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2 **FAIR POLITICAL PRACTICES COMMISSION**
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3 Sacramento, CA 95814
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4 Attorney for Complainant
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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of

12 SANTA CLARA COUNTY
13 REPUBLICAN PARTY,

14 Respondent.

FPPC No. 14/903

DEFAULT DECISION AND ORDER

(Gov. Code, §§ 11506 and 11520)

15 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
16 Order for consideration at its next regularly scheduled meeting.

17 Respondent Santa Clara County Republican Party has been provided advice by an attorney of
18 their choosing as to their rights to a probable cause conference and administrative hearing under the
19 Political Reform Act, Administrative Procedure Act, and all other relevant laws, and they have chosen to
20 waive all such rights to a probable cause conference and administrative hearing and to allow this matter
21 to proceed to a default decision. (A true and correct copy of Respondent's written waiver is attached to
22 the supporting declaration of Gary Winuk as Exhibit A-1. The waiver is conditioned upon the
23 Commission's approval of the terms of this Default Decision and Order.)

24 In this case, Respondent violated the Political Reform Act as described in Exhibit 1 and the
25 supporting declaration of Robert Perna, which are attached hereto and incorporated by reference as

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27
28

1 though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this
2 matter.

3 This Default Decision and Order is submitted to the Commission to obtain a final disposition of
4 this case as to the above-named Respondents.

5
6 Dated: _____

7 Gary S. Winuk, Chief of Enforcement
8 Fair Political Practices Commission

9
10 **ORDER**

11 The Commission issues this Default Decision and Order and imposes an administrative penalty of
12 \$5,000. This penalty is payable to the “General Fund of the State of California.”

13 IT IS SO ORDERED, effective upon execution below by the Chairman of the Fair Political
14 Practices Commission at Sacramento, California.

15
16 Dated: _____

17 Joann Remke, Chair
18 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Santa Clara County Republican Party is a political party committee (within the meaning of Government Code section 85205) in that it is the Republican county central committee for Santa Clara County.

Also, Yolo County Republican Central Committee is a political party committee (within the meaning of Government Code section 85205) in that it is the Republican county central committee for Yolo County. The Yolo central committee is the Respondent in Fair Political Practices Commission (“FPPC”) case number 11/278, which is a related case.

This case involves failure to disclose the existence of an intermediary relationship in connection with the making of substantial contributions to a committee known as Damon Dunn for Secretary of State 2010.

This Default Decision and Order only applies to Respondent Santa Clara County Republican Party—which has waived its rights to a probable cause conference and administrative hearing. (Ex. A to this Default Decision and Order is the supporting declaration of Gary Winuk. Ex. A-1 to the Winuk declaration is a true and correct copy of Respondent’s waiver, with specified conditions.) Other potential Respondents, such as Charles and Ann Johnson, are not affected by this Default Decision and Order, and this case remains open as to them.

In this case, Respondent violated the Political Reform Act (the “Act”)¹ as follows:

Count 1: In October and November 2010, Respondent Santa Clara County Republican Party was an intermediary for contributions totaling \$33,000 from Charles and Ann Johnson to the committee known as Damon Dunn for Secretary of State 2010, but this intermediary relationship was not disclosed in violation of Section 84302.

PROCEDURAL HISTORY

Respondent has been informed of the matter set forth herein. Also, it has consulted with an attorney of their choosing about their rights to a probable cause conference and an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all

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.

other relevant laws. However, Respondent has agreed to waive these rights, and is aware that by doing so, the Enforcement Division will proceed with this default recommendation to the Commission. (As stated above, a copy of Respondent's written waiver in this regard is submitted herewith as Exhibit A-1 and incorporated herein by reference as if in full.)

NATURE OF DEFAULT PROCEEDINGS

In this situation, where Respondent has waived its rights to a probable cause conference and an administrative hearing, the Commission may take action based upon the Respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subd. (a).)

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violations in question.

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

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts in election campaigns are fully and truthfully disclosed so that voters may be fully informed and improper practices may be inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Campaign Contribution Limits

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

For example, in 2010, an individual wishing to contribute to a candidate for California Secretary of State could not contribute more than \$6,500 per election. However, at that time, there was no limit on contributions from a political party committee (such as a county central committee) to that same candidate.² (See Sections 83124, 85301, 85303; also, see Regulation 18545 as it was in effect in 2010.)

At the time, there was a calendar year limit of \$32,400 with respect to how much an individual could contribute to a political party committee, but individuals could exceed this

Prohibition Against Concealed Intermediary Relationships

Undisclosed intermediary relationships are prohibited by Section 84301 because it deprives the public of important information about the true source of campaign contributions, and it facilitates the unlawful circumvention of campaign contribution limits. Specifically, Section 84301 provides:

No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.

Section 84301's use of the phrase "directly or indirectly" shows that the statute's prohibition is broad, encompassing any situation where the public is deceived about the true source of a contribution. The statutory prohibition must be broad because an undisclosed intermediary relationship may occur in a variety of ways.

An undisclosed intermediary relationship involves concealed earmarking under Sections 85704 and 84302. This occurs when a committee, such as a county central committee, receives a contribution from a donor where the contribution has been earmarked to go to a particular candidate, and the committee thereafter gives the contribution to that candidate. This only is allowed if there is full disclosure to the public that the original donor is the true contributor and that the committee merely is an intermediary. This required disclosure serves the important public purpose of transparency, which recognizes that "[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited [such as circumvention of the Political Reform Act's campaign contribution limits]." (Section 81002, subd. (a).)

In this regard, Section 85704 provides (with emphasis added):

A person may not make any contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate unless the contribution is fully disclosed pursuant to Section 84302.

Section 84302 requires full disclosure of the intermediary relationship and identification of the original contributor as the true source of funds. Specifically, the statute provides (with emphasis added):

"No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his

amount so long as the excess was not used by the committee to support/oppose candidates for state office.

principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor.”

Regulation 18432.5, subdivision (a)(1), further explains Section 84302 by providing:

(a) For purposes of Government Code Section 84302, a person, as defined in Government Code Section 82047 [which includes any “committee, and any other organization or group of persons acting in concert”], is an intermediary for a contribution if any of the following applies:

(1) The recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution.

Thus, when a committee receives a contribution from a donor where the contribution has been earmarked to go to a particular candidate, if the committee thereafter gives the contribution to that candidate, then the disclosure requirements of Sections 85704 and 84302 must be fulfilled. First, the committee must disclose to the candidate that the committee is an intermediary and that the original donor is the true contributor. Second, the candidate is required to disclose “both the intermediary and the contributor” on the candidate’s campaign statement. (Section 84302.) Failure to abide by these disclosure requirements makes the entire transaction unlawful.

Additionally, since this statutory scheme classifies the original donor as the true contributor, the campaign statements filed by the original donor (and the other parties) must reflect that the donor made the contribution to the candidate through the committee as an intermediary. If false campaign statements are filed, which untruthfully characterize the intermediary as the true contributor to the candidate, then the public has been deceived as to the identity of the true contributor. In such case, the transaction amounts to an undisclosed intermediary relationship because the contribution has been made in the name of another in violation of Section 84301.

SUMMARY OF THE FACTS

As stated above, Respondent Santa Clara County Republican Party is a political party committee (within the meaning of Government Code section 85205) in that it is the Republican county central committee for Santa Clara County. (Supporting declaration of Robert Perna, Ex. B hereto, ¶ 3.)

As of the first half of 2010, Charles and Ann Johnson were “maxed out” contributors to the Dunn committee for the California primary and general elections, having each contributed \$13,000. (Ex. B, ¶ 18.)

Count 1

In a case such as this, the burden of proof rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.)

The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

The phrase “preponderance of evidence” usually is defined in terms of probability of truth or more likely to be true than not true. (1 Witkin, Cal. Evid. (4th ed. 2012) Burden of Proof and Presumptions, § 36.)

In the second half of 2010, Charles and Ann Johnson each wrote a check in the amount of \$17,000 to the Santa Clara County Republican Party. Respondent Santa Clara County Republican Party accepted the Johnsons’ contributions, totaling \$34,000. Shortly thereafter, Respondent contributed \$33,000 to the Dunn committee.

The Johnsons filed major donor campaign statements, reporting that the central committees were the true recipients of the entire sum of their contributions (Ex. B, ¶ 57.)

The campaign filings of Respondent Santa Clara County Republican Party reported that they were the true recipients of the Johnsons’ contributions and that they had made a separate contribution to the Dunn committee. Respondent did not report to the Dunn committee the full name and street address of the Johnsons, nor their occupation, nor the name of their employer, if any, nor their principal place of business, if self-employed.

Campaign filings of the Dunn committee reported that the contributions were received from the central committee (Ex. B, ¶ 59.)

Ultimately, Mr. Dunn lost his election to the current Secretary of State, Debra Bowen (Debra Bowen received 53.2% of the vote, and Damon Dunn received 38.2%.) (Ex. B, ¶ 62.)

The Santa Clara County Republican Party has fully cooperated with the FPPC’s investigation in this matter. Members and representatives of the Santa Clara County Republican Party freely submitted for interviews with the FPPC and the Party provided all documents and records requested by the FPPC. Respondent contends that there is no evidence that the Santa Clara County Republican Party intended to violate any provisions of the Political Reform Act or FPPC Regulations.

The FPPC documentation makes clear that the events in question took place in 2010 and as a result the current officers of the Party are unable to attest to the events that gave rise to this proceeding.

Since 2010, there has been no known evidence of conduct warranting further investigation. In addition, there is no known evidence that the current officers of the Party have acted in other than a legal manner in full compliance with the laws of the State of California and the regulations of the FPPC.

Finally, the Santa Clara County Republican Party contends it has taken significant steps to improve its campaign reporting practices to insure that it remains fully compliant with all California laws and regulations.

Count 1

As described above and in the supporting declaration of Robert Perna (Ex. B hereto), which is incorporated herein by reference as if in full, sets forth evidence of the circumstances surrounding and leading up to the contributions in question in this case. In light of the facts set forth in the Perna declaration (which have been shared with Respondent's counsel), and in light of the fact that Respondent has elected to waive its right to contest this default proceeding, it is apparent—by a preponderance of the evidence—that in October and November 2010, Respondent Santa Clara County Republican Party was an intermediary for over-the-limit contributions totaling \$33,000 from Charles and Ann Johnson to the committee known as Damon Dunn for Secretary of State 2010, but that neither the full name and street address of the Johnsons, nor their occupation, nor the name of their employer, were disclosed to the Dunn Committee as required by Section 84302.

In this manner, the FPPC investigators concluded that Respondent Santa Clara County Republican Party violated Section 84302.

CONCLUSION

This matter consists of one count of violating Government Code 84302. A count carries a maximum administrative penalty of \$5,000 per count. (Section 83116, subd. (c).) 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. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency

in a manner not constituting a complete defense under Government Code section 83114(b);

(5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, concealment of intermediary relationships is one of the most serious violations of the Act because it facilitates an undisclosed intermediary relationship and unlawful circumvention of campaign contribution limits. Also, it deceives the public as to important information regarding the true source of a campaign's financial support. One of the more recent stipulations involving Section 84302 imposed a penalty in the high range. (See *In the Matter of Gustavo Villa*, FPPC No. 13/1122, approved Jan. 16, 2014 [\$4,500 penalty].) The current case warrants an even higher penalty because it is a default—as opposed to the *Gustavo* case, which was a stipulation with admitted facts. Also, Respondent in this case is a sophisticated political party committee, and it had reason to know that its conduct was unlawful.

PROPOSED PENALTY

Under these circumstances, it is respectfully submitted that imposition of the maximum penalty of \$5,000 for Count 1 is justified.

1 GARY S. WINUK
Chief of Enforcement
2 **FAIR POLITICAL PRACTICES COMMISSION**
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Telephone: (916) 322-5660

4 Attorney for Complainant
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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of

12 SANTA CLARA COUNTY
13 REPUBLICAN PARTY,

14 Respondent.

FPPC No. 14/903

DECLARATION OF GARY WINUK IN
SUPPORT OF DEFAULT DECISION AND
ORDER

(Gov. Code, § 11520)

15 I, Gary Winuk, declare as follows:

16 1. I am employed by, and I represent the Fair Political Practices Commission (“FPPC” or
17 “Commission”) in my capacity as Chief of the Enforcement Division. My business address is 428 J
18 Street, Suite 620, Sacramento, California.

19 2. If called as a witness, I competently could and would testify to the following, which is
20 based upon my own personal knowledge.

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1 GARY S. WINUK
Chief of Enforcement
2 NEAL P. BUCKNELL
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
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5 Attorneys for Complainant
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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**

10
11 In the Matter of

12 SANTA CLARA COUNTY
13 REPUBLICAN PARTY,

14 Respondent.

FPPC No. 14/903

DECLARATION OF ROBERT PERNA IN
SUPPORT OF DEFAULT DECISION AND
ORDER

(Gov. Code, § 11520)

15 I, Robert Perna, declare as follows:

16 1. I am a program specialist for the Enforcement Division of the Fair Political Practices
17 Commission (the "FPPC" or "Commission"). My business address is 428 J Street, Suite 620,
18 Sacramento, California.

19 2. I am the program specialist assigned to this case. If called as a witness, I competently
20 could and would testify to the following, which is based upon my own personal knowledge and upon my
21 investigation.

22 **Parties**

23 3. Santa Clara County Republican Party is a political party committee (within the meaning of
24 Government Code section 85205) in that it is the Republican county central committee for Santa Clara
25 County.

26 4. Yolo County Republican Central Committee is a political party committee (within the
27 meaning of Government Code section 85205) in that it is the Republican county central committee for
28 Yolo County.

1 **Case History**

2 5. In April 2011, the FPPC commenced a proactive investigation regarding six contributions
3 (totaling \$102,000) made by Charles and Ann Johnson (husband and wife) to three different county
4 central committees, including the Santa Clara and Yolo central committees, in 2010. This file was
5 opened for three main reasons.

6 6. First, the three different central committees each received \$34,000 from the Johnsons at
7 around the same time (shortly before the 2010 general election).

8 7. Second, soon after receiving the money, the Santa Clara and Yolo central committees
9 appeared to keep a small “cut” for themselves and forwarded the rest to a committee known as Damon
10 Dunn for Secretary of State 2010—and the Johnsons were “maxed out” contributors to the Dunn
11 committee.

12 8. Third, the remaining central committee, known as the Placer County Republican Party,
13 wound up returning the Johnsons’ money.

14 9. As part of my investigation, I obtained campaign filings/records, bank records, telephone
15 records, emails, text messages, and minutes of central committee meetings from the parties and witnesses
16 in this case. True and correct copies of many of these documents are attached hereto as exhibits and
17 discussed in more detail below. Also, as part of my investigation, I conducted witness interviews.

18 10. Generally, the witnesses who were interviewed denied knowledge of any specific
19 earmarking arrangements, and the Johnsons, by and through their attorney, have denied any violations of
20 the Act. However, the Johnsons refused to be interviewed by the Enforcement Division. (Ex. B-18
21 hereto is a true and correct copy of a comment letter that Respondent Santa Clara County Republican
22 Party has asked to be considered.)

23 11. Additionally, the Santa Clara and Yolo central committees maintain that their ordinary
24 practice is not to accept earmarked contributions, and they maintain that there is a lack of direct evidence
25 of earmarking in this case. However, based upon the results of my investigation, other, more convincing
26 evidence shows that there was in fact earmarking. This is discussed in more detail below.

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1 communicated with the Johnsons about this through the Johnsons’ daughter, Jennifer Bolt—who acted as
2 the Johnsons’ agent.

3 20. For example, on October 11, 2010, Mr. Sowers sent an email to Mr. Johnson, inviting him
4 to a fundraising event for the Dunn committee.

5 21. The next morning, on October 12, 2010, Ms. Bolt emailed Mr. Sowers and stated that her
6 dad (Mr. Johnson) wanted to know if he was “maxed on Damon [Dunn] or not.” Also, she asked how
7 much more her dad, brother, and uncle could give to “max” out.

8 22. Later that morning, Mr. Sowers forwarded the email to his business partner, Ms. Novello,
9 stating: “Let’s talk about this before I respond.”

10 23. A little over an hour later, at 11:33 a.m., Mr. Sowers emailed Ms. Bolt, confirming that
11 Mr. and Mrs. Johnson were “maxed out” (and discussing how much other family members could give).
12 Also, Mr. Sowers stated in his email (with *italics* and **bold** added):

13 I know you are extremely busy, but if you have a couple minutes to
14 talk *there is **another way** that you and your Dad can **directly** help the*
15 *campaign.* Damon just shot his commercials yesterday and I should be
16 able to email them to you by Thursday, so you can see them. I truly
17 believe that if Damon can spend \$500,000 to \$600,000 on his TV buy he
18 can win this race. We have about \$250,000 of that, and we are
19 aggressively raising money but it will take a few of our friends to get us
20 over the top. *I would love to talk to you if you have just 2 minutes.* My
21 direct office is

22 24. That evening, Mr. Sowers and Ms. Bolt exchanged additional emails in which Ms. Bolt
23 asked Mr. Sowers to call her on her cell phone “tomorrow,” and Mr. Sowers indicated he would do so.

24 25. Telephone records reflect that the next day, on October 13, 2010, at approximately 11:15
25 a.m., there was an 18 minute call between telephone numbers belonging to Ms. Bolt and Mr. Sowers.

26 26. That evening, at approximately 5:49 p.m., a telephone call was placed from Mr. Sowers’
27 number to Mr. Rexroad’s number.

28 27. Later that evening (still October 13), at approximately 8:23 p.m., a three minute telephone
call was placed from a number belonging to Mr. Rexroad’s firm, Meridian Pacific, to a number
belonging to Steve Mullen, Chairman of Santa Clara County Republican Party.

28 28. Approximately one minute after that telephone call ended, Mr. Rexroad emailed Mr.
Sowers. The subject of the email was “Central Committee.” The body of the email listed the name and

1 contact information for Santa Clara County Republican Party (the other central committee described
2 above—which ultimately received \$34,000 from the Johnsons). Also, the email identified Steve Mullen
3 as the contact person for the central committee (ending with “Attn: Steve Mullen”).¹

4 29. Approximately three minutes later, Mr. Sowers replied to Mr. Rexroad’s email with a
5 question: “The max contribution to *each entity* is \$30K correct?” (Emphasis added. Mr. Rexroad’s
6 email only mentioned the Santa Clara central committee. However, Mr. Sowers use of the phrase “each
7 entity” in his immediate reply strongly suggests that Mr. Sowers and Mr. Rexroad were talking not only
8 about the Santa Clara central committee—but also, they were talking about the other two central
9 committees (Placer and Yolo) that were identified in Mr. Rexroad’s above-described email of October 6.
10 As it turns out, all three central committees ultimately received \$34,000 apiece from the Johnsons.)

11 30. A short while later, Mr. Rexroad replied, “\$32,400.”² (The emails involved in the
12 exchange are attached hereto as Ex. B-2.)

13 31. The following afternoon, on October 14, 2010, Mr. Sowers emailed Ms. Bolt, stating
14 (with *italics* and **bold** added):

15 Jenny

16 It was great talking to you yesterday. *Below is the way that you and your*
17 *Dad can help us win this campaign:*

18 As I said we have \$250,000 in the bank for our TV buy, and I feel pretty
19 good that through everyone’s hard work we will be able to raise an
20 additional \$150,000 towards our TV buy. I really think that it will take a
21 \$500,000 to \$600,000 TV buy in the LA area where the majority of voters
22 in the State are to really give Damon a legitimate shot at winning this race.

23 . . .

24 ***There are 3 entities that are trying to help Damon raise as much money***
25 ***into his campaign, and they are listed Below [sic]. \$32,400 can be***
26 ***Contributed [sic] to each entity per individual. If I can raise another***
27 ***\$100,000 to \$200,000 it will give us the TV buy we need and give us the***
28 ***best chance of winning. Checks written to any of the entities below can be***

25 ¹ Meeting minutes of Santa Clara County Republican Party reflect that a little bit earlier that
26 evening, at a meeting that convened at approximately 7:06 p.m., Mr. Mullen “suggested that candidates
27 encourage contributions to the party, *especially when their contributors had maxxed [sic] out on*
28 *contributions to their campaign.*” (Emphasis added.)

² At the time, \$32,400 was the calendar year limit with respect to how much an individual could
contribute to a political party committee. However, individuals could exceed this amount so long as the
excess was not used by the committee to support/oppose candidates for state office.

1 sent directly to our office. I do need to mention that since contributions to
2 organizations cannot be ear marked we cannot guarantee what these
3 organizations will do, **but they are all helping Damon as much as they**
possibly can. After you speak with your Dad please let me know what your
4 thoughts are. . . .

5 *Yolo County Republican Party*
6 PO Box 1546
7 Davis, CA 95617
8 FPPC# 742847

9 *Republican Party of Placer County*
10 1700 Eureka Road 3170
11 Roseville, CA 95661
12 916-672-8446
13 FPPC# 743461

14 *Santa Clara County Republican Party*
15 522 North Monroe Street
16 San Jose, CA 95128
17 Attn: Steve Mullen

18 32. Five days later, on October 19, 2010, Mr. Sowers emailed Ms. Bolt, checking to see if
19 “you and your Dad had made a decision on helping Damon get his commercial on the air.” (See Ex. B-3
20 hereto.)

21 33. Late that evening, Mr. Sowers exchanged emails with another potential contributor and
22 stated, “I have asked Charlie Johnson to make a \$100,000 Contribution [*sic*] to help Damon. I will find
23 out tomorrow if he will do it.” (Also, one of the emails from Mr. Sowers to the contributor
24 acknowledged that the contributor already had made the “maximum contribution” to the Dunn
25 committee, but Mr. Sowers went on to say, “If you are interested in contributing anymore [*sic*] money to
26 help Damon, please let me know and I will get you some information on how you can help.” The emails
27 involved in the exchange are attached hereto as Ex. B-4.)

28 34. Two days later, on October 21, 2010, at 10:15 a.m., there was a three minute call between
telephone numbers belonging to Ms. Bolt and Mr. Sowers.

35. Close to an hour later, at 11:10 a.m., Mr. Sowers emailed Mr. Rexroad. The subject of the
email was: “I need you to call me asap. . . .” The body of the email stated: “I need to get this done
before noon today.”

36. Eight minutes later, at 11:18 a.m., there was a three minute call between telephone
numbers belonging to Mr. Rexroad and Mr. Sowers.

1 37. Based on the duration shown in the telephone records, that call would have ended at
2 approximately 11:21 a.m. About one minute later, at 11:22 a.m., there was another three minute call
3 between telephone numbers belonging to Ms. Bolt and Mr. Sowers.

4 38. Between 11:23 a.m. and 11:34 a.m., telephone records reflect that:

- 5 ❖ a call was placed from a telephone number belonging to Mr. Rexroad’s firm, Meridian
6 Pacific, to Tom Hudson, Chairman of the Placer central committee (and it appears that
7 the call took place while Mr. Sowers was on the phone with Ms. Bolt);
- 8 ❖ there were two calls between telephone numbers belonging to Mr. Rexroad and Mr.
9 Sowers; and
- 10 ❖ a call was placed from a telephone number belonging to Mr. Rexroad to a telephone
11 number belonging to Jim Battin—a buyer with The Battin Group, which (according to
12 invoices) was working with the Dunn committee on the TV buy.

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1 39. Shortly thereafter (still on October 21), at approximately 12:03 p.m., Mr. Sowers sent the
2 following email to Ms. Bolt (which is attached hereto as Ex. B-5):

3 **Subject:** RE: Contributions to Party Committies [*sic*]

4 Jenny

5 Thank you very much for everything you are doing. I cannot express in
6 words how much we appreciate what you are doing.

7 Checks for \$34,000 each can be made out to the 3 County Parties Below
8 [*sic*]. All 3 Checks [*sic*] can be Fed Exed to our office, Pacific Fundraising
9 Group, 2208 29th Street, Suite #300, Sacramento, CA 95817, ATTN:
10 Michael Sowers 916-715-1987. Our Fed Ex Number is 393454962. Thank
11 you again for all you're doing.

12 Michael

13 Yolo County Republican Party
14 PO Box 1546
15 Davis, CA 95617
16 FPPC# 742847

17 Republican Party of Placer County
18 1700 Eureka Road 3170
19 Roseville, CA 95661
20 916-672-8446
21 FPPC# 743461

22 Santa Clara County Republican Party
23 522 North Monroe Street
24 San Jose, CA 95128
25 Attn: Steve Mullen

26 **Delivery of the Johnsons' Checks to the Central Committees**

27 40. Thereafter, Charles Johnson wrote one check to each of the three central committees
28 described above, and Ann Johnson did the same. Each of the six checks was in the amount of \$17,000—
for a combined total of \$102,000 (or \$34,000 for each central committee).

41. Rather than mail the checks to Mr. Sowers (or directly to the central committees), the
Johnsons caused the checks to be left for pick-up at the Franklin Templeton offices in San Mateo,
California. (At the time, Mr. Johnson was Chairman of the parent company of Franklin Templeton.)

42. On October 22, 2010, at 12:20 p.m., Mr. Sowers sent an email to Mr. Rexroad, notifying
Mr. Rexroad about where to pick up the checks.

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1 43. Karim Drissi, a representative of Mr. Rexroad's firm, Meridian Pacific, acted as a courier,
2 picking up the checks and delivering them to the various central committee officers.

3 44. Telephone records, including records of text messages, reflect that throughout the courier
4 process, Mr. Drissi was in contact with Mr. Rexroad/Meridian Pacific—and with officers of all three
5 central committees.

6 45. During this time, in the early evening of October 22, 2010, Mr. Drissi and Mr. Rexroad
7 exchanged several text messages in which Mr. Drissi confirmed that he “[c]onnected with both of them.
8 Good to go.”

9 46. Mr. Rexroad replied, “Nice.”

10 47. Mr. Drissi replied: “Placer checks deposited tomorrow or Monday? Mark [Wright,
11 Treasurer of the Placer central committee] said if I get them to him tomorrow, then they will be deposited
12 Monday. Is that permissible?”

13 48. Mr. Rexroad said, “That is fine.”

14 49. Later that evening (still on October 22), Mr. Drissi and Mark Wright, Treasurer of the
15 Placer central committee, corresponded via email and worked out an appointment for the following day,
16 October 23, 2010, so that they could meet and Mr. Drissi could deliver the checks.

17 50. During his interview, Mr. Drissi confirmed that he did in fact deliver the checks from the
18 Johnsons to each of the three central committees.

19 **Email to the Central Committees with Wire Instructions**

20 51. On October 25, 2010, Mr. Rexroad sent an email to all three Chairmen of the central
21 committees discussed above, which contained instructions about how to wire money to the Dunn
22 committee. (See Ex. B-6 hereto.)

23 **Transaction with the Placer Central Committee**

24 52. Something unexpected happened with the Placer central committee. That committee
25 voted to use the Johnsons' money to make a sizable contribution to a different candidate, Andy Pugno,
26 who was running for California State Assembly. Mr. Pugno also was one of Mr. Rexroad's clients, but
27 when Mr. Rexroad found out what Placer intended to do with the Johnsons' money, Mr. Rexroad
28 communicated with one of the officers of the central committee—and the central committee immediately

1 refunded all of the Johnsons' money, calling the transaction "tainted."³ When someone raised concerns
2 about what the Placer central committee should tell the Pugno committee, Mr. Hudson, Chairman of the
3 Placer central committee, stated that he already had discussed the matter with Mr. Wright, the central
4 committee's Treasurer, and "[i]f you get any questions from the Pugno campaign, be sure to refer THEM
5 to Matt Rexroad, who is their consultant (and who knows exactly what is going on and what he did to
6 cause the problems)." (See Exs. B-8 and B-9, which are true and correct copies of pertinent emails
7 to/from Mr. Rexroad and representatives of the Placer central committee. In Ex. B-8, the Chairman of
8 the Placer central committee denies that he was asked to do anything illegal, and he maintains that there
9 was no coordination. However, this "disclaimer" language is consistent with the fact that the Chairman
10 had very recently found out that his central committee was the subject of an FPPC investigation, which is
11 discussed in more detail below.)

12 **Conveyance of the Johnsons' Funds through the Santa Clara and Yolo Central Committees**

13 53. With respect to the other two central committees (Santa Clara County Republican Party
14 and Yolo County Republican Central Committee), they accepted the Johnsons' money and forwarded
15 virtually all of it to the Dunn committee. (Of the \$34,000 that each central committee received, Santa
16 Clara forwarded \$33,000, and Yolo forwarded approximately \$32,300.)

17 54. Specifically, in a campaign statement filed by Santa Clara County Republican Party (for
18 the reporting period of October 17 through November 20, 2010), the committee reported that it received
19 \$34,000 from the Johnsons on October 25, 2010,⁴ and the committee reported that it made a contribution
20 to the Dunn committee in the amount of \$33,000 on November 8, 2010.

21 55. In a campaign statement filed by Yolo County Republican Central Committee (for the
22 reporting period of October 16 through December 31, 2010), the committee reported that it

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25 _____
26 ³ When Mr. Sowers found out about this, he was very upset, describing the situation as "[m]ore
27 Bullshit problems," and referring to the situation as "[a]nother Rexroad fuck up." (See Ex. B-7 hereto.)

28 ⁴ Even though the Santa Clara central committee reported that it received the Johnsons' contributions on October 25, 2010, the committee actually received the Johnsons' checks from Mr. Drissi on or about October 22, 2010.

1 received \$34,000 from the Johnsons on October 26, 2010.⁵ The very next day (according to a campaign
2 statement filed by the Dunn committee for the reporting period of October 17 through December 31,
3 2010), the Yolo central committee contributed \$500 to the Dunn committee (via wire transfer), and on
4 November 10, 2010, the Dunn committee received an additional contribution in the amount of \$31,800
5 from the Yolo central committee.

6 56. Both central committees were faced with low account balances and bank “holds” on the
7 funds when they deposited the Johnsons’ checks—which helps explain why the contributions were not
8 made to the Dunn committee until after the general election (held on November 2, 2010). (For example,
9 see pertinent financial records of both central committees attached hereto as Exs. B-10 through B-14.)

10 **Campaign Filings – No Intermediary Relationship Disclosed**

11 57. The Johnsons filed major donor campaign statements, reporting that the central
12 committees were the true recipients of the entire sum of their contributions—with no mention about the
13 central committees being intermediaries for contributions to the Dunn committee.

14 58. The campaign filings of Santa Clara County Republican Party and Yolo County
15 Republican Central Committee reported that they were the true recipients of the Johnsons’ contributions
16 and that they made separate contributions to the Dunn committee. The filings did not mention anything
17 about the central committees being intermediaries for the contributions from the Johnsons.

18 59. Campaign filings of the Dunn committee reported that the contributions were received
19 from the central committees—and no mention was made about the central committees being
20 intermediaries for the Johnsons.

21 **Miscellaneous Information re: Damon Dunn and his Treasurer, Kelly Lawler**

22 60. As part of my investigation, I interviewed the Dunn committee’s treasurer, Kelly Lawler.
23 She stated that she was not involved in fundraising for the committee or strategic planning. At the time
24 of the November 2010 statewide election, she also provided bookkeeping and campaign reporting
25 services for the Placer and Santa Clara central committees. However, she maintained that she did not
26

27 ⁵ Even though the Yolo central committee reported that it received the Johnsons’ contributions on
28 October 26, 2010, the committee actually received the Johnsons’ checks from Mr. Drissi on or about
October 22, 2010.

1 make a connection between the contributions that the Johnsons made to those central committees (or to
2 the Yolo central committee)—and the money that those central committees gave to the Dunn committee.
3 Ms. Lawler stated that she had many clients and handled many contributions. Additionally, she had a
4 staff person who did some of the work. At that time, her firm was processing substantial transactions
5 (\$200,000 to \$300,000) on a daily basis.

6 61. As part of my investigation, I also interviewed Damon Dunn. He stated that he had no
7 experience as a political candidate, and no amount of money was going to make any difference in his
8 mind. If Meg Whitman did well, the other candidates for state office would do well based on her results.
9 He knew ahead of time that the race was going to be tight. He viewed this campaign as an opportunity to
10 gain valuable experience, and he relied upon Mr. Rexroad and Meridian Pacific due to their political
11 experience and contacts. When asked about the contributions from the Johnsons and the central
12 committees, he said that he had no knowledge of discussions concerning county central committees
13 supporting his campaign. No one talked to him about central committee money, and he did not know
14 what central committee money came in. Also, he said that he did not communicate with Ms. Bolt, the
15 Johnsons, or other donors about their contributions. Whenever the money came in, Mr. Sowers would
16 take care of it.

17 62. Ultimately, Mr. Dunn lost his election to the current Secretary of State, Debra Bowen.
18 (According to www.smartvoter.org, Debra Bowen received 53.2% of the vote, and Damon Dunn
19 received 38.2%.)

20 **Background Information re: the “Tainted” Placer Transaction**

21 63. With respect to the Placer central committee refunding the Johnsons’ money and calling
22 the transaction “tainted” (as described above), I investigated to determine whether there was any
23 intervening event that might have caused the central committee to change its mind—considering that
24 Exhibit B-1 reflects that as of October 6, 2010, Mr. Rexroad apparently had reason to believe that the
25 central committee was good for “Dunn Party Money.” On the one hand, it appeared to me that Mr.
26 Rexroad had made earmarking arrangements with the Placer central committee around the beginning of
27 October 2010—consistent with Ex. B-1. On the other hand, the Placer central committee tried to do
28 something else with the money.

1 64. I discovered that as part of a separate FPPC investigation, an investigative subpoena *duces*
2 *tecum* for various records in the possession of the Placer central committee was personally served on
3 Mark Wright, Treasurer of the central committee, on October 23, 2010—the same day that Mr. Drissi
4 (the courier with Mr. Rexroad’s firm) hand delivered the Johnsons’ checks to Mr. Wright. (See Ex. B-15
5 hereto, which is a true and correct copy of the subpoena and proof of service that were obtained from the
6 file for the separate FPPC investigation.) Also, about four days earlier, Mr. Wright had acknowledged
7 receiving three other FPPC notices/subpoenas for the central committee’s bank records. (See Ex. B-16
8 hereto.) The timing of the service/acknowledgment of these subpoenas/notices is important background
9 information to explain why the Placer central committee backed out of the “tainted” transaction. (See the
10 email from Tom Hudson, Chairman of the central committee, attached here to as Ex. B-17, p. 2: “Since
11 we are in the middle of an FPPC audit, I also worry that we may need to have some money in the bank in
12 case we are forced to negotiate over a fine, or in case we need to hire competent legal representation for
13 our Treasurer [Mark Wright]. . . .”)

14
15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed at Sacramento, California, on _____, 2014.

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Robert Perna
Program Specialist, Enforcement Division
Fair Political Practices Commission



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WAIVER OF RIGHT TO PROBABLE CAUSE
HEARING AND ADMINISTRATIVE HEARING**

FPPC Case No. 14/903

1. I, the undersigned on behalf of the Santa Clara County Republican Party (“Committee”), have consulted with an attorney of the Committee’s choosing, and understand the rights of the Committee to a probable cause hearing and administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws.

2. The Committee hereby waives its rights to a probable cause hearing and administrative hearing. The Committee understands and agrees that this case will proceed to a default recommendation by the Enforcement Division of the Fair Political Practices Commission, and the Committee waives the 15-day notice requirement for defaults. However, this waiver is made with the following conditions:
 - a. This waiver does not constitute an admission of any kind.

 - b. The default recommendation will be for one count under Government Code section 84302 with the maximum penalty of \$5,000 per count, and the penalty imposed shall not exceed the default recommendation.

 - c. This represents the final and complete resolution of the matter in question.

 - d. This waiver shall be null and void if any of the foregoing conditions are not met, in which case, all payments tendered by the undersigned in connection with this waiver shall be reimbursed. (Should this occur, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of the default recommendation.)

Dated: _____

Signature of Authorized Representative on Behalf of
Respondent Santa Clara County Republican Party

Printed Name and Title