UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74501 / March 13, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16439

In the Matter of **Jane G. Ciabattoni** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER AND CIVIL PENALTY**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Jane G. Ciabattoni ("Ciabattoni" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order and Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 13(d) of the Exchange Act, and the rules promulgated thereunder, require the filing of a Schedule 13D, commonly referred to as a "beneficial ownership report," when a person or group of persons acting together for the purpose of acquiring, holding, or disposing of securities, directly or indirectly acquires beneficial ownership of more than 5% of a voting class of a company's equity securities. Timely disclosure of beneficial ownership, and intentions regarding the equity securities held, substantially contribute to the pool of material information available to inform investment and voting decisions. Section 13(d)(2) and Rule 13d-2(a) thereunder also require the filing of amendments to Schedule 13D whenever there is a material change in the facts contained in the Schedule 13D.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of insider information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to the prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR and posted on the company's website to facilitate rapid dissemination to the public.

3. Ciabattoni failed to file on a timely basis multiple required Schedule 13D amendments and Section 16(a) reports relating to his beneficial ownership of securities of First Physicians Capital Group, Inc. ("FPCG"). As of at least January 2014, Respondent took a series of steps to take FPCG private, an extraordinary corporate transaction that triggers a reporting obligation. Respondent, however, failed to file an amendment to her Schedule 13D Item 4 disclosure until June 20, 2014. At that time, Respondent finally reported that she was "evaluating potential transactions that could allow the Issuer to become eligible to terminate its registration under Section 12(g)(4) of the Act" and that her "inten[t]" was "to support a reverse stock split by the Issuer, which would result in the Issuer having fewer than 300 stockholders of record and becoming eligible to terminate the Issuer's registration." Also, between February 6,

[1] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2010 and April 7, 2014, Respondent engaged in twelve transactions acquiring or disposing of her beneficial ownership of FPCG securities, but did not report any of these transactions on a Form 4 or Schedule 13D amendment until June 20, 2014.

Respondent

4. Jane G. Ciabattoni, age 70, is a beneficial owner of FPCG shares directly owned by The Ciabattoni Living Trust dated August 17, 2000 ("the Trust"), a family trust that she and her husband Anthony J. Ciabattoni created by agreement on August 17, 2000, and for which both are grantors and trustees. Both she and her husband, as trustees of the Trust, have shared power to vote and dispose of the FPCG shares held by the Trust. As of June 2014, the Trust, Respondent and Mr. Ciabattoni reported beneficial ownership of 10,270,400 shares of FPCG, representing approximately 39% of the class. On June 20, 2014, Ciabattoni filed a Schedule 13E-3 jointly with other insiders of FPCG disclosing the company's plans to go private by effectuating a 1-for-2,000 reverse stock split so as to reduce the number of record shareholders and allow the company to deregister. Ciabattoni is a resident of Laguna Beach, California, and is not employed.

Issuer

5. First Physicians Capital Group, Inc. ("FPCG") is a Delaware company whose principal executive offices are located in California. FPCG's business is to provide management, financial, and ancillary healthcare and IT services to the rural and community hospital market. FPCG's common stock was at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the OTCBB with the ticker FPCG. However, after filing a Form 10-Q on February 22, 2011, FPCG failed to file quarterly or annual reports with the Commission until April 2014. FPCG also failed to file any reports on Form 8-K after September 2011 and before December 2013. In order to deregister and go private, FPCG became current in its filings on April 4, 2014. Then, on June 20, 2014, the Company filed a preliminary proxy statement on Schedule 14A and, jointly with Respondent and others, a Schedule 13E-3, disclosing its plans to go private by conducting a reverse stock split and deregistering its securities. On October 15, 2014, FPCG's shareholders approved the reverse stock split of the company's common stock, which would permit FPCG to deregister and cease to be a public company. On October 27, 2014, FPCG filed a final amendment to its Schedule 13E-3 announcing the completion of the going private transaction. On December 19, 2014, FPCG filed Form 15-12G terminating its securities registration.

Legal Framework

6. Section 13(d)(1) of the Exchange Act and Rule 13d-1(a) thereunder together require any person or group who has acquired, directly or indirectly, beneficial ownership of more than five percent of a class of a registered equity security to file a statement with the Commission disclosing the identity of its members and the purpose of its acquisition. *See generally GAF Corp. v. Milstein*, 453 F.2d 709, 717 (2d Cir. 1971), *cert. denied*, 406 U.S. 910 (1972). Entities or individuals comply with Section 13(d) of the Exchange Act by filing a Schedule 13D with the

Commission no later than ten business days after they accumulate beneficial ownership of more than five percent of the class of equity security.

7. Schedule 13D requires disclosure of, among other things: (1) the identity of the acquirer, including beneficial owners;[2] (2) a description of the purpose(s) of the acquisition, including any plans (i) to affect the issuer's Board of Directors or (ii) to cause an extraordinary corporate transaction, such as a merger, reorganization, or going-private transaction; and (3) the interest of all persons making the filing, including those acting together as a group. A duty to file under Section 13(d) of the Exchange Act and Rule 13d-1 creates the duty to file truthfully and completely. *SEC v. Savoy Indus.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) *cert. denied*, 440 U.S. 913 (1979). Scienter is not required to establish a violation of Section 13(d). *Id.* at 1167; *SEC v. Levy*, 706 F. Supp. 61, 69 (D.D.C. 1989).

8. Exchange Act Rule 13d-101, which sets forth reportable items covered in a Schedule 13D disclosure, requires filers to disclose "the purpose or purposes of the acquisition of securities of the issuer" in the Item 4 disclosure. Exchange Act Rule 13d-101 further provides a list of plans or proposals that a reporting person may have that would trigger an Item 4 reporting obligation, including additional purchases of securities or a going-private transaction by a public company.[3] Specifically, the Rule provides that any plan or proposal that relates to the "acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer [subpart (a)]" or "[c]ausing a class of securities of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association [subpart (h)]" or "[a] class of equity securities of the issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the [Exchange] Act [subpart (i)]" is a required disclosure under Item 4 of the Schedule 13D. A disclosable matter under Rule 13d-101 includes a reporting person's plan which would result in an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer. *SEC v. Teo*, 746 F.3d 90, 99 n.10 (3d Cir. 2014).

9. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) together require a filer to promptly amend Schedule 13D when there are material changes or developments in the

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[2] Whether a person is a "beneficial owner," a term that is not defined under Section 13(d) of the Exchange Act, is determined through the application of Rule 13d-3, which broadly includes "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise" has or shares voting or investment power with respect to a registered equity security. *See* Rule 13d-3(a); *see also SEC v. First City Financial Corp.*, 890 F.2d 1215, 1221 (D.C. Cir. 1989). More than one person may be a beneficial owner of the same securities. Because beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity. *See Amendments to Beneficial Ownership Reporting Requirements*, SEC Release No. 34-39538, 1998 WL 7449, at *7-8 (Jan. 12, 1998).

[3] *See* Rule 13d-101 (Item 4). Generally, when an issuer becomes eligible to deregister under Section 12 or suspend periodic reporting under Section 15(d) with respect to a class of its equity securities in a transaction conducted by an affiliate of the issuer, the transaction type is defined as "going private" under Exchange Act Rule 13e-3(a)(3). *See* Rule 13e-3(a)(3) (defining a "going private" transaction).

information previously reported. Rule 13d-2(a) provides that a one percent or larger change in beneficial ownership is a *per se* material change. Qualitative disclosures providing narrative in response to line item requirements of Rule 13d-101 also are subject to material changes. For example, generic disclosure that indicates the beneficial owner is reserving the right to engage in any of the kinds of transactions enumerated in Item 4 (a)-(j) of Exchange Act Rule 13d-101 must be amended when a plan with respect to a disclosable matter has been formulated. *See In the Matter of Tracinda Corp.*, Rel. No. 34-58451, 2008 SEC LEXIS 3036 (Sept. 3, 2008) (settled order). Depending on the facts and circumstances, however, an amendment also may be required before a plan has been formulated because the obligation to revise arises under Section 13(d)(2) and corresponding Rule 13d-2(a) promptly after a "material change occurs in the facts set forth in the" Schedule 13D.

10. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, "insiders"). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means "any person who is deemed a beneficial owner pursuant to [S]ection 13(d) of the [Exchange] Act and the rules thereunder."[4]

11. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing his or her beneficial ownership of all securities of the issuer. Insiders must subsequently file Form 4 reports whenever they engage in transactions that result in a change in beneficial ownership. Such disclosures on Form 4 must be made within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file an annual statement on Form 5 within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the corporate insider has previously reported all such transactions).

[4] *See* Rule 16a-1(a)(1). This determination of beneficial ownership, though, does not apply to persons eligible as Qualified Institution 13G Filers or Qualified Control Person 13G Filers. Such persons are not deemed the beneficial owner of any securities held by the qualified institution "for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business … as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d-3(b)." *Id*.

12. There is no state of mind requirement for violations of Section 16(a) and 13(d) and the rules thereunder.[5] The failure to timely file a required report, even if inadvertent, constitutes a violation.[6]

Respondent's Failure to Report Material Change to Plans or Proposals for FPCG

13. As a greater than 5% beneficial owner of FPCG common stock, Respondent was subject to the reporting requirements of Exchange Act Section 13(d).

14. Respondent filed her initial Schedule 13D on November 8, 2007 and subsequently filed four amendments between April 24, 2008 and February 25, 2009. In her fourth amendment to Schedule 13D, Item 4 disclosure, filed on February 25, 2009, Respondent stated that the acquisition of securities beneficially owned was for "investment purposes" and that she "do[es] not have any present plans or proposals that relate to or would result in any of the actions required to be disclosed in Item 4 of Schedule 13D." Respondent further stated that she had "no present intention of" reviewing or reconsidering her "position with respect to the Issuer" or formulating any such "plans or proposals."

15. Respondent made no further amendments to her Schedule 13D Item 4 disclosures over the next five years.

16. However, as FPCG and Respondent disclosed in their amended Schedule 13E-3 and the company's definitive proxy statement on Schedule 14A, both filed on September 15, 2014, the Trust and FPCG began considering a going-private transaction in early 2011, and continued to have discussions with FPCG regarding the advisability of and the reasons for undertaking a going private transaction through 2014.

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[5] *See Lexington Resources Inc., et al.*, 96 SEC Docket 229, 2009 WL 1684743, at *17-18 (June 5, 2009) (initial decision) ("A finding of scienter is not required to demonstrate a violation of either [Section 13(d) or 16(a)]"); *Robert G. Weeks, et al.*, 76 SEC Docket 2609, 2002 WL 169185, at *50 (Feb. 4, 2002) (initial decision) ("No showing of scienter is required to prove violations of these reporting provisions"); *see also Savoy Indus.*, 587 F.2d at 1167 ("Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct.").

[6] *Cf. Oppenheimer & Co., Inc.*, 47 SEC 286, 1980 WL 26901, at *1-2 (May 19, 1980) (Commission opinion) ("We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation"); *see generally Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5*, SEC Release No. 34-47809 (May 7, 2003) (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders "does not change the fact that *any* Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)") (emphasis added); *Herbert Moskowitz*, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) ("evidence of both motive for non-disclosure and actual market impact … is irrelevant" to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred).

17. By January 2014, Respondent took a series of steps in furtherance of undertaking a going-private transaction involving FPCG. Specifically, Respondent, by and through her husband as co-trustee of the Trust, informed FPCG management that the Trust would support going private and assisted FPCG in that effort, including by securing waivers from certain shareholders to remove a registration requirement on certain FPCG preferred stock. Thus, by no later than January 2014, Respondent's "intention" as previously disclosed in Item 4 of her Schedule 13D had materially changed, and she was required to disclose *at that time* that she and the Trust had taken steps in support of a going private transaction.

18. Between February 2014 and June 2014, Respondent, by and through her husband as co-trustee, took additional steps towards taking the company private through a reverse stock split transaction, including: (a) by March 2014, discussing with FPCG officers and directors the fractional share repurchase and reverse stock split transaction and a proposal from a third party to conduct related valuation work; (b) receiving information about Board meetings discussing valuation issues, ratio stock split analyses, public company cost estimates, and the preliminary proxy statement; and (c) in May 2014, assisting FPCG with shareholder vote projections on the reverse stock split and going private transaction.

19. Notwithstanding these facts, including Respondent's steps in support of taking FPCG private as early as January 2014—an extraordinary corporate transaction that triggers a reporting obligation—Respondent did not file an amendment to her Schedule 13D Item 4 disclosure until five months later, on June 20, 2014. The amended Schedule 13D Item 4 disclosure, jointly filed by Respondent, her husband Anthony J. Ciabattoni, and the Trust on June 20, 2014, stated, "The Reporting Persons are evaluating potential transactions that could allow the Issuer to become eligible to terminate its registration under Section 12(g)(4) of the Act. As of the date of this Statement, the Issuer has approximately 355 record stockholders, a significant portion of which hold small positions in the Issuer's Common Stock. The Reporting Persons intend to support a reverse stock split by the Issuer, which would result in the Issuer having fewer than 300 stockholders of record and becoming eligible to terminate the Issuer's registration."

Respondent's Failure to Amend Schedule 13D to Report Later Acquisition of FPCG Shares

20. In her fourth amendment to Schedule 13D filed on February 25, 2009, Respondent disclosed beneficial ownership of 8,385,000 shares of FPCG stock, which constituted 44.82% of the class (based on 10,322,922 shares outstanding).

21. Although she continued to acquire or dispose of beneficial ownership of FPCG stock, Respondent made no further amendments to her Schedule 13D over the next five years.

22. On June 20, 2014, Respondent filed a fifth amendment to her Schedule 13D, disclosing beneficial ownership of 10,270,400 shares of FPCG stock, which constituted 38.95% of the class (based on 19,659,507 shares outstanding), and twelve transactions in the stock occurring between February 6, 2010 and April 7, 2014. Respondent had not previously disclosed these transactions, each of which was required to be reported months to years prior to June 20, 2014.

Respondent's Failure to Timely File Required Section 16(a) Reports

23. As a greater than 10% beneficial owner of FPCG's common stock, Respondent was subject to the reporting requirements of Exchange Act Section 16(a). Respondent filed an initial statement of beneficial ownership on Form 3 on November 8, 2007.

24. Respondent subsequently filed several Form 4 reports between November 2007 and February 13, 2009. Respondent did not file Form 4 or Form 5 reports after February 2009 for over five years, even though Respondent continued to acquire and dispose of FPCG stock or derivative securities.

25. On June 20, 2014, Respondent finally filed a Form 4 disclosing twelve transactions in FPCG stock that occurred between February 6, 2010 and April 7, 2014. Each of these transactions was required to be disclosed within two business days of their occurrence. When Respondent finally disclosed the transactions on June 20, 2014, the disclosures were months to many years late.

Violations

26. As a result of the conduct described above, Respondent violated Sections 13(d)(2) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 thereunder.

Respondent's Cooperation

27. In determining to accept the Offer, the Commission considered the cooperation Respondent provided to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 21C of the Exchange Act, Respondent Jane G. Ciabattoni shall cease and desist from committing or causing any violations and any future violations of Sections 13(d)(2) and 16(a) of the Exchange Act and Rules 13d-2 and 16a-3 thereunder;

B. Respondent Jane G. Ciabattoni shall, within fourteen (14) days of the entry of this Order and on a joint and several basis with The Ciabattoni Living Trust Dated August 17, 2000, and with Anthony J. Ciabattoni, pay a civil money penalty in the amount of $75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with Exchange Act Section 21F(g)(3). If timely payment is not made, additional

interest shall accrue pursuant to 31 U.S.C. §3717.

C. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Jane G. Ciabattoni as Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary