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FIRST GENERAL COUNSEL'S REPORT

MUR: 6223

DATE RECEIVED: October 20, 2009

DATE ACTIVATED: December 18, 2009

SOL: December 30, 2010

COMPLAINANTS:

Melanie Sloan
Ann Weismann
Citizens for Responsibility and Ethics
in Washington

RESPONDENTS:

St. John Properties, Inc.
Edward St. John
Lawrence Maykrantz
Robert Becker
Jeffrey Gish
Stanley Meros
H. Richard Williamson
Gerard Wit

Steele for Maryland, Inc., and
Elizabeth S. Rubin, in her official
capacity as treasurer

Maryland Republican State Central Committee, and
Robert Christopher Rosenthal, in his official
capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441f
2 U.S.C. § 441b(a)
11 C.F.R. § 110.4(b)
11 C.F.R. § 114.2

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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I. INTRODUCTION

Complainants allege that St. John Properties, Inc. ("SJPI") and Edward St. John, SJPI's president and principal owner, violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by using corporate funds to reimburse six SJPI Senior Vice Presidents for contributions made to two federal political committees – the Maryland Republican State Central Committee ("MRSCC") and Steele for Maryland, Inc. ("the Steele Committee") in 2005 and 2006. Complainants also allege that MRSCC and the Steele Committee impermissibly accepted the reimbursed corporate contributions.

SJPI and Mr. St. John acknowledge reimbursing the six officers for a total of \$60,000 in contributions to MRSCC, but deny reimbursing any of the \$5,000 in contributions to the Steele Committee. The SJPI respondents argue that the reimbursements, which were repaid during a state criminal investigation, did not violate federal campaign finance laws, and argue in the alternative that any violation was not knowing and willful. Both MRSCC and the Steele Committee acknowledge receipt of the contributions, but deny any prior knowledge of the reimbursements.

As discussed below, we recommend that the Commission find reason to believe SJPI knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by using corporate funds to make contributions in the name of others. We also recommend that the Commission find reason to believe Mr. St. John knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f by consenting to the use of corporate funds to make contributions in the name of others and by helping or assisting in making contributions in the name of another. Additionally, we recommend that the Commission find reason to believe the six SJPI Vice Presidents – Lawrence Maykrantz, Robert Becker, Jeffrey Gish, Stanley Meros, H. Richard Williamson, and Gerard Wit

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1 – violated 2 U.S.C. §§ 441b(a) and 441f by knowingly permitting their names to be used to make
2 contributions in the name of others and consenting to the use of corporate funds to make the
3 contributions. We further recommend that the Commission find no reason to believe the Steele
4 Committee violated the Act and close the file as to it, but take no action at this time as to
5 MRSCC. Finally, we recommend the use of compulsory process to assist in an investigation into
6 whether the SJPI respondents acted in a knowing and willful manner and whether there were
7 other reimbursed federal contributions.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Factual Background**

10 SJPI is a privately-held real estate development company based in Maryland, which is
11 owned by its President Edward St. John. Lawrence Maykrantz, Robert Becker, Jeffrey Gish,
12 Stanley Meros, H. Richard Williamson, and Gerard Wit are SJPI's Senior Vice Presidents ("the
13 Vice Presidents"). SJPI is also affiliated with, and may effectively control, several limited
14 liability companies and partnerships, including Riverside Technology Park LLC and BWI
15 Technology LLC. SJPI Response at 4-5.

16 Commission records show that Mr. St. John is an experienced political contributor,
17 having made over \$150,000 in contributions to federal candidates and committees between 2000
18 and 2006, some of which were at the maximum legal contribution limit to those committees at
19 the time. Prior to 2006, each of the Vice Presidents made between \$2,000 and \$6,000 in total
20 contributions, and none had made a federal contribution greater than \$2,000. SJPI's Controller,
21 Lori H. Rice, routinely monitors and records the political contributions of the company's
22 executives and affiliated companies to avoid exceeding state or federal contribution limits.
23 Ms. Rice Affidavit ¶ 5.

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1 On December 30, 2005, two limited liability companies ("LLCs") affiliated with SJPI,
2 Riverside Technology Park LLC and BWI Technology LLC, each made a \$2,500 contribution to
3 the Steele Committee that were apportioned between primary and general elections. SJPI
4 Response at 5. Pursuant to the Commission's regulations for LLC contributions, the Steele
5 Committee also attributed the LLC contributions to eight specified members – Mr. St. John, the
6 Vice Presidents, and an additional SJPI senior executive. *See* 11 C.F.R. § 110.1(g).
7 Accordingly, two primary election contributions in the amount of \$262.50 and two general
8 election contributions in the amount of \$50 were attributed to each of eight individual members.¹
9 The SJPI respondents all assert that none of the LLC contributions were reimbursed.

10 In October 2006, in response to Mr. St. John's efforts to recruit senior officers to make
11 political contributions, the six Vice Presidents each made a \$10,000 contribution to MRSCC.² In
12 February 2007, Mr. St. John directed SJPI's Controller to include each of the Vice Presidents'
13 political contributions, including the \$10,000 federal contribution to MRSCC, as a factor in
14 calculating their year-end bonuses.³ The SJPI Controller did not explain how or when the Vice
15 Presidents reported their contributions to her, and the Vice Presidents did not provide individual
16 affidavits of their account of the reimbursements. Further, the record is not clear on whether
17 similar contribution reimbursements were made in prior years.

¹ Although SJPI states that the contributions were attributed to eight members, the Steele Committee's April 2006 Quarterly Report show contributions from only five members - three of the Vice Presidents, Mr. St. John, and the other SJPI senior executive (Edward Okonaki). It is unclear why the other three Vice Presidents' contributions were not disclosed.

² Commission records show that Mr. St. John also made a similar \$10,000 contribution to MRSCC that was addressed neither in the complaint nor in SJPI's response.

³ The total bonuses were then "grossed up" to account for appropriate state and federal income taxes.

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1 In the summer of 2007, the Maryland State Prosecutor's Office initiated an investigation
2 into the SJPI-related contributions and ultimately found that the Vice Presidents' contributions to
3 Democratic gubernatorial nominee Martin O'Malley and Democratic Baltimore County
4 Executive nominee Jim Smith were reimbursed by SJPI in violation of Maryland state law. Mr.
5 St. John admitted to civil violations for the reimbursements, agreed to pay a \$55,000 fine, and
6 donated another \$55,000 to a charitable organization that assists underprivileged children in
7 Baltimore with college expenses. The state settlement was publicized in a June 13, 2008 press
8 release, which stated the following:

9 The charges arise from contributions made by several St. John vice
10 presidents who fully expected that they would be reimbursed by
11 Mr. St. John for the contributions at a later time. In fact, those vice
12 presidents, Lawrence Jayaraman, Robert Becker, Jeffrey Gich, Stanley
13 Merno and H. Richard Williamson, were reimbursed for the contributions
14 as a part of their year end bonus. Since there was insufficient evidence
15 to establish that Mr. St. John knew that such actions violated
16 Maryland law, civil citations were filed, instead of criminal charges.
17

18 Complaint at Attachment A (emphasis added).

19 In November 2007, after the Maryland State Prosecutor's investigation commenced, but
20 prior to the State Prosecutor filing civil charges, each of the Vice Presidents repaid to SJPI the
21 reimbursements of their \$10,000 MRSCC contributions. SJPI's Response at 9-10.

22 The complaint in this matter was based on the evidence of reimbursements cited in the
23 Maryland State Prosecutor's press release of the settlement, and from the complainants' review
24 of the Commission's disclosure database, which showed that the Vice Presidents made federal
25 contributions to MRSCC and the Steele Committee during the same time as the reimbursed state
26 contributions. Complainants allege that Mr. St. John, SJPI, and the Vice Presidents violated
27 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(1)(i) and 114.2 by reimbursing the Vice
28 Presidents' federal contributions to MRSCC and the Steele Committee. Complainants also

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1 allege that MRSCC and the Steele Committee violated 2 U.S.C. §§ 441b(a) and 441f as well as
2 11 C.F.R. §§ 110.4(b)(1)(i) and 114.2 by accepting these contributions.

3 SJPI, Mr. St. John, and the Vice Presidents deny that the Steele Committee contributions
4 were reimbursed, that the MRSCC contributions were made with the expectation of
5 reimbursement, or that they knowingly and willfully violated the law.

6 Both MRSCC and the Steele Committee deny any violation of the Act. Both assert that
7 they screened the contributions pursuant to the Commission regulations at 11 C.F.R. § 103.3, and
8 that there was no information at the time to suggest that the contributions were impermissible.
9 MRSCC Response ¶¶ 5, 7 and Steele Response. MRSCC further explains that each contribution
10 was made by personal check that included the requisite contributor information, was within the
11 relevant contribution limits, and was handled in the ordinary course of business. MRSCC
12 Response ¶ 6. MRSCC asserts that it did not become aware of the reimbursements until after
13 they had been repaid to SJPI, at which point it was appropriate for it to consider the Vice
14 Presidents to have been the true source of the contributions. MRSCC Response ¶¶ 12-13. Thus,
15 MRSCC has not refunded its contributions.

16 **B. Legal Analysis**

17 Under the Federal Election Campaign Act of 1971, as amended ("the Act"), corporations
18 are prohibited from making contributions from their general treasury funds in connection with
19 any election of any candidate for federal office. 2 U.S.C. § 441b(a). A candidate, political
20 committee, or other person is prohibited from knowingly accepting or receiving any corporate
21 contribution. *Id.* Furthermore, it is unlawful for any officer or director of any corporation to
22 consent to any contribution by the corporation. *Id.*

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1 The Act also prohibits a person from making a contribution in the name of another
2 person, knowingly permitting his name to be used to effect such a contribution, or knowingly
3 accepting a contribution made by one person in the name of another. 2 U.S.C. § 441f. The
4 Commission's regulations further prohibit knowingly helping or assisting any person in making a
5 contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii). Those regulations specifically
6 explain that attributing a contribution to one person, when another person is the actual source of
7 the funds used for the contribution, is an example of making a contribution in the name of
8 another.⁴ See 11 C.F.R. § 110.4(b)(2)(ii).

9 The Act addresses violations of law that are knowing and willful. See 2 U.S.C.
10 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is
11 violating the law. *Federal Election Commission v. John A. Dromesi for Congress Committee*,
12 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by
13 proof that the defendant acted deliberately and with knowledge that the representation was
14 false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to
15 show that the defendant had a specific knowledge of the regulations; an inference of a knowing
16 and willful act may be drawn from the defendant's scheme to disguise the source of funds used
17 in illegal activities. *Id.* at 213-15.

⁴ On June 8, 2009, a federal district court judge in California dismissed criminal charges that Pierce O'Donnell violated § 441f by reimbursing conduit contributions to the 2004 presidential campaign of Senator John Edwards, ruling in part that Congress did not intend that provision to outlaw indirect contributions made through conduits. *U.S. v. O'Donnell*, C.D. Cal., Criminal No. 08-872. On September 23, 2009, the Commission filed an amicus curiae brief supporting the government's appeal of that decision. Oral argument took place on January 13, 2010. While this case remains pending, the Commission should and has enforced § 441f. See MUR 5504 (Károly) and MUR 5818 (Feiger) (recent Commission matters involving Section 441f violations).

1 **1. Edward St. John and St. John Properties, Inc.**

2 Based on the information provided in the complaint and SJPI's response, it appears that
3 SJPI knowingly and willfully violated sections 441b(a) and 441f of the Act by reimbursing the
4 contributions, and that Mr. St. John knowingly and willfully violated 2 U.S.C. §§ 441b(a) and
5 441f by consenting to the reimbursements and helping or assisting in making contributions in the
6 name of another. See 11 C.F.R. § 110.4(b)(1)(iii). Mr. St. John recruited the senior executives
7 to make their \$10,000 MRSCC contributions, and then directed SJPI's Controller, Ms. Rice, to
8 reimburse the contributions with SJPI funds through each Vice President's 2007 year-end bonus.
9 As a result of the reimbursements, SJPI became the true source of each Vice President's MRSCC
10 contribution in violation of sections 441b(a) and 441f of the Act.

11 **a. Expectation of Reimbursement**

12 Respondents first argue that the reimbursements do not violate the Act because the Vice
13 Presidents allegedly did not expect to be reimbursed. Significantly, however, Respondents did
14 not submit any individual signed statements to support the asserted lack of knowledge.
15 Respondents simply note that each of the Vice Presidents had previously contributed to federal
16 candidates, had the financial ability to make the \$10,000 contributions without the
17 reimbursements, and that the reimbursements only occurred three to four months after the
18 contributions were made. They further assert that, as the reimbursements were later repaid to
19 SJPI, the contributions were ultimately made with the Vice Presidents' personal funds, not
20 SJPI's corporate funds, and thus were not a violation of the Act.

21 Notwithstanding their assertion, the available information suggests that the Vice
22 Presidents expected that they would be reimbursed. First, Ms. Rice stated in her affidavit that
23 she recorded the Vice Presidents' contributions. Rice Affidavit ¶ 5. As the Vice Presidents

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1 made their contributions with personal funds, it can be inferred that they most likely reported the
2 exact amounts of their political contributions to Ms. Rice, and there would appear to be no
3 reason why they would do this if there was no expectation of reimbursements. Second, while all
4 of the Vice Presidents were prior political contributors, none had made a prior contribution
5 greater than \$2,000, with most ranging between \$250 and \$1,000, suggesting that they may not
6 have made their \$10,000 contributions without some expectation of reimbursement. Third, the
7 Maryland State Prosecutor's post-investigation press release addressing the state contributions –
8 which Mr. St. John and SJPI cite for the proposition that there was insufficient evidence to prove
9 criminal intent as to the federal contributions – specifically concluded that the Vice Presidents
10 fully expected reimbursement of their state campaign contributions. Finally, the delay in
11 reimbursing the contributions does not undermine that they were, in fact, reimbursed or the
12 conclusion that Respondents made, or assisted in the making of, contributions in the name of
13 another.⁵

14 Further, the fact that the reimbursements were repaid to the company as corrective action
15 did not negate the violation. SJPI did not request that the Vice Presidents return the
16 reimbursements until their discovery became inevitable, due to the State Prosecutor's
17 investigation. Reversing the transaction at this point is akin to returning an illegal contribution;
18 while it does constitute mitigating corrective action, it does not erase the violation.⁶

⁵ The Commission has previously found violations of 2 U.S.C. §§ 441b(a) and 441f where employees' contributions were later reimbursed through year-end company bonuses. See, e.g., MUR 5357 (Centex Corporation) Commission Certification dated September 12, 2003 (Commission found reason to believe and later conciliated violations where the company and its CEO violated §§ 441b(a) and 441f where employees sent copies of contribution checks to company officers, and their contributions were reimbursed in year-end bonuses).

⁶ See, e.g., MUR 5955 (Dr. Jose Valdez) Commission Certification dated February 13, 2008 (Commission found reason to believe as to corporate officer who reimbursed contributions with personal funds though the conduits had repaid the reimbursements prior to the company filing a *sua sponte* submission); MUR 5643 (Carter's, Inc) Commission Certification dated January 25, 2005 (Commission found reason to believe as to corporation and

b. Knowing and Willful

Respondents dispute that the violations were knowing and willful by claiming that neither Mr. St. John nor the Vice Presidents knew that the reimbursements were unlawful and that Mr. St. John and SJPI made no attempt to conceal the reimbursements. In arguing that the reimbursements were not concealed, they note that Ms. Rice kept detailed records of the contributions and the bonus calculations, and that SJPI gave the records that showed the federal reimbursements to the Maryland State Prosecutor's Office during the state investigation. SJPI's Response at 8. Respondents also point to the State Prosecutor's press release, which specifically stated that there was insufficient evidence to show that Mr. St. John knew the state reimbursements were unlawful. As noted above, the assertion that no one knew reimbursing contributions was unlawful is unsupported by signed statements from either Mr. St. John or any of the individual contributors.⁷

Indeed, as explained below, the record suggests that Mr. St. John's and SJPI's conduct may have been knowing and willful. Mr. St. John is an experienced political contributor who appears to have executed a sophisticated reimbursement scheme to circumvent the limits and prohibitions of the Act. The level and extent of Mr. St. John's prior contributions (some of which were at the lawful maximum limits), SJPI's Controller's active monitoring of SJPI officers' contributions against relevant federal limits, and the fact that the Vice Presidents' \$10,000 contributions were all at the maximum legal limit to a state party committee, suggest

corporate officer who reimbursed contributions with corporate funds though the conduits had repaid the reimbursements prior to the company filing a response submission); MUR 5357 (Centex Corporation) Commission Certification dated September 12, 2003 (same).

⁷ Generally, the Commission has not pursued respondents for knowing and willful 441f violations at the reason to believe stage only where it has the benefit of a more complete record, including individual statements that allowed it to assess the credibility of the respondents' claimed lack of knowledge and the absence of attempts to conceal their conduct. See, e.g., MUR 5627 (Joseph A. Solomon); MUR 5643 (Carter's, Inc); MUR 5357 (Centex Corporation).

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1 that Mr. St. John (and SJPI) had specific knowledge of the Act's contribution limits. In addition,
2 though two SJPI affiliate LLCs made contributions (to the Steele Committee), it does not appear
3 that SJPI attempted to make any contributions directly with corporate funds, indicating at least
4 some level of awareness of the prohibitions on corporate contributions.

5 Furthermore, rather than indicating a lack of unlawful intent, the mechanism for making
6 the reimbursements as part of a larger bonus suggests an attempt to conceal the transaction.
7 Including the reimbursements in the confidential calculation of each Vice President's annual
8 bonus, rather than as an immediate reimbursement of a business expense, effectively concealed
9 the purpose of the payments. While a separate reimbursement check would create a clear record
10 at the company's bank and within SJPI's accounting office, the inclusion of the reimbursement
11 in the bonus creates no record outside of the Controller's confidential business calculations. The
12 decision to include the reimbursement as part of a larger bonus could be considered an unusual
13 and suspicious business practice that evidences a scheme to conceal the reimbursements.
14 Respondents' argument that the production of the bonus calculation worksheet in the state
15 criminal investigation shows SJPI did not conceal the scheme is unpersuasive because it appears
16 likely to have been involuntary.

17 This case is most similar to cases in which the Commission has found knowing and
18 willful section 441f violations, in that Mr. St. John is a relatively experienced federal contributor
19 who disguised the reimbursements.

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4 Similarly, in MUR 5818 (Fieger), the Commission found probable cause to believe that
5 the respondents knowingly and willfully violated section 441f based on several factors, including
6 the respondents' extensive prior political contributions and their payment of the reimbursement
7 through means to "naïve-minded employees."

8 Finally, that the press release indicates that the Maryland State Prosecutor lacked
9 sufficient evidence to establish that Mr. St. John knew the reimbursement of the state
10 contributions violated state law should not dissuade the Commission from investigating whether
11 he knew the reimbursement of the federal contributions violated federal law for the following
12 reasons: (1) the state investigation concerned an entirely different set of contributions than those
13 at issue here, (2) the State Prosecutor declined to criminally prosecute the state contributions as a
14 matter of prosecutorial discretion,⁸ and

15
16 In addition, we understand from the State Prosecutor's office that its grand
17 jury investigation

18
19 Thus, the conclusion that there was

⁸ Because the State Prosecutor declined to pursue a criminal case as a matter of prosecutorial discretion and because the contributions at issue in the state proceeding are not the same as those at issue here, and indeed the State Prosecutor's office does not have any jurisdiction over the federal contributions, this case does not present the legal and equitable issues raised by the respondents in MUR 5818 (Fieger) after a jury acquitted two respondents of criminal charges relating to the very same contributions at issue in the parallel civil proceeding.

1 insufficient evidence to meet the higher standard of proof required in criminal proceedings may
2 have stemmed from a lack of time in which to conduct further investigation.

3 In sum, the available information indicates that SJPI and Mr. St. John may have made the
4 reimbursements knowing that they were unlawful. Therefore, we recommend the Commission
5 find that SJPI and Mr. St. John knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

6 2. The Vice Presidents

7 It appears that Lawrence Maykowitz, Robert Becker, Jeffrey Gish, Stanley Meros,
8 H. Richard Williamson, and Gerard Wit also violated the Act by knowingly permitting their
9 names to be used to effect a contribution in the name of another. Although SJPI disputes the
10 Vice Presidents' knowledge of the reimbursements through counsel, as previously mentioned,
11 the available information suggests that they expected to be reimbursed. See pages 8-9, *supra*.

12 Based on their corporate positions, the Vice Presidents are senior officers who have a
13 prior history of political contributions. By giving their contribution information to SJPI's
14 Controller and accepting reimbursement for those contributions, they consented to the making of
15 corporate contributions through the reimbursements. As senior corporate officers, the Vice
16 Presidents are the type of sophisticated conduits that the Commission has pursued in the past for
17 section 441f violations. See MUR 5818 (Eieger) (Commission found probable cause to believe
18 that a partner who was Secretary/Treasurer of a law firm violated §§ 441b(a) and 441f)
19 Commission Certification dated August 26, 2009; see also MUR 5765 (Crop Production
20 Services, Inc.) (Commission found reason to believe that a Vice President, three managers, and
21 two of their spouses violated § 441f as conduits, and conciliated with the Vice President and
22 managers but took no further action regarding the spouses).

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1 a recipient committee to disgorge reimbursed contributions, although the conduits had repaid the
2 reimbursements prior to notifying the Commission and the committee of the reimbursements).

3 4. The Steele Committee

4 Based on the available information, it does not appear that the Steele Committee
5 contributions were reimbursed, or that they were otherwise impermissible. The SJPI respondents
6 deny that they were, and there currently is no available information to the contrary. It thus
7 appears that the Steele Committee did not violate the Act by receiving and accepting the
8 contributions. Therefore, we recommend the Commission find no reason to believe that the
9 Steele Committee violated 2 U.S.C. §§ 441b(a) or 441f and close the file as to it. We also
10 recommend that the Commission include in its closing letter to the Steele Committee an
11 appropriate request that it confirm the accuracy of its disclosure of the partners to whom the LLC
12 contributions were attributed. See footnote 2, *supra*.

13 **III. PROPOSED INVESTIGATION**

14 The proposed investigation would focus on obtaining additional information about Mr.
15 St. John and the Vice Presidents' understanding and expectation regarding the contributions and
16 the reimbursements, including their knowledge of contribution limits and the prohibitions against
17 corporate contributions and contributions in the name of another. We would also address
18 whether Mr. St. John made the reported \$10,000 contribution to MRSCC and whether that
19 contribution was reimbursed. We expect to obtain the necessary information through informal
20 means with cooperation from Mr. St. John and the Vice Presidents, but also recommend that the
21 Commission authorize the use of compulsory process, including the use of subpoenas, as
22 necessary.

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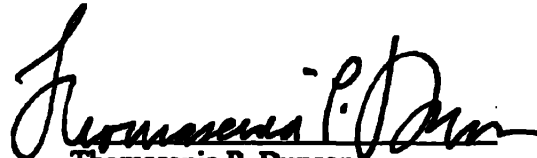
IV. RECOMMENDATIONS

1. Find reason to believe that Edward St. John and St. John Properties, Inc. knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
2. Find reason to believe that Lawrence Maykrantz, Robert Becker, Jeffrey Gish, Stanley Meros, H. Richard Williamson, and Gerard Wit violated 2 U.S.C. §§ 441b(a) and 441f.
3. Take no action at this time as to the Maryland Republican State Central Committee and Robert Christopher Rosenthal, in his official capacity as treasurer.
4. Find no reason to believe that State for Maryland, Inc. and Elizabeth S. Rubin, in her official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f and close the file as to it.
5. Approve the attached Factual and Legal Analyses.
6. Authorize the use of compulsory process as to all respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.


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7. Approve the appropriate letters.

3/18/2010
Date


Thomasenia P. Duncan
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Ann Marie Terzaken
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