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9
10 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

11 **STATE OF CALIFORNIA**

12 In the Matter of:

FPPC No. 12/0834

13 SULLIVAN SOLAR POWER and
14 DANIEL SULLIVAN,

STIPULATION, DECISION, and ORDER

Respondents.

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16 **STIPULATION**

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Sullivan Solar Power and Daniel Sullivan hereby agree that this Stipulation will be
19 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
20 meeting.

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

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
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1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
5 to timely file Lobbyist Employer Reports, in violation of Section 86117, subdivision (a) of the
6 Government Code (4 counts) as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by
7 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this
8 matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
11 Four Thousand Dollars (\$4,000). A cashier's check from Respondents in said amount, made payable to
12 the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
13 administrative penalty, and shall be held by the State of California until the Commission issues its
14 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
15 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
16 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
17 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
18 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
19 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
20 shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____ Gary S. Winuk, on Behalf of the Enforcement Division
23 Fair Political Practices Commission

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25 Dated: _____ [Respondent, individually and on behalf of Sullivan
26 Solar Power]

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Sullivan Solar Power and Daniel
3 Sullivan” FPPC No. 12/0834, including all attached exhibits, is hereby accepted as the final decision and
4 order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Ann Ravel, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Sullivan Solar Power (“Respondent”) has been a lobbyist employer since October 1, 2011. As a lobbyist employer, Respondent is required to file quarterly lobbying disclosure statements with the Office of the Secretary of State

Respondent employed Ogilvy Public Relations, a Lobbying Firm in California, to lobby the California State Legislature during the 2011/2012 legislative sessions. Between October 1, 2011 and December 31, 2012, Respondent made payments for lobbying services of \$165,000. Respondents failed to timely file four lobbyist employer reports (Form 635) from October 1, 2011 through September 30, 2012. The required reports were filed on average 153 days late, eventually reporting a total of \$90,000 for the period.

Despite qualifying as a lobbyist employer under the Political Reform Act (the “Act”)¹, Respondent failed to comply with the lobbying filing requirements by failing to timely file its disclosure statements from October 1, 2011 through September 30, 2012.

For the purposes of this Stipulation, Respondent’s violations are as follows:

- COUNT 1: Respondent failed to timely file a Report of Lobbyist Employer for the period from October 1, 2011 through December 31, 2011 (due January 31, 2012), in violation of Government Code Sections 86117 and 84605(d).

- COUNT 2: Respondent failed to timely file a Report of Lobbyist Employer for the period from January 1, 2012 through March 31, 2012 (due April 30, 2012), in violation of Government Code Sections 86117 and 84605(d).

- COUNT 3: Respondent failed to timely file a Report of Lobbyist Employer for the period from April 1, 2012 through June 30, 2012 (due July 31, 2012), in violation of Government Code Sections 86117 and 84605(d).

- COUNT 4: Respondent failed to timely file a Report of Lobbyist Employer for the period from July 1, 2012 through September 30, 2012 (due October 31, 2012), in violation of Government Code Sections 86117 and 84605(d).

¹ 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 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

An express purpose of the Act, as set forth in Section 81002, subdivision (b), is that the activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials. The Act therefore establishes a lobbyist employer, lobbying firm and lobbyist reporting system designed to accomplish this purpose of disclosure.

Under Government Code Section 82039.5 and Regulation 18239.5, “lobbyist employer” means any person or bona fide association, other than a lobbying firm, who: employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action; or contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action.

Duty to File Lobbyist Employer Reports

Pursuant to Government Code Sections 86115 and 86116, lobbyist employers (and any person who directly or indirectly makes payments to influence legislative or administrative action of five thousand dollars (\$5,000) or more in value in any calendar quarter) shall file periodic reports containing all the following information:

- (a) the name, business address, and telephone number of the lobbyist employer or other person filing the report;
- (b) the total amount of payments to each lobbying firm;
- (c) the total amount of all payments to lobbyists employed by the filer;
- (d) a description of the specific lobbying interests of the filer;
- (e) a periodic report completed and verified by each lobbyist employed by a lobbyist employer pursuant to Section 86113;
- (f) each activity expense of the filer, a total of all activity expenses of the filer shall be included;
- (g) the date, amount, and the name of the recipient of any contribution of one hundred dollars (\$100) or more made to an elected state officers, state candidates, or committees; and
- (h) the total of all other payments to influence legislative or administrative action including overhead expenses and all payments to employees who spend 10 percent or more of their compensated time in any one month in activities related to influencing legislative or administrative action.

Under Government Code Section 86117, reports required by Section 86116 shall be filed during the month following each calendar quarter.² The period covered shall be from the first day of January of each new biennial legislative session through the last day of the calendar quarter prior to the month during which the report is filed. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire legislative session to date.

Furthermore, under Government Code Section 84605, subdivision (a)(4), an electronic quarterly statement must be submitted to the Secretary of State for any lobbyist employer who expenses, income, or other items total two thousand five hundred dollars (\$2,500) or more in a calendar quarter.

SUMMARY OF THE FACTS

Respondent Sullivan Solar Power (“Respondent”) has been a lobbyist employer since October 1, 2011. As a lobbyist employer, Respondent is required to file quarterly lobbying disclosure statements with the Office of the Secretary of State

Respondent employed Ogilvy Public Relations, a Lobbying Firm in California, to lobby the California State Legislature during the 2011/2012 legislative sessions. Between October 1, 2011 and December 31, 2012, Respondent made payments for lobbying services of \$165,000. Respondents failed to timely file four lobbyist employer reports (Form 635) from October 1, 2011 through September 30, 2012. The required reports were filed on average 153 days late, eventually reporting a total of \$90,000 for the period.

Despite qualifying as a lobbyist employer under the Political Reform Act (the “Act”)³, Respondent failed to comply with the lobbying filing requirements by failing to timely file its disclosure statements from October 1, 2011 through September 30, 2012.

² The filing deadlines are as follows: April 30 for the January, February and March reporting period; July 31 for the April, May and June reporting period; October 31 for the July, August and September reporting period; January 31 for the October, November and December reporting periods. In the event the filing deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. Cal. Code Regs. tit. 2, § 18116 (a)

³ 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 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.

COUNTS 1-4

(Failure to Timely File Required Lobbyist Employer Reports)

Respondent Sullivan Solar Power failed to timely file quarterly lobbyist employer reports for the October 1, 2011 through September 30, 2012 reporting periods, in violation of Government Code Sections 86115 and 86117.

Count	Reporting Period	Due Date	Filed On	Days Late
1	10/01/11-12/31/11	01/31/2012	04/05/2012	65
2	01/01/12-03/31/12	04/30/2012	01/29/2013	274
3	04/01/12-06/30/12	07/31/2012	01/29/2013	182
4	07/01/12-09/30/12	10/31/2012	01/29/2013	90

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000) per count for a total of twenty thousand dollars (\$20,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include:

- (1) the seriousness of the violations;
- (2) the presence or lack of intent to deceive 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.

The Enforcement Division has considered failure to properly report lobbying activity to be a serious violation of the Act as it violates one of its central purposes: that the activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials. The public harm inherent in these violations is that the public is deprived of important and timely information from Respondent regarding the amounts and nature of lobbying activity.

Other similar cases regarding a violation of Section 86117 that have been recently approved by the Commission include:

- *In the Matter of California Industrial Hygiene Council and Jaime Steedman-Lyde*; FPPC No. 10/361 (Default Decision). Respondent California Industrial Hygiene Council, a California lobbyist employer, and Respondent Steedman-Lyde, California Industrial Hygiene Council's Responsible Officer, failed to timely file ten Lobbyist Employer Reports (Form 635) between October 1, 2009 and September 30, 2012, failing to disclose total payments made for lobbying services in the amount of \$95,557.03, in violation of Government Code Section 86115, 86117, 84605 (10 counts). **Total Proposed Penalty: \$10,000**

- *In the Matter of Wildlife Center and Lindy O'Leary*, FPPC No.10/367 (Default Decision). Respondent Wildlife Center, a California lobbyist employer, and Respondent O'Leary, Wildlife Center's Responsible Officer, failed to timely file five Lobbyist Employer Reports (Form 635) between October 1, 2009 and December 31, 2010, failing to disclose total payments made for lobbying services in the amount of \$65,910.76, in violation of Government Code Section 86115, 86117, 84605 (5 counts). **Total Proposed Penalty: \$5,000**

- *In the Matter of State Public Affairs Committee – Junior Leagues of California and Wendy Penbera*, FPPC No. 10/366 (Default Decision). Respondent State Public Affairs Committee - Junior Leagues of California, a California lobbyist employer, and Respondent Penbera, State Public Affairs Committee - Junior Leagues of California's Responsible Officer, failed to timely file two Lobbyist Employer Reports (Form 635) between October 1, 2009 and March 31, 2010, failing to disclose total payments made for lobbying services in the amount of \$11,708.27, in violation of Government Code Section 86115, 86117, 84605 (2 counts). **Total Proposed Penalty: \$2,000.**

In this case, Respondent's actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. The present case does not appear to be a pattern of behavior or part of a bigger disclosure issue. Respondents voluntarily filed the delinquent lobbyist employer statements before being contacted by the Fair Political Practices Commission.

In this matter, Respondent failed to file lobbyist employer reports for four reporting periods. Respondent was contacted by the California Secretary of State and advised of the violations of the Act. However, Respondent did not respond or take action to correct these violations until months later. Respondent also failed to timely disclose \$90,000 worth of lobbying payments and activity, depriving the public of information on a significant amount of lobbying activity.

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$4,000.

* * * * *