,000
12/30/15	Minh T. Nguyen	\$5,000
1/7/16	United Care Medical Group, Inc.	\$5,000
1/8/16	Family Choice Medical Group, Inc.	\$10,000

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24 At the time, two of the donors identified above—the United Care and Family Choice medical
25 groups—were involved in contractual business relationships with CalOptima. According to Do, these
26 donors were not targeted based on such relationships.

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1 Do was required to report each payment by filing a Form 803 behested payment report with his
2 agency within 30 days of the making of each payment. However, Do failed to timely file the required
3 reports.

4 On or about February 3, 2015, Do was sworn in as an Orange County Supervisor. That same day,
5 Lecong assumed office as Do's Executive Assistant/Deputy Chief of Staff. As an agent of Do, Lecong
6 took certain actions related to the Statue Project, including soliciting funding from community donors,
7 with Do's knowledge and approval ("ratification"). The majority of the payments for the Statue Project
8 were raised directly by Lecong, acting as Do's agent, and used to build the Statue Project. As a result, the
9 law treats the related payments to have been made at the behest of Do.

10 Do belatedly filed certain Form 803s with the Orange County Registrar of Voters on April 14,
11 2016; August 9, 2016; and October 26, 2018, and has now filed all required Form 803s.

12 VIOLATIONS

13 Counts 1 and 2

14 *Pay-to-Play Contribution Restrictions*

15 *Violation of Disqualification and Disclosure Provisions*

16 As noted above, at a meeting of the CalOptima Board of Directors, which was held on December
17 1, 2016, Do voted to extend McConnell's federal lobbyist contract up to six months, while a new contract
18 was being considered. Also, on or about January 6, 2017, the CalOptima ad hoc committee—which
19 included Do—interviewed the four semi-finalists for the new federal lobbyist contract.

20 In this manner, Do made, participated in making, and attempted to use his official position to
21 influence governmental contracting decisions involving a participant who contributed to his campaign.
22 At the time of Do's vote to extend McConnell's contract, and at the time of Do's participation in the ad
23 hoc committee's interviewing process, Do had reason to know that McConnell was a source of
24 contributions to Do's supervisor campaign committee in excess of \$250 during the past 12 months.
25 Specifically, Do had received a contribution in the amount of \$1,900 from McConnell in August 2016
26 (less than four months before Do's vote of December 1, 2016 and less than five months before the ad hoc
27 committee's discussion of January 6, 2017).

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1 Also, as noted above, in September 2017, Do was appointed to be one of the members of an ad
2 hoc committee that was formed to interview two lobbying firms that were competing for a CalOptima
3 state lobbyist contract. After interviewing both firms, the ad hoc committee made its recommendations to
4 the full CalOptima Board of Directors, prior to a public meeting scheduled for February 1, 2018. This
5 included a recommendation in favor of entering into a two-year contract on an as-needed basis with
6 Townsend Public Affairs at a cost of \$24,000 per year (subject to three one-year extensions).

7 In this manner, Do made, participated in making, and attempted to use his official position to
8 influence a governmental contracting decision involving a participant who contributed to his campaign.
9 At the time, Do had reason to know that Mr. Townsend was the source of campaign contributions
10 totaling more than \$250 during the past 12 months. Specifically, in December 2016, Mr. Townsend
11 contributed \$1,900 to Do. Also, in March 2017, Mr. Townsend made an additional contribution to Do in
12 the amount of \$2,000.

13 With respect to McConnell and Townsend, Do was required to recuse/disqualify himself from the
14 governmental decision-making process, and Do was required to disclose the reason for his
15 disqualification (receipt of contributions in excess of \$250 during 12-month look-back period)—but he
16 failed to do so. In this way, Do violated Section 84308, subdivision (c). For settlement purposes, two
17 counts are charged, as noted in the chart below:

Count	Description
1	Federal lobbyist contract – voted to extend McConnell’s contract (on 12/1/16); interviewed applicants and participated in ad hoc committee regarding potential renewal of McConnell contract (on 1/6/17)
2	State lobbyist contract – served on ad hoc committee starting September 2017, which led to applicant interviews and recommendation in favor of a contract with Townsend

22 **Counts 3 through 6**

23 *Failure to Timely File Form 803 Behested Payment Reports*

24 As noted above, Do failed to timely file Form 803 behested payment reports disclosing eight
25 payments—totaling approximately \$110,440—which were made at his behest for the Statue Project (by
26 donors of \$5,000 or more per calendar year).

27 In this way, Do violated Section 82015, subdivision (b)(2)(B)(iii). For settlement purposes, four
28 counts are charged (as discussed in more detail below).

1 **PROPOSED PENALTY**

2 This matter consists of six counts. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed here is \$30,000.²³

4 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
5 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
6 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
7 considers the facts and circumstances of the violation in the context of the following factors set forth in
8 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
9 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
10 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
11 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
12 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
13 staff or any other governmental agency in a manner not constituting complete defense under Government
14 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
15 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
16 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

17 The purpose of the pay-to-play statute is to assure that appointed members of boards or
18 commissions are not influenced by the receipt of campaign contributions from the persons appearing
19 before them, and are not able to use their position of authority to unduly influence applicants to make
20 contributions to their campaigns.²⁴

21 Payments made at the behest of elected officials—including charitable donations—are a means
22 by which donors may seek to gain favor with elected officials. Timely reporting of such activity serves to
23 increase public awareness regarding potential attempts to influence in this manner. There is inherent
24 public harm in late disclosure because the public is deprived of important information that the Act
25 mandates must be disclosed. The Commission has found timely disclosure to be essential.

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²³ See Section 83116, subdivision (c).

²⁴ Source: <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/conflict-of-interest/pay-to-play-contribution-restrictions.html>.

1 In this case, the violations appear to be the result of negligence by a public official and there is no
2 indication that Do's actions were intended to conceal, deceive, or mislead. As to the pay-to-play
3 violations, Do contends that CalOptima staff failed to notify him of the potential conflicts and, once he
4 discovered the issue, he took corrective action. As to the behested payment violations, Do contends that
5 he did not at the time understand that the behested payment reporting requirements may be triggered by
6 activity conducted by his staff and did not at the time understand that Lecong's activities could be
7 attributed to him as an agent with respect to the Statue Project. Also, prior to the initiation of this case,
8 Do voluntarily filed some missing behested payment reports disclosing the subject behested payments.
9 Further, Do does not have a prior history of similar violations of the Act, and the violations appear to be
10 isolated.

11 However, Do is a former prosecutor for the Office of the Orange County District Attorney.
12 Further, before being elected to the Orange County Board of Supervisors and appointed to the CalOptima
13 Board of Directors, Do served as Chief of Staff to Orange County Supervisor Janet Nguyen—and he
14 served as a Garden Grove City Councilman. In light of this background, it is fair to say that Do is a
15 sophisticated public official who had ample reason to know and understand the requirements of the Act.
16 Further, there is no evidence that Do consulted Commission staff regarding the activity underlying the
17 violations contained herein.

18 The Commission also considers penalties previously imposed in comparable cases. Regarding
19 Counts 1 and 2, the Commission approved a stipulation involving a violation of Section 84308. In *In the*
20 *Matter of Lyn Semeta*; FPPC Case No. 16/756 (approved July 2019), a planning commissioner voted for
21 a conditional use permit in favor of a local business—and the following month, the planning
22 commissioner accepted a contribution (to her city council campaign committee) from that same local
23 business in the amount of \$550. This was a violation of the Act's pay-to-play contribution restrictions.
24 One count was charged—for which the Commission imposed a penalty in the amount of \$2,000.

25 The current case involves contributions in excess of \$250 that were received during the 12-month
26 look-back period. The *Semeta* case involved a contribution in excess of \$250 that was received during the
27 90-day period following the vote. Both cases involve:

- 28 1. a violation of the same statute;

2. the appearance of impropriety, irrespective of whether the contributions were received before or after the vote;
3. receipt of contributions that were reported on campaign statements in a timely manner;
4. seeming negligence/lack of intentional concealment; and
5. respondents without any prior history of similar violations.

However, there are some differences between the cases, which warrant a higher penalty in the current case. For example, *Semeta* involved a smaller contribution (\$550 in that case, compared to thousands of dollars in the current case). Also, in *Semeta*, shortly after accepting the contribution, the respondent refunded the over-the-limit amount to the contributor. Similar facts are not present in the current case. Under these circumstances, a penalty in the amount of \$3,000 per count is recommend for Counts 1 and 2.

An even higher penalty is not being sought for these counts because the federal lobbyist contract did not go to McConnell, ultimately. Also, before the CalOptima Board of Directors voted on the state lobbyist contract matter involving Townsend, the matter was pulled from the agenda for the stated purpose of re-starting the RFP process, which was due, at least in part, to the violation that comprises Count 2.

Regarding Counts 3 through 6, the Commission considered another stipulation involving behested payment reporting. In *In the Matter of Tony Rackauckas*; FPPC Case No. 16/612 (approved September 2017), the Commission imposed a penalty in the amount of \$1,500 per count against the Orange County District Attorney for failure to timely file behested payment reports disclosing 14 payments (from 14 different donors). Fourteen counts were charged. Reportable activity consisted of charitable donations to a non-profit organization, Orange County Gang Reduction and Intervention Partnership. These donations, which were solicited by Rackauckas (as president/active fundraiser for the non-profit), totaled approximately \$190,000. The required Form 803s were filed about six to nine months late. Rackauckas had a history of filing prior Form 803s on time.

Rackauckas is similar to the current case in several ways. Both cases involve:

1. numerous behested payment reports that were filed late;
2. seeming negligence/lack of intentional concealment by sophisticated public officials;
3. respondents with no prior history of similar violations of the Act; and

1 4. respondents who cooperated with the Enforcement Division by agreeing to an early
2 settlement, in advance of the probable cause conference that otherwise would have been held.

3 *Rackauckas* involved 14 counts that were charged for failure to timely file behested payment
4 reports with respect to charitable payments amounting to \$190,000 received from 14 distinct donors. The
5 current case involves failure to timely file behested payment reports with respect to charitable payments
6 totaling a lower amount (\$110,440) and received from a lower number of distinct donors (seven). Also,
7 unlike in the comparable case, the payments at issue in this case resulted largely from the fundraising
8 efforts of the agent of the official, and not from the official himself. Further, the respondent in the
9 comparable case was the president of the entity that received the payments, whereas similar facts do not
10 appear in this matter. As a result, a lower number of counts (four) in the current case is warranted.

11 In summary, the following agreed upon penalty for Counts 1 through 6 is recommended:

Count	Description	Penalty
1	Pay-to-Play Contribution Restrictions, Violation of Disqualification and Disclosure Provisions – Federal Lobbyist Contract Matter	\$3,000
2	Pay-to-Play Contribution Restrictions, Violation of Disqualification and Disclosure Provisions – State Lobbyist Contract Matter	\$3,000
3	Failure to Timely File Form 803 Behested Payment Reports	\$1,500
4	Failure to Timely File Form 803 Behested Payment Reports	\$1,500
5	Failure to Timely File Form 803 Behested Payment Reports	\$1,500
6	Failure to Timely File Form 803 Behested Payment Reports	\$1,500
		Total: \$12,000

19 CONCLUSION

20 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
21 Respondent, Andrew Do, hereby agree as follows:

22 1. Respondent violated the Act as described in the foregoing pages, which are a true and
23 accurate summary of the facts in this matter.

24 2. This stipulation will be submitted for consideration by the Fair Political Practices
25 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

26 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
27 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
28 liability of Respondent pursuant to Section 83116.

1 4. Respondent has consulted with his attorneys, Nicholas Sanders, The Sutton Law Firm,
2 and understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in Sections
3 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to,
4 the right to appear personally at any administrative hearing held in this matter, to be represented by an
5 attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the
6 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
7 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

8 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
9 Respondent agrees to the Commission imposing against him an administrative penalty in the amount of
10 \$12,000. One or more payments totaling this amount—to be paid to the General Fund of the State of
11 California—is/are submitted with this stipulation as full payment of the administrative penalty described
12 above, and they will be held by the State of California until the Commission issues its decision and order
13 regarding this matter.

14 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
15 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
16 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to
17 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
18 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
19 Director, shall be disqualified because of prior consideration of this Stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party’s executed signature page—including a hardcopy of a signature page transmitted via
3 fax or as a PDF email attachment—is as effective and binding as the original.
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5 Dated: _____

Angela J. Brereton, Chief of Enforcement
Fair Political Practices Commission

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9 Dated: _____

Andrew Do, Respondent

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1 The foregoing stipulation of the parties “In the Matter of Andrew Do,” FPPC Case Nos. 16/510
2 and 18/648, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
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