



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 15, 2021

Kevin G. Ennis  
Special Counsel  
350 South Grand Avenue, 37th Floor  
Los Angeles, CA 90071

Re: Your Request for Advice  
**Our File No. A-21-128**

Dear Mr. Ennis:

This letter responds to your request for advice on behalf of City of Pasadena (“City) Council member Steve Madison regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

May City Councilmember Madison participate in the decision to amend the City’s existing commercial cannabis business ordinance where he is employed by a law firm, and the law firm’s past clients include MMMG, LLC, a cannabis management company, and Mr. Bierman and Mr. Modlin, cofounders of MedMen Enterprises Inc., a cannabis retailer whose subsidiary has applied in the past for a City retail cannabis license?

### CONCLUSION

Yes. Based on the facts provided, the decision would not have a financial effect on Councilmember Madison’s financial interest in his law firm as a business entity and source of income. There is no indication that the decision will affect the law firm’s gross income, assets or

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18998 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.

liabilities and there is no nexus shown to exist between a goal of the law firm and Councilmember Madison's compensation from the law firm.

### **FACTS AS PRESENTED BY REQUESTER**

The City's commercial cannabis businesses ordinance ("Cannabis Ordinance") regulates commercial cannabis businesses consistent with state law. It requires cannabis retailers to obtain and maintain a valid commercial cannabis permit and use permit. Pertinent to this matter, under the current Cannabis Ordinance, cannabis retailers are limited to no more than six in the City, and no more than one retailer per City Council district at any one time. Retail cannabis must be more than 1,000 feet of any other cannabis retailer or cultivation site, or within 500 feet of any testing laboratory. In addition to these restrictions, cannabis testing laboratories may not be located within 500 feet of any other testing laboratory.

The City has prepared the Proposed Cannabis Ordinance Amendment, which would increase potential cannabis retailer sites to three retailers per District and decrease separation distance requirements to within 450 feet of any other cannabis retailer or within 1,000 feet of any cultivation site, or within 500 feet of any testing laboratory. Finally, the Proposed Cannabis Ordinance Amendment would correct an error in the distance separation from cannabis testing laboratories and other cannabis uses in order to make the distances consistent with other separation requirements of 500 feet.

Councilmember Madison is a partner at Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"). Quinn Emanuel is a business litigation firm with 27 offices around the world, over 875 attorneys of which over 275 are partners, and thousands of clients worldwide. As a partner, Councilmember Madison receives a small percentage of Quinn Emanuel's profits based upon his ownership of less than one percent (1%) of the firm.

In 2019, a partner at Quinn Emanuel provided legal services to three cannabis-related clients: MMMG, LLC, a cannabis management company that acts as a management company for businesses with medical marijuana licenses and also invests in legal marijuana enterprises, and individuals Adam Bierman and Andrew Modlin. Mr. Bierman and Mr. Modlin are the cofounders of MedMen Enterprises Inc. ("Medmen"), a cannabis retailer with flagship locations in Los Angeles, Las Vegas, Chicago, and New York.

MMMG, LLC paid one bill in July 2019 for Quinn Emanuel's legal services and, due to an indemnification obligation, also paid bills for matters related to Mr. Bierman or Mr. Modlin. Since July 2020, Quinn Emanuel has not done any work for Mr. Bierman, Mr. Modlin, or any work related to other MedMen entities. In February 2021, Quinn Emanuel received its final payment of more than \$500 from MMMG, LLC related to its services to Mr. Bierman and Mr. Modlin. Councilmember Madison did not work on the MMMG, LLC matter and did not participate in the representation of Mr. Bierman and Mr. Modlin.

In January of 2019, MME Pasadena Retail, Inc, a subsidiary of MedMen, applied to the City for a retail cannabis license. On August 27, 2020, the City Manager disqualified MedMen Pasadena's application to become a licensed cannabis business in the City because of

a material change in the owners listed on MedMen Pasadena's application. The City Manager explained that the evaluation and scoring of MedMen Pasadena's application was no longer valid because a different score and evaluation would have been likely with the new ownership team. In May 2020, Mr. Modlin's employment agreement with MedMen expired. In June 2020, Mr. Bierman stepped down as a member, and Mr. Modlin stepped down as an observer of MedMen's Board of Directors.

## ANALYSIS

The Act's conflict of interest provisions prohibit a public official from taking part in a governmental decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests distinguishable from the decision's effect on the public generally. (Sections 87100 and 87103.) Pertinent to your request, an official's interests that may give rise to a disqualifying conflict of interest under the Act are set forth in Section 87103 and include:

- A business interest in any business entity in which the official has a direct or indirect investment worth \$ 2,000 or more (Section 87103(a)), or in which the official is a director, officer, partner, trustee, employee, or holds any management position. (Section 87103(d).)
- A source of income interest in any source from whom the official receives \$500 or more in value in the 12 months prior to when the decision is made including a pro rata share of income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Sections 82030 and 87103(c).)
- An interest in the official's personal finances including those of immediate family members. (See Section 87103.)

With respect to the decision to amend the Cannabis Ordinance, Councilmember Madison has identified a financial interest in Quinn Emanuel as a business interest and source of income, because he is a partner at the law firm and will receive more than \$500 income from the firm in any 12 month period. Because his ownership interest in the law firm is less than a 10 percent interest, he does not have a source of income interest in MMMG, LLC, MedMen, Mr. Bierman, or Mr. Modlin, as clients of the law firm. (Section 82030.) We look solely to the reasonably foreseeable impact of the decision on his law firm as a business entity and source of income interest.

### *Foreseeability and Materiality*

Regulation 18701(a) provides that a decision's financial effect on an official's financial interest is presumed to be reasonably foreseeable if the official's interest is "explicitly involved" in the decision as a named party in, or the subject of, the decision. An interest is the "subject of a proceeding" if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest including any decision affecting an interest in real property as described in Regulation 18702.2(a)(1) through (6). The facts indicate Councilmember Madison's law firm is not explicitly involved in the Cannabis Ordinance

amendment decision, as it is not named in the decision nor is it the subject of the decision. Regulation 18701(b) sets forth the foreseeability standard applicable here, for a decision's effect on an official's interest that is not explicitly involved in the decision. It provides that the effect of the decision on such an interest is reasonably foreseeable if it "can be recognized as a realistic possibility and more than hypothetical or theoretical."

### *Business as a Source of Income*

For a business entity not explicitly involved in the decision, Regulation 18702.1(a)(2) provides that the decision's reasonably foreseeable financial effect is material if the decision may result in an increase or decrease of the business's annual gross revenues, or the value of the business's assets or liabilities, in an amount equal to or more than \$ 1,000,000, or five percent of the business's annual gross revenues and the increase or decrease is at least \$ 10,000.

Regulation 18702.3 sets forth the materiality standards with respect to an official's source of income interest. Regulation 18702.3(a)(4) provides that a decision's reasonably foreseeable financial effect on an official's source of income interest in a business entity is material if the business entity "will be financially affected under the materiality standards of Regulation 18702.1," discussed in the above paragraph. Additionally, Regulation 18702.3(b) "nexus" standard, provides that "[a]ny reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receives or is promised the income for achieving the purpose or goal.

Therefore, the Act would prohibit Councilmember Madison from taking part in the City decision to amend the Cannabis Ordinance if it is reasonably foreseeable that the decision may result in an increase or decrease of his law firm's annual gross revenues, or the value of its assets or liabilities, in an amount equal to or more than \$10,000. The Act would also prohibit Councilmember Madison from taking part in the decision, if the decision will further or hinder a goal of his law firm, and Councilmember Madison is promised income for achieving this goal.

However, there are no facts to support that the Cannabis Ordinance amendment decision will have a reasonably foreseeable and material financial effect on the Quinn Emanuel law firm under the above standards. The law firm's identified cannabis-related clients have paid their outstanding bills, as of February 2021, and are no longer clients of the law firm. There are no facts showing that the law firm would otherwise have a realistic possibility of a financial effect from the decision. Nor are there facts indicating that the decision would further or hinder a goal or purpose of the law firm. Based on the facts provided, there is no evidence that the Cannabis Ordinance amendment decision would have a reasonably foreseeable or material financial effect on Councilmember Madison's business and source of income interest in the Quinn Emanuel law firm. (Regulations 18701, 18702.1 and 18702.3.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

*L. Karen Harrison*

By: L. Karen Harrison  
Senior Counsel, Legal Division

LKH:dkv