BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of:
SUSAN KENNEDY and SUSAN P.
KENNEDY, INC.

Respondents.

INTRODUCTION

Respondent Susan Kennedy qualified as a lobbyist as the result of attempting to influence commissioners and staff of the California Public Utilities Commission (“CPUC”) from 2012 to 2014. Respondent Susan P. Kennedy, Inc. is Kennedy’s consulting company that received payment for Kennedy’s lobbying services thereby qualifying as a lobbying firm. The Political Reform Act (the “Act”)1 requires lobbyists and lobbying firms to register with the Office of the Secretary of State (“SOS”) and file quarterly reports. Kennedy and Susan P. Kennedy, Inc. failed to register and failed to file quarterly reports.

1 The 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 18110 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.
SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2012 – 2014.

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

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. For this reason, the Act is to be construed liberally to accomplish its purposes. One purpose of the Act is to prevent improper influence by lobbyists over public officials by regulating the activities of lobbyists and requiring disclosure of their financial activity. Another stated purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”

Definition of a Lobbyist

A “lobbyist” under the Act, is an individual who receives $2,000 or more in a calendar month to communicate directly, or through an agent, with state officials for the purpose of influencing legislative or administrative action. “Administrative action” means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, ratemaking proceeding, or quasi-legislative proceeding. Specifically in regard to the CPUC, “ratemaking proceeding” means any proceeding before the CPUC in which it is reasonably foreseeable a rate will be established including, general rate cases.

For matters before the CPUC, “quasi-legislative proceeding” means any proceeding that involves consideration of the establishment of a policy that will apply generally to a group or class of persons. It does not include a proceeding to determine the rights or duties of a person under existing laws,

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2 § 81001, subd. (h).
3 § 81003.
4 §81002, subd. (b).
5 § 81002, subd. (f).
6 §82039, subd, (a)(1).
7 §82002, subd. (a).
8 §82002, subd. (b).
9 §82002, subd. (c).
regulations, or policies. Nor does “quasi-legislative” include a proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.

Definition of Lobbying Firm

A lobbying firm is a business entity, including an individual contract lobbyist, that receives compensation for the purpose of influencing legislative or administrative action on behalf of another person, where any partner, owner, officer or employee of the entity is a lobbyist.

Registration

A lobbying firm must register with SOS within 10 days of qualifying as a lobbying firm. The registration includes the name and address of the firm, as well as a list of lobbyists employed by the firm and information about the firm’s clients. The registration must include a certification for each lobbyist at the firm containing information about the lobbyist. A lobbyist also must complete ethics training as part of the certification and registration process.

Reporting

Lobbying firms must file quarterly reports disclosing payments received for lobbying services, the identity and lobbying interests of clients, the firm’s activity expenses, and contributions made by the firm to state elected officials or candidates during the quarter. Additionally, a lobbyist must prepare a lobbying report each quarter that is filed with the lobbying firm’s report. The lobbyist report discloses all activity expenses, and contributions made to a state elected official or candidate by the lobbyist. Lobbying firm reports, along with the lobbyist reports, must be filed with SOS during the month following each calendar quarter.

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10 Reg. §18202, subd. (a)(1).
11 Reg. §18202, subd. (a)(3).
12 §82038.5, subd. (a).
13 §§86100 and 86101.
14 §86104.
15 §86103.
16 §86103, subd. (d).
17 §86114.
18 §86113.
19 §86117.
SUMMARY OF THE FACTS

Kennedy served as a CPUC Commissioner from 2003 to 2006. She then served as Chief of Staff to Governor Schwarzenegger from 2007 to 2011. She then worked as a consultant for various clients with business before the CPUC, as well as other state and Federal agencies, while she was establishing a new energy storage business. She is the sole owner of Susan P. Kennedy, Inc. According to Kennedy, she has worked full-time at her energy storage business since 2014 and is no longer acting as a paid consultant.

Lyft

On November 1, 2012, Lyft, Inc. contracted with Kennedy to provide consulting services involving the coordination and strategic management of Lyft’s public policy interests. Specifically, Kennedy was to provide consulting services. The contract was for one year and paid Kennedy $15,000 per month. It was subsequently extended beyond the original contract term.

At the time of the contract, Lyft, along with similar companies including UberX and Sidecar, were under scrutiny from the CPUC, which regulates transportation providers such as limousines and airport shuttles. Lyft and the other companies – known in the industry as Transportation Network Companies, or TNCs – began operating in California in mid-2012. On August 23, 2012, the CPUC sent Lyft a cease-and-desist letter ordering it to cease operations because it had not received operating authority from the CPUC. In November of 2012, Lyft agreed to pay a fine of $20,000 for operating without CPUC authority, as did other TNCs.

After being retained by Lyft, Kennedy contacted CPUC President Michael Peevey, Executive Director Paul Clanon, and other CPUC staff to convince them the CPUC should work with the TNCs, not shut them down. She advocated for the CPUC to undertake rulemaking specific to TNCs. Consequently, in December of 2012, the CPUC instituted a rulemaking proceeding regarding TNCs. (CPUC #R12-12-011.) The proceeding sought primarily to identify public safety issues involving TNCs and adopt regulations to address those concerns. Over the next nine months, the CPUC received comments on the TNC rulemaking and conducted public forums with the interested parties. In September of 2013, the CPUC issued a “Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New

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20 All titles refer to the person’s position at the period of time being discussed, unless otherwise indicated.
Entrants to the Transportation Industry” (CPUC # D13-09-0450) (the “TNCs Decision”). The TNCs Decision reiterated that TNCs were subject to the jurisdiction of the CPUC but at the same time acknowledged they were unique and that existing regulations for other types of passenger carriers were not sufficient. The TNC Decision adopted rules and regulations applicable to TNCs concerning liability insurance, driver licensing and background checks, driver training programs, vehicle inspections, and data reporting by the TNCs, amongst other requirements.

During the rulemaking process, Kennedy contacted various CPUC officials on behalf of Lyft to influence the nature of the rules and regulations. The efforts of Kennedy and Lyft were successful as the resulting rules and regulations adopted many of the suggestions and positions put forward by Kennedy and Lyft during the rulemaking process.

Despite her efforts to influence CPUC officials on the TNC regulations, Kennedy did not register as a lobbyist or lobbying firm, and did not file quarterly reports during the periods in which she sought to influence CPUC officials on behalf of Lyft. Lyft also did not file quarterly lobbyist employer reports during this time. Kennedy’s duties as described in her contract with Lyft did not include lobbying, but her contacts with CPUC officials regarding the TNC rulemaking process qualified her as a lobbyist.

San Gabriel Valley Water Company

The San Gabriel Valley Water Company (“San Gabriel”) is an investor-owned public utility water company regulated by the CPUC. San Gabriel contracted with Kennedy in December 2013 for consulting services on governmental regulatory, legislative, and public affairs matters. San Gabriel paid Kennedy $25,000 per month for her services. At the time, San Gabriel had a general rate case pending with the CPUC (Application # 11-07-005) (hereafter the “general rate case”) Sand Hill treatment plant. San Gabriel was seeking to increase water rates for customers in the City of Fontana as well as recover costs related to its Sand Hill treatment plant. The City of Fontana and Fontana School District objected to the proposed rate increases. According to Kennedy, San Gabriel primarily sought her guidance and strategy related to the Sandhill Treatment plant issue.

During the first half of 2014, Kennedy had meetings with Peevey and his staff, and Commissioner Michael Picker and his staff, regarding issues related to the San Gabriel general rate case. During these meetings, and through emails, Kennedy sought to influence the CPUC’s decision on cost recovery for the
Sand Hill treatment plan in the general rate case. On May 8, 2014, the CPUC issued a decision siding with the City of Fontana and Fontana School District regarding the proposed rate increases (Decision # 14-05-001) and denying rate recovery for the Sand Hill treatment plant, amongst other issues. The CPUC’s decision invalidated much of a settlement San Gabriel had with the CPUC’s Office of Ratepayer Advocate. Subsequently, the CPUC issued a decision on November 24, 2015 containing a modified rate increase agreed upon by all parties (Decision # 15-11-028). Kennedy’s communications with CPUC officials during the first two quarters of 2014 on behalf of San Gabriel qualified as lobbying. At the time, neither Kennedy nor Susan P. Kennedy, Inc. were registered to lobby and they did not file quarterly reports. San Gabriel did file quarterly lobbyist employer reports during these two quarters. The reports disclosed payments to another lobbying firm for lobbying the CPUC on San Gabriel’s behalf, but the reports did not disclose the payments to Susan P. Kennedy, Inc.

Registration and Reporting

Kennedy acknowledges through this stipulation her contacts with CPUC officials on behalf of Lyft and San Gabriel qualified her as a lobbyist, and Susan P. Kennedy, Inc. as a lobbying firm for the 4th quarter of 2012 through the 2nd quarter of 2014. In conjunction with this settlement, Kennedy has registered Susan P. Kennedy, Inc. as a lobbying firm and herself as a lobbyist. She has also filed quarterly lobbying firm reports and lobbyist reports disclosing the lobbying activity. The following table summarizes the content of those reports.

<table>
<thead>
<tr>
<th>Report Period</th>
<th>Client(s)</th>
<th>Client(s) Interest(s)</th>
<th>Payments Received</th>
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<tr>
<td>10/1/12 – 12/31/12</td>
<td>Lyft</td>
<td>CPUC Rule 12-12-011</td>
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<td>4/1/13 – 6/30/13</td>
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<td>CPUC Rule 12-12-011</td>
<td>$900</td>
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<tr>
<td>7/1/13 – 9/30/13</td>
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<td>CPUC Rule 12-12-011 and Decision 13-09-045</td>
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<td>San Gabriel</td>
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</table>

Total: $201,500
VIOLATIONS

Count 1: Failure to timely register lobbying firm and file lobbyist certification

Kennedy and Susan P. Kennedy, Inc. failed to timely register Susan P. Kennedy, Inc. as a lobbying firm and failed to complete a lobbyist certification for Kennedy, in violation of sections 86100 and 86101.

Counts 2 – 8: Failure to timely file lobbying firm and lobbyist reports

Kennedy and Susan P. Kennedy, Inc. failed to timely file quarterly lobbyist and lobbying firm reports for seven calendar quarters, in violation of sections 86113, 86114, and 86117.

PROPOSED PENALTY

This matter consists of eight counts of violating the Act, which carries a maximum administrative penalty of $5,000 per count and $40,000 total.

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) the seriousness of the violations; 2) the presence or lack of intent to conceal, deceive or mislead the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

In this case, the violations were serious since the public and other interested parties were not informed of Kennedy’s lobbying activity. Further, since Kennedy did not complete the certification required of lobbyists, the Act’s requirements of publishing a lobbyist’s name, address, and picture, and ethics training, did not occur. While Kennedy maintains she did not intend to qualify as a lobbyist, given her experience and sophistication, she should have been aware at the time that her activity qualified as lobbying. In conjunction with this settlement, Kennedy filed delinquent reports to disclose her lobbying activities. But the value of these disclosures is limited considering they occurred well after the administrative actions lobbied. According to Kennedy, she is no longer acting as a paid consultant and
does not intend to resume such work.

In determining whether a proposed penalty is appropriate, the Commission also considers penalties it has approved in similar cases. In the Matter of California Strategies, LLC, Jason Kinney, Rusty Areias, and Winston Hickox (FPPC #11/850) (“California Strategies”) concerned three experienced political consultants who qualified as lobbyists by attempting to influence government officials on behalf of their clients. The three lobbyists and their employer failed to register and failed to file quarterly reports in 2012 and a portion of 2013 despite California Strategies, LLC receiving approximately $67,500 during 2012 from clients for lobbying services provided by the three lobbyists. It’s not clear from the filings how much California Strategies, LLC received in 2013. The Commission approved a settlement on September 19, 2013. The settlement imposed a $4,500 penalty on each of the three individuals for failing to register as lobbyists, and on California Strategies, LLC for failing to register as a lobbying firm. The settlement also included penalties of $3,000 per count against each respondent for failing to file quarterly reports. Each count covered one calendar year of reports.

The nature of the violations in this case are similar to those in California Strategies. However, the counts are organized in a different manner, with Kennedy and Susan P. Kennedy, Inc. charged together on each count because Kennedy is the sole owner of Susan P. Kennedy, Inc. and its only lobbyist, whereas California Strategies involved a larger business and multiple lobbyists. On the violations for failure to file quarterly reports, more counts are proposed in this case due to the level of activity compared to California Strategies. Also, a higher penalty per count is proposed because Kennedy is highly sophisticated and, given the extent of her communications with officials, should have been aware at the time her actions qualified as lobbying.

Therefore, the following administrative penalty is recommended: Count 1: $4,500; and Counts 2 – 8: $4,000 per count; for a total of $32,500.

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and respondents Susan Kennedy and Susan P. Kennedy, Inc. hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

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

4. Respondents have consulted with their attorney, James Harrison of Remcho Johansen & Purcell, LLP, and understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in sections 83115.5, 11503, 11523, and regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at respondents’ own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing an administrative penalty in the amount of $32,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding this matter.

6. If the Commission refuses to approve this stipulation—then this stipulation shall become null and void, and within fifteen business days after the Commission meeting at which the stipulation is rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.
7. The parties to this agreement may execute their respective signature pages separately. A copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax or as a PDF email attachment is as effective and binding as the original.

Dated: ___________________  Galena West, Chief of Enforcement  
Fair Political Practices Commission

Dated: ___________________  Susan Kennedy, individually and on behalf of Susan P. Kennedy, Inc.

The foregoing stipulation of the parties “In the Matter of Susan Kennedy and Susan P. Kennedy, Inc.,” FPPC Case No. 17/563 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: ___________________  Joann Remke, Chair  
Fair Political Practices Commission