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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 06/786
13)
14 CALIFORNIA REPUBLICAN PARTY AND) STIPULATION, DECISION and
DOUGLAS R. BOYD, SR.,) ORDER
15)
16 Respondents.)
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18 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
19 and Respondents California Republican Party and Douglas R. Boyd, Sr. agree that this Stipulation will
20 be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 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 administrative hearing to
24 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 Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
28 right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents California Republican Party and Douglas R.
5 Boyd, Sr. violated the Political Reform Act by failing to properly report the total amount of expenditures
6 made, in violation of Section 84211, subdivisions (b), (i), (j), and (k) of the Government Code (2
7 counts), failing to properly report the balance of cash, in violation of Section 84211, subdivision (e) of
8 the Government Code (1 count); failing to properly report accrued expenses, in violation of Section
9 84211, subdivisions (i) and (k) of the Government Code (2 counts), failing to properly report subvendor
10 information, in violation of Sections 84211, subdivision (k) and 84303 of the Government Code (2
11 counts), and failing to properly report vendor information for credit card expenditures of \$100 or more,
12 in violation of Section 84211, subdivision (k) of the Government Code (1 count). All counts are
13 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
14 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

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

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Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

Dated: _____

Douglas R. Boyd, Sr., Respondent,
Individually and on behalf of
California Republican Party

EXHIBIT 1

INTRODUCTION

Respondent California Republican Party (“Respondent Committee”) is a state general purpose political party committee. This case arose from a Franchise Tax Board (“FTB”) audit of Respondent Committee for the period January 1, 2003 through December 31, 2004. Respondent Douglas R. Boyd, Sr. served, at all times relevant, as the treasurer for Respondent Committee. During the period covered by the audit, Respondent Committee reported receiving contributions of \$24,351,472 and making expenditures totaling \$26,823,501.

Respondents violated the Act’s requirements for (1) reporting of expenditures, (2) reporting of cash balances, (3) reporting of accrued expenses, (4) reporting subvendor information for payments made, and (5) reporting of vendor information for credit card payments made.

For the purposes of this Stipulation, Respondents’ violations of the Political Reform Act¹ (the “Act”) are stated as follows:

- COUNT 1: Respondents California Republican Party and Douglas R. Boyd, Sr. overstated expenditures by approximately \$202,999 on a pre-election campaign statement for the reporting period ending October 16, 2004, in violation of Section 84211, subdivisions (b), (i), (j), and (k).
- COUNT 2: Respondents California Republican Party and Douglas R. Boyd, Sr. overstated expenditures by approximately \$128,562 on a semi-annual campaign statement for the reporting period ending December 31, 2004, in violation of Section 84211, subdivisions (b), (i), (j), and (k).
- COUNT 3: Respondents California Republican Party and Douglas R. Boyd, Sr., overstated the balance of cash by approximately \$316,462 by the period ending December 31, 2004, in violation of Section 84211, subdivision (e).
- COUNT 4: Respondents California Republican Party and Douglas R. Boyd, Sr. failed to properly report accrued expenses totaling approximately \$232,941 on a pre-election campaign statement for the reporting period ending October 16, 2004, in violation of Section 84211, subdivisions (i) and (k).
- COUNT 5: Respondents California Republican Party and Douglas R. Boyd, Sr. failed to properly disclose accrued expenses totaling approximately \$526,790 on a semi-

¹The 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 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.

annual campaign statement for the reporting period ending December 31, 2004, in violation of Section 84211, subdivisions (i) and (k).

COUNT 6: Respondents California Republican Party and Douglas R. Boyd, Sr. failed to report on a pre-election campaign statement for the reporting period ending October 16, 2004, required subvendor information for payments totaling approximately \$345,789, in violation of Sections 84211, subdivision (k), and 84303.

COUNT 7: Respondents California Republican Party and Douglas R. Boyd, Sr. failed to report on a semi-annual campaign statement for the reporting period ending December 31, 2004, required subvendor information for payments totaling approximately \$318,385, in violation of Sections 84211, subdivision (k), and 84303.

COUNT 8: Respondents California Republican Party and Douglas R. Boyd, Sr. failed to report on campaign statements for the reporting periods ending October 16, 2004, and December 31, 2004, vendor information for credit card expenditures of \$100 or more totaling approximately \$149,309, in violation of Section 84211, subdivision (k).

SUMMARY OF THE LAW

Section 81002 provides that campaigns shall fully and truthfully disclose information regarding receipts and expenditures in election campaigns in order to fully inform the public and inhibit improper practices. The Act established a campaign reporting system to accomplish this purpose.

Section 82013, subdivision (a), defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. Pursuant to the Act, a committee, which qualifies as a committee under Section 82013, subdivision (a), shall file specific, required campaign statements. (See Sections 84200 – 84209.) Section 84211 prescribes that certain information must be disclosed on campaign statements filed by a committee, including information about the contributions received and the expenditures made by the committee.

Duty to Disclose Expenditures on Campaign Statements

Section 82025 defines “expenditure” as a payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure can be either a monetary or nonmonetary payment made for political purposes. (Section 82025, subd. (a) and Regulation 18225, subd. (a).) Section 84211, subdivision (b), requires candidates and their controlled committees to disclose the total amount of expenditures made during the period covered by the campaign statement as well as the total cumulative amount of expenditures made.

Duty to Report The Balance of Cash

The campaign statement must contain “[t]he balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.” (Section 84211, subd. (e).) The cash balance at the beginning and ending of the reporting period is reported as the “Beginning Cash Balance” and the “Ending Cash Balance” on the “Summary Page,” which provides an overview of a committee’s finances. For the purposes of computing the Beginning and the Ending Cash Balance, a committee must accurately report cash receipts (i.e., monetary contributions) and cash payments on the Summary Page.

Duty to Disclose and Itemize Accrued Expenses in Campaign Statements

Section 84211, subdivision (b), requires a committee to disclose in each of its campaign statements the total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made. In addition, for each person to whom the committee makes an expenditure of \$100 or more during the period covered by the campaign statement, a committee must disclose information that includes the payee’s name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure is made. (84211, subs. (i) and (k).)

“Expenditure” includes any individual payment or accrued expense (i.e., an unpaid bill). (Sections 82025, 84211, subd. (k)(6).) Further, an expenditure is “made” on the date the payment is made or on the date consideration, if any, is received, whichever is earlier. (Section 82025.) If consideration is received before payment is made, then the expenditure must be reported on the campaign statement as an accrued expense as of the date on which the goods or services are received. (Regulation 18421.6, subd. (b).)

Duty to Report Subvendor Payments

Section 84303 provides that no expenditure of five hundred dollars (\$500) or more shall be made, other than overhead and normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of, or for the benefit of any candidate or committee, unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. Regulation 18431, subdivision (c), requires disclosure of the expenditures made by an agent or independent contractor to be made at the same time and in the same manner and detail as required under Section 84211, subdivision (k) for the committee’s direct expenditures as set forth above. This information reported by the candidate or committee is commonly referred to as “subvendor information.”

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (a), it is the duty of the committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s treasurer may be held jointly and severally liable, along with the

committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

The Respondents in this matter are the California Republican Party, a general purpose political party committee and Douglas R. Boyd, Sr. At all times relevant, Respondent Boyd was the treasurer for Respondent Committee.

COUNTS 1 & 2

Failure to Disclose Total Amount of Expenditures Made

Respondents had a duty to disclose the total amount of expenditures made during the periods covered by their campaign statements. However, Respondents failed to accurately disclose the total expenditures made by overstating expenses by approximately \$331,561 for two reporting periods - the second pre-election reporting period due before the November 7, 2004 election, which ended October 16, 2004, and the post-election semi-annual campaign statement, which ended December 31, 2004. According to Respondent Committee's records and amendments filed on August 1, 2005, the expenditures made by Respondents during the second pre-election reporting period were overstated by approximately \$202,999 and overstated during the post-election semi-annual reporting period by approximately \$128,562.

By failing to disclose the total amount of expenditures made, Respondents twice violated Section 84211, subdivisions (b), (i), (j), and (k) of the Government Code.

COUNT 3

Failure to Disclose Balance of Cash

Respondents had a duty to disclose the balance of cash on hand at the beginning and ending of the period covered by the campaign statement. However, Respondents failed to accurately disclose the balance of cash. According to Respondent Committee's bank records, the balance of cash was overstated by approximately \$316,462 by the period ending December 31, 2004.

Respondents' campaign statements were required to include an accurate statement of the balance of cash on hand at the beginning and the end of the period covered by the campaign statement. (Section 84211, subd. (e).) However, Respondent Committee's campaign statements overstated the balance of cash. Consequently, Respondents failed to accurately report cash on hand.

By failing to accurately disclose the balance of cash on hand, Respondents violated Section 84211, subdivision (e) of the Government Code.

COUNTS 4 & 5

Failure to Properly Disclose Accrued Expenses

Respondents had a duty to disclose in each campaign statement the total amount of expenditures made during the reporting period covered by the campaign statement and the total cumulative amount of expenditures made. (Section 84211, subd. (b).) In addition, for each person to whom an expenditure of \$100 or more was made during the reporting period, Respondents were required to disclose information that included the payee's name and address, the amount of each expenditure, and a brief description of the consideration for which each expenditure was made. (Section 84211, subds. (i), (k).) Accrued expenses are reported as of the date on which the goods or services are received. (Section 82025, Regulation 18421.6, subd. (b).)

Generally, accrued expenses are unpaid bills. Respondents accrued expenses totaling \$759,731 for goods and services received from various vendors which were not disclosed until they were paid. Of this amount, \$232,941 was accrued through the pre-election period ending October 16, 2004. Respondents accrued an additional \$526,790 from vendors during the campaign reporting period from October 17, 2004 through December 31, 2004. Respondents disclosed no accrued expenses in these two campaign statements, but instead reported the expenditures when paid on both the last semi-annual statement of 2004 and the first semi-annual statement of 2005.

Exacerbating this lack of reporting was the fact that \$526,790 of the expenses accrued were for nonmonetary contributions made to candidates appearing on the ballot in the 2004 General Election causing the Late Contribution Reports ("LCRs") filed with the Secretary of State for five of these candidates to be understated by \$349,218.

By failing to timely report accrued expenses, Respondents twice violated Section 84211, subdivisions (i) and (k).

COUNTS 6 & 7

Failure to Report Subvendor Information for Payments Made

Respondents had a duty to report on their campaign statements subvendor information for payments of \$500 or more made by an agent to a subvendor on Respondent Committee's behalf for campaign services, as if the expenditures were made directly by the committee. Respondents failed to report on a second pre-election campaign statement and a semi-annual campaign statement for the reporting periods ending October 16, 2004, and December 31, 2004, required subvendor information for payments made during said reporting periods totaling approximately \$664,174.

On August 1, 2005, Respondents filed amended campaign statements disclosing payments to subvendors. According to Respondent's campaign statements and records, subvendor information for payments made that should have been reported during the second pre-election reporting period totaled approximately \$345,789 and totaled approximately \$318,385 for the post-election semi-annual reporting period.

By failing to report required subvendor information for expenditures of \$500 or more, Respondents twice violated Sections 84211, subdivision (k) and 84303.

COUNT 8

Failure to Report Vendor Information for Credit Card Payments Made

Respondents had a duty to report on their campaign statements credit card vendor information for payments of \$100 or more made to credit card vendors, as if the expenditures were made directly by the committee. Respondents failed to report on a second pre-election campaign statement and a semi-annual campaign statement for the reporting periods ending October 16, 2004, and December 31, 2004, vendor information for credit card expenditures of \$100 or more totaling approximately \$149,309.

According to Respondent's campaign statements and records, vendor information for credit card payments made that should have been reported during the second pre-election reporting period totaled approximately \$2,741 and totaled approximately \$146,568 for the post – election semi-annual reporting period.

By failing to report required vendor information for credit card expenditures of \$100 or more, Respondents violated Section 84211, subdivision (k).

CONCLUSION

This matter consists of 8 counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count for a total of forty thousand dollars (\$40,000).

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, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The public harm inherent in campaign reporting violations, where pertinent information is not disclosed, is that the public is deprived of important information such as the sources and amounts of contributions to a campaign, the amounts expended by the campaign, and information about the recipients and reasons for the expenditures. The typical administrative penalty for these types of violations is usually on the lower-to-middle end of the penalty range but has varied based on the circumstances of the violation, such as the total dollar amount not reported and whether the information should have been reported on a pre-election or post-election campaign statement. In contrast, the penalty for non-disclosure of subvendor information for payments of \$500 or more has typically been in the middle of the penalty range.

AGGRAVATION: Respondent Committee has prior experience with campaign reporting as well as the Act and has been prosecuted previously for campaign reporting violations including not reporting subvendor information and accrued expenses. As such, Respondents should have known or been familiar with the requirements of the Act. Additionally, the total dollar amounts not reported are substantial.

MITIGATION: Over half of the required disclosures were to appear on post-election campaign statements. Additionally, Respondents have stated that these were unintentional reporting mistakes and some were carried over from previous periods. Also, the monetary amounts affected by the mistakes made are small in comparison to the overall amounts collected and spent by the committee. In fact, Respondents state that the two major state political parties' campaign reports reflects a unique combination of California campaign-reportable activity and federal campaign reportable activity, so the actual dollars involved are significantly greater than the \$24,351,742 in contributions and \$26,823,501 in expenditures reported by Respondent Committee. In addition, none of the violations concerns a failure to file reports and statements regarding contributions to candidates or expenditures on behalf of candidates and Respondents worked cooperatively and quickly to resolve this matter with the Commission.

COUNTS 1 & 2 – Failure to Disclose Total Amount of Expenditures Made

Respondents were required to report the total amount of expenditures made during the two reporting periods. The expenditures made during the second pre-election reporting period were overstated by approximately \$202,999 and the expenditures made during the post-election semi-annual reporting period were overstated by \$128,562. By not correctly reporting this information regarding the total expenditures made by Respondent Committee, Respondents deprived the public of information regarding the accurate amounts expended by the campaign before and after the 2004 General Election. In mitigation, on August 1, 2005, before being contacted by the Franchise Tax Board or the Commission but after the election, Respondents filed amended campaign statements correcting these amounts. Respondents contend that the discrepancies were due to computer errors. Thus, an administrative penalty of two thousand dollars (\$2,000) for each of these violations is appropriate.

COUNT 3 – Failure to Disclose Balance of Cash

Respondents were required to report the balance of cash on hand at the beginning and ending of the period covered by the campaign statement. However, Respondents had overstated the balance of cash by approximately \$316,462 by the period ending December 31, 2004. Consequently, Respondents deprived the public of information regarding the accurate cash on hand. Thus, a typical administrative penalty of two thousand dollars (\$2,000) for this violation is appropriate.

COUNTS 4 & 5 – Failure to Properly Disclose Accrued Expenses

Respondents failed to disclose accrued expenses of approximately \$759,731 for goods and services received from various vendors during two reporting periods – one pre-election and one post-election. In mitigation, the total dollar amount not reported is relatively low, compared

to the approximately \$8.8 million in expenditures Respondents made during the same reporting periods. In addition, Respondents contend that accrued expense errors often reflect expenditures incurred in one period but identified in another period. In aggravation, Respondents disclosed the expenses after the 2004 General Election when they paid. Additionally, \$526,790 of the expenses accrued were for nonmonetary contributions made to candidates appearing on the ballot in the 2004 General Election causing the LCRs filed with the Secretary of State for five of these candidates to be understated by \$349,218. Therefore, an administrative penalty of two thousand five hundred dollars (\$2,500) for the pre-election campaign statement and two thousand dollars (\$2,000) for the post-election semi-annual campaign statement are appropriate penalties.

COUNTS 6 & 7: Failure to Report Subvendor Information for Payments Made

Respondents failed to report on a pre-election and a semi-annual campaign statement for the reporting periods ending October 16, 2004, and December 31, 2004, required subvendor information for payments made during said reporting periods totaling approximately \$664,175 - \$345,789 during the pre-election reporting period and \$318,385 during the post-election semi-annual reporting period. In mitigation, on August 1, 2005, before being contacted by the Franchise Tax Board or the Commission but after the election, Respondents filed amended campaign statements disclosing payments to subvendors. Respondent contends that as a practice, subvendor details are often obtained after a general election campaign has concluded from dozens of campaign vendors. Although the amount of subvendor information for payments made appears to be significant for the two reporting period, totaling \$664,174, it is less than 8% of the total expenditures made by Respondents during those reporting periods. Therefore, an administrative penalty of two thousand five hundred dollars (\$2,500) per violation is appropriate.

COUNT 8: Failure to Report Vendor Information for Credit Card Payments Made

Respondents had a duty to report on their campaign statements credit card vendor information for payments of \$100 or more made to credit card vendors, as if the expenditures were made directly by the committee. Respondents failed to report on a second pre-election campaign statement and a semi-annual campaign statement for the reporting periods ending October 16, 2004, and December 31, 2004, required credit card vendor information for payments made during said reporting periods totaling approximately \$149,309 ~ \$2,741 during the pre-election reporting period and \$146,568 during the post-election semi-annual reporting period. The amount of credit card vendor information for payments made for the two reporting periods is less than 2% of total expenditures made by Respondents during those reporting periods. Thus, an administrative penalty of two thousand five hundred dollars (\$2,500) for a combination of the two reporting periods is appropriate.

Accordingly, the facts of this case justify an imposition of an administrative penalty of eighteen thousand dollars (\$18,000).