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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**
10

11 In the Matter of:

FPPC Case No. 15/1408

12 SAN JOAQUIN COUNTY
REPUBLICAN CENTRAL
13 COMMITTEE/CALIFORNIA
REPUBLICAN VICTORY FUND and
14 LOUIS LEMOS,

STIPULATION, DECISION AND ORDER

15 Respondents.
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17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents San Joaquin County Republican Central Committee/California Republican Victory Fund
20 and Louis Lemos hereby agree that this Stipulation will be submitted for consideration by the Fair
21 Political Practices Commission at its next regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of Respondents pursuant to section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
28 appear personally at any administrative hearing held in this matter, to be represented by an attorney at

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 As described in Exhibit 1, it is further stipulated and agreed that Respondents committed one
5 violation of the Political Reform Act. Exhibit 1, which is attached hereto and incorporated by reference
6 as though fully set forth herein, is a true and accurate summary of the facts in this matter.

7 Respondents agree to the issuance of the Decision and Order, which is attached hereto. Also,
8 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
9 \$5,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
10 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
11 administrative penalty described above, and same shall be held by the State of California until the
12 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
13 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen business
14 days after the Commission meeting at which the Stipulation is rejected, all payments tendered by
15 Respondents in connection with this Stipulation shall be reimbursed to Respondents.

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1 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation
2 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the
3 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
4 Stipulation.

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7 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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11 Dated: _____

Charles Roots, Treasurer, on behalf of San Joaquin
County Republican Central Committee/California
Republican Victory Fund, Respondent

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15 Dated: _____

Louis Lemos, Respondent

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17 **DECISION AND ORDER**

18 The foregoing Stipulation of the parties “In the Matter of San Joaquin County Republican Central
19 Committee/California Republican Victory Fund and Louis Lemos,” FPPC Case No. 15/1408, including
20 all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices
21 Commission, effective upon execution below by the Chair.

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23 IT IS SO ORDERED.

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25 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

This matter arose from an audit performed by the Political Reform Audit Program of the Franchise Tax Board.

The San Joaquin County Republican Central Committee/California Republican Victory Fund is a political party committee. In 2012, Louis Lemos was the committee treasurer. The current committee treasurer is Charles Roots—who is authorized to sign this stipulation on behalf of the central committee, but is not a respondent.

This case involves acceptance of an over-the-limit contribution in violation of the Political Reform Act (the “Act”).¹

SUMMARY OF THE LAW

All legal references and discussions of law pertain to the Act’s provisions as they existed in October 2012.

Definition of Political Party Committee

The Act defines “political party committee” to include the county central committee of any organization that meets the requirements for recognition as a political party pursuant to Elections Code section 5100.² For example, the San Joaquin County Republican Central Committee/California Republican Victory Fund is a political party committee because it is the Republican county central committee for San Joaquin County.

Campaign Contribution Limits

The Act imposes campaign contribution limits with respect to the making and acceptance of certain contributions. However, these limits are adjusted periodically, and different limits apply depending upon who is contributing and who is receiving.

In 2012, there was a calendar year limit of \$32,500 with respect to how much a political party committee could accept from a single person.³ Over-the-limit contributions only could be accepted and kept by the committee if the funds were “split between the committee’s all-purpose (candidate) account and its restricted use (non-candidate) account at the time of deposit, with the amount deposited into the all-purpose (candidate) account not to exceed the applicable limits [of \$32,500]. . . .”⁴

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 this source.

² Section 85205.

³ Sections 83124; 85303, subdivision (b); and Regulation 18545, subdivision (a)(8).

⁴ *Bell Advice Letter* (A-11-102). Also, see Regulation 18534, subdivision (c).

Separation of these funds is important because political party committees are prohibited from using funds in their restricted use (non-candidate) accounts to make contributions to candidates for elective state office (or to make contributions to other committees for the purpose of making contributions to candidates for elective state office).⁵ Such contributions by a political party committee must be made from a bank account maintained and designated as an “all purpose” committee account.⁶

Joint and Several Liability of Committee and Treasurer

It is the duty of a committee treasurer to ensure that the committee complies with the Act.⁷ A treasurer may be held jointly and severally liable, along with the committee, for violations committed by the committee.⁸

SUMMARY OF THE FACTS

On or about October 22, 2012, the San Joaquin County Republican Central Committee/California Republican Victory Fund received a contribution in the amount of \$50,000 from the committee known as Re-Elect Bill Emmerson for Senate 2012. That same day, the central committee deposited the contribution into its all purpose (candidate) account. The over-the-limit portion of the contribution (\$17,500) was not transferred to the central committee’s restricted use (non-candidate) account.

The Franchise Tax Board’s audit report notes that some of this over-the-limit amount (at least \$7,620) was used to make a contribution in the amount of \$40,000 to the committee known as Bill Berryhill for Senate 2012 on or about October 29, 2012. (Berryhill lost by one percentage point—approximately 2,923 votes—to Cathleen Galgiani in the general election held November 6, 2012, and his committee terminated in 2013.)

VIOLATION

Count 1: Acceptance of Over-the-limit Contribution

In accepting and depositing the full Emmerson contribution in the amount of \$50,000 into the central committee’s all purpose (candidate) account, and by failing to transfer the over-the-limit funds—totaling \$17,500—into the restricted use (non-candidate) account, the central committee and its treasurer, Lemos, violated Section 85303, subdivision (b), which prohibits the acceptance of over-the-limit contributions by central committees for the purpose of making contributions for the support or defeat of candidates for elective state office.

Lemos maintains that he sought advice from the central committee’s reports preparer on the subject of this violation, and it was not forthcoming.

⁵ Regulation 18534, subdivision (d).

⁶ See Regulation 18534, subdivision (b).

⁷ Sections 81004, 84100, and Regulation 18427.

⁸ Sections 83116.5 and 91006.

PROPOSED PENALTY

This matter consists of one count. The maximum penalty that may be imposed is \$5,000.⁹

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; and (e) whether the violator has a prior record of violations.¹⁰ Additionally, the Commission considers penalties in prior cases with similar violations.

Regarding Count 1, one of the reasons campaign contribution limits exist is to curtail the potentially corrupting influence and the appearance of corruption caused by large donors. Also, acceptance of over-the-limit contributions is a serious violation of the Act because it has the potential to give an unfair advantage to one side in an election.

Recently, the Commission found that the San Joaquin County Republican Central Committee/California Republican Victory Fund violated campaign contribution limits and helped funnel unlawful contributions to Bill Beryhill when he successfully sought election to the California State Assembly in 2008. See *In the Matter of Bill Berryhill, Tom Berryhill, Bill Berryhill For Assembly - 2008, Berryhill For Assembly 2008, Stanislaus Republican Central Committee (State Acct.), and San Joaquin County Republican Central Committee/Calif. Republican Victory Fund*, FPPC Case No. 10/828 (approved Apr. 24, 2014), where the maximum penalty of \$5,000 per count was imposed against the central committee. (Lemos was the central committee's treasurer in that case as well, but he was not a named respondent.) The current case involves a similar type of violation by the same central committee, and at least some of the over-the-limit funds were used to support the same candidate—just for a different election. Under these circumstances, the maximum penalty is warranted.

Also, the San Joaquin County Republican Central Committee/California Republican Victory Fund agrees that a material condition of this settlement is that the central committee will transfer the over-the-limit amount in this case—\$17,500—from its all purpose (candidate) account to its restricted use (non-candidate account), and this transfer will be irrevocable. Proof of the transfer will be provided to the Enforcement Division prior to the Commission meeting at which this stipulation is considered.

CONCLUSION

For the foregoing reasons, an agreed upon penalty of \$5,000 is recommended.

⁹ See Section 83116, subdivision (c).

¹⁰ Regulation 18361.5, subdivision (d).