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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6417
Date Complaint Filed: November 1, 2010
Date of Notification: November 4, 2010
Date of Last Response: January 10, 2011
Date Activated: January 28, 2011

Expiration of Statute of Limitations

Earliest: March 30, 2015
Latest: October 13, 2005

COMPLAINANT:

Democratic Party of Oregon

RESPONDENTS:

Jim Huffman for Senate and Lisa Lisker, in her
official capacity as treasurer
James Huffman
Leslie Spencer

RELEVANT STATUTES AND REGULATIONS:

2 U.S.C. § 434(b)(3)(E)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.33
11 C.F.R. § 104.3(d)(4)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint alleges that Jim Huffman for Senate and Lisa Lisker, in her official capacity as treasurer ("Committee"), reported the receipt of six loans totaling \$1.35 million from Oregon's 2010 Republican Senate candidate James Huffman's personal funds that were not from his personal funds. The allegation is based on Huffman's personal disclosure statement filed with the U.S. Senate ("PDS") that described the value of his

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1 assets as between \$565,003 and \$1,115,000, the bulk of which were in a retirement fund.
2 According to the complaint, "[i]t is simply implausible that Mr. Huffman had enough
3 'personal funds' to loan \$1.35 million" to the Committee, and "[c]onsequently, some or all
4 of the \$1.35 million in cash loans likely emanated from a source other than Mr. Huffman's
5 'personal funds,'" resulting in the likelihood that the Committee accepted, and the source
6 of the funds made, an excessive contribution. Complaint at 5. The complaint requests that
7 the Commission investigate the violations, including whether they were knowing and
8 willful. *Id.* The joint response of the Committee, James Huffman, and his wife, Leslie
9 Spencer, concedes that several of the loans should have been attributed to Spencer rather
10 than Huffman, and states that the Committee is amending its disclosure reports to show the
11 loans as having been made by Spencer. Response at 1.

12 As discussed in more detail below, it appears that none of the loans came from
13 Huffman's "personal funds." Bank of the West was the source of one of the loans, in the
14 amount of \$50,000, and Leslie Spencer, Huffman's spouse, was the source of the other five
15 loans, totaling \$1.3 million. Since Spencer contributed \$4,800 to her husband's campaign
16 on the same day that she made her second loan to the Committee, she made excessive
17 contributions of \$1.3 million to the Committee, which Huffman and the Committee
18 accepted. Accordingly, we recommend that the Commission find reason to believe that
19 Leslie Spencer violated 2 U.S.C. § 441a(a), and the Committee and James Huffman
20 violated 2 U.S.C. § 441a(f). Since the Committee misreported all six loans and failed to
21 file a Schedule C-1 disclosing Bank of the West as the source of one loan, we also
22 recommend that the Commission find reason to believe that the Committee violated

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1 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).

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3 **II. FACTUAL SUMMARY**

4 The complaint alleges that between February 25, 2010 and October 13, 2010, the
5 Committee disclosed that Huffman made six loans totaling \$1.35 million from his
6 "personal funds," but Huffman reported on his PDS, attached to the complaint, that his
7 personal assets consisted of a checking account valued between \$15,001 and \$50,000, stock
8 valued between \$50,001 and \$100,000, and a retirement fund valued between \$500,000 and
9 \$1,000,000. Complaint at 1. The complaint notes that Huffman's PDS also discloses that
10 his wife, Leslie Spencer, is the beneficiary of two trusts valued at \$6,478,878, in which
11 Huffman has no ownership interest.¹ Complaint at 2. Maintaining that it is "implausible"
12 that Huffman had enough personal funds to make some or all of the loans, the complaint
13 alleges some or all of the \$1.35 million in loans originated from another source, likely
14 resulting in the Committee accepting—and the actual source of the loans making—an
15 excessive contribution. Complaint at 5.

16 A joint response was submitted on behalf of all the respondents, and attached sworn
17 declarations from Huffman, Spencer, and the Committee's treasurer. According to the
18 response, Huffman and Spencer believed that Huffman could loan the Committee up to the
19 amount of his share of jointly owned property, regardless of the source of the funds. *Id.* at
20 2 and Exhibit 2, ¶ 9. They estimated that amount, which excluded Spencer's trust funds, to

¹ According to the PDS, the trusts are managed by Fiduciary Trust Company International ("FTCI"), and consist of the Leslie M. Spencer Trust, of which Spencer is the income beneficiary, and a Spencer 2005 Family Trust, in which Spencer has an undivided one-third interest. Complaint, Exhibit A.

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1 be approximately \$2.3 million.² *Id.* For five of the loans, however, instead of using
2 Huffman's individual or joint assets to make the loans, the couple used Spencer's FTCI
3 trust account, which was solely in her name, to make \$1.3 million of the loans because it
4 was the most convenient and accessible source, and because there was a secure transfer
5 history between their joint account at Bank of the West and FTCI. *Id.* at 2, 3, and 6.

6 According to the Response, "[t]he decisions that were made with respect to the source of
7 the loans were based solely on convenience and flexibility." *Id.* at 6 and Exhibit 2, ¶ 7.

8 The Response describes the transmittal of the \$1.3 million in funds originating from
9 Spencer's FTCI trust account to the Committee for the five loans, and attaches supporting
10 documentation. See Exhibits 1 to 8. FTCI wired the funds from Spencer's trust account in
11 the amounts of \$50,000, \$150,000 and \$200,000 to Huffman's and Spencer's joint account
12 at Bank of the West on March 15, 2010, April 8, 2010, and July 1, 2010, that were used to
13 fund three loans of the same amounts disclosed by the Committee as from Huffman's
14 personal funds on March 30, 2010, March 31, 2010, and June 30, 2010, respectively.
15 Response at 3. To fund a fourth loan of \$500,000 on September 14, 2010, also disclosed as
16 from Huffman's personal funds, Spencer wired \$500,000 from her FTCI line of credit to
17 the joint bank account on September 13, 2010, and Huffman then wired those funds to the
18 Committee's account at Wachovia Bank the next day. *Id.* Finally, to fund a fifth loan
19 disclosed as from the candidate's personal funds on October 13, 2010, Spencer wired
20 \$400,000 from her FTCI line of credit directly to the Committee's account at Wachovia
21 Bank to "facilitate the timing of a planned Committee advertisement." Response at 4.

² The Response admits in retrospect that the estimate was too high because the estimated real market value of their joint homes was significantly less than what they were later appraised for, and the estimate included a property in Spencer's name alone. The Response states that the appropriate estimate would have been closer to \$1,798,328. See Response at 5 and notes 4 and 5.

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1 A sixth loan disclosed as from Huffman's personal funds did not originate from
2 Spencer's FTCL account. On February 25, 2010, Huffman and Spencer transferred \$50,000
3 from a pre-existing home equity line of credit account at Bank of the West, secured by their
4 jointly owned Oregon home, to their joint account at the same bank. The same day, a
5 check for \$50,000 from the joint account made payable to Jim Huffman for Senate was
6 deposited into the campaign account. Response at 2.

7 **III. LEGAL ANALYSIS**

8 **A. Excessive Contribution**

9 The Act provides that no person shall make contributions to any candidate and his
10 or her authorized political committee with respect to any election for federal office which,
11 in the aggregate, exceed \$2,400. 2 U.S.C. § 441a(a)(1)(A). No candidate or candidate
12 committees shall knowingly accept any contribution or make any expenditure in violation
13 of section 441a. 2 U.S.C. § 441a(f). The term "contribution" includes any "gift,
14 subscription, loan, advance, or deposit of money or anything of value made by any person
15 for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

16 The United States Supreme Court has upheld the constitutionality of the Act's
17 contribution limits as applied to members of a candidate's family. In *Buckley v. Valeo*,
18 424 U.S. 1, 51 n.57 (1976) ("*Buckley*"), the Court noted that the legislative history of the
19 Act indicated that "[i]t is the intent of the conferees that members of the immediate family
20 of any candidate shall be subject to the contribution limitations established by this
21 legislation... The immediate family member would be permitted merely to make
22 contributions to the candidate in amounts not greater than \$1,000 for each election
23 involved, "citing to S. Conf. Rep. No. 93-1237, p. 58 (1974), U.S. Code Cong. & Admin.

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1 News 1974, p. 5627. According to *Buckley*, "[a]lthough the risk of improper influence is
2 somewhat diminished in the case of large contributions from immediate family members,
3 we cannot say that the danger is sufficiently reduced to bar Congress from subjecting
4 family members to the same limitations as nonfamily contributors." 424 U.S. 1, 53 n.59. In
5 several cases, the Commission has conciliated with respondents where family members
6 made excessive contributions to the candidate's campaign. *See, e.g.*, MUR 5348 (Condon);
7 MUR 5334 (O'Grady); MUR 5429 (Weiner); and MUR 5138 (Ferguson). *But see* MUR
8 5321 (Robert) and MUR 5724 (Feldkamp).

9 Federal candidates may make unlimited contributions from their "personal funds"
10 to their campaigns. 11 C.F.R. § 110.10. "Personal funds" include (a) amounts derived
11 from assets that, under applicable State law, at the time the individual became a candidate,
12 the candidate had legal right of access to or control over, and with respect to which the
13 candidate had legal and rightful title or an equitable interest, (b) income received during the
14 current election cycle, of the candidate, including salary and other earned income from
15 bona fide employment; income from the candidate's stocks or other investments; bequests
16 to the candidate; income from trusts established before the beginning of the election cycle;
17 income from trusts established by bequest after the beginning of the election cycle of which
18 the candidate is the beneficiary; gifts of a personal nature that had been customarily
19 received by the candidate prior to the beginning of the election cycle; and (c) amounts
20 derived from a portion of the assets that are owned jointly by the candidate and the
21 candidate's spouse. 11 C.F.R. § 100.33.

22 Huffman and Spencer do not claim that the \$1.3 million in loans to the Committee
23 that were funded from Spencer's FTCL accounts fell into any of the above categories such

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1 that they can be deemed Huffman's "personal funds." The Response states that, since their
2 marriage, Huffman and Spencer have not considered the FTCI funds "any differently than
3 money in their joint account," and have transferred funds from it to the joint account for
4 "family purposes," including home renovations, car purchases, and family travel, as well as
5 to pay federal and state taxes from their joint returns and to deposit joint tax refunds. *Id.* at
6 7 and Exhibit 2, ¶ 8. The Response admits, however, that the couple understood that "only
7 Ms. Spencer had access to the FTCI account and [they] did not consider these funds when
8 estimating Mr. Huffman's net worth." *Id.* at 7. Thus, the couple's use of the funds in the
9 FTCI account as the source of the loans was not based on any belief that they were, in
10 reality, anything other than Spencer's solely owned funds to which Huffman had no
11 independent access. Nor do they contend now, with an understanding of the applicable
12 laws, that using the FTCI funds was legally permissible. To the contrary, Respondents
13 have already begun to remedy their violations. On its Post-General Report to the FEC, the
14 Committee disclosed that Spencer made five of the loans, amended prior 2010 disclosure
15 reports accordingly, and Huffman has contributed sufficient personal funds to enable the
16 Committee to make an initial, substantial refund to Spencer. *Id.* at 7. Specifically, the
17 response states Huffman "is making" a \$967,270 contribution to the Committee, comprised
18 of \$787,270 from Huffman's interest in the value of the couple's two homes, \$80,000 from
19 the sale of his stock, and \$100,000 from his TIAA-CREF account, in order to permit the
20 Committee to refund loans derived from the FTCI account. *Id.* at 5-6. On February 11,
21 2011, in response to a Request for Additional Information, the Committee stated that it
22 received a \$940,000 contribution from Huffman, it had refunded \$1 million to Spencer, and
23 expects to fully refund her by May 2011.

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B. Reporting

The Act provides that each report shall identify the person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan.

2 U.S.C. § 434(b)(3)(E). When a candidate obtains a loan derived from a home equity line of credit for use in connection with the candidate's campaign, the candidate's principal campaign committee shall disclose on Schedule C-1 to the report covering the period when the loan was obtained, the date, amount, and interest rate of the loan, the name and address of the lending institution, and the types and value of collateral or other sources of repayment that secure the loan, advance, or line of credit, if any. 11 C.F.R. § 104.3(d)(4).

The Committee incorrectly reported on its 2010 April Quarterly Report, 2010 Pre-Primary Report, 2010 July Quarterly Report, 2010 October Quarterly Report and 2010 Pre-General Report that the six loans were from Huffman's personal funds. The Bank of the West was the source of the first loan, which was in the amount of \$50,000. For this loan, the Committee should have filed a Schedule C-1 with the 2010 April Quarterly Report, since the loan was based on a home equity line of credit. With respect to the other five loans totaling \$1.3 million, the Committee should have disclosed them as from Spencer on the appropriate 2010 disclosure reports.

The Committee has amended its 2010 April, July, and October Quarterly Reports, and the 2010 Pre-General Report to reflect on Schedule A and Schedule C that Spencer made contributions to the Committee in the form of loans. The Committee also amended its 2010 Pre-Primary Report to reflect on Schedule C that Spencer made the loans, and filed

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1 a Schedule C-1 with the amended 2010 April Quarterly Report along with a revised
2 Schedule C to reflect that Bank of the West was the source of the first loan.

3 Based on the above, we recommend that the Commission find reason to believe that
4 Leslie Spencer violated 2 U.S.C. § 441(a) by making an excessive contribution, and James
5 Huffman, and Jim Huffman for Senate and Lisa Lisker, in her official capacity as treasurer,
6 violated 2 U.S.C. § 441a(f) by accepting an excessive contribution. We also recommend
7 that the Commission find reason to believe that Jim Huffman for Senate and Lisa Lisker,
8 in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R.
9 § 104.3(d)(4) for failing to properly report \$1.35 million in loans.

10
11 **C. Knowing and Willful**

12 The complaint requests that the Commission investigate the alleged violations,
13 including whether they were knowing and willful. Complaint at 5. To establish a knowing
14 and willful violation, there must be knowledge that one is violating the law. *See FEC v.*
15 *John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). A knowing
16 and willful violation may be established "by proof that the defendant acted deliberately and
17 with knowledge that the representation was false." *U.S. v. Hopkins*, 916 F.2d 207, 214
18 (5th Cir. 1990). A knowing and willful violation may be inferred "from the defendants'
19 elaborate scheme for disguising" their actions. *See id.* at 214-15.

20 It appears that Huffman and Spencer understood how to calculate the limits on the
21 amount of loans Huffman could make to the Committee from his personal and joint assets,
22 but they did not understand that the loans had to be funded from those assets as well.
23 While they consulted Lisker, who confirmed their understanding of how to calculate the

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limits on the amount of loans Huffman could make, they did not discuss with her the required source of the loans. *See* Declarations of James Huffman, Leslie Spencer and Lisa Lisker, attached to the Response. We have no contrary information suggesting that the Respondents intentionally made, accepted, or failed to properly report the loans. The Respondents did not attempt to "disguise" the source of the loans as they are easily traced to their sources, and Huffman's PDS indicated that he did not have the personal or joint assets to make all the loans in issue. Accordingly, we do not recommend that the Commission find that the Respondents' violations were knowing and willful.

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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V. RECOMMENDATIONS

1. Find reason to believe that Jim Huffman for Senate and Lisa Lisker, in her official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(d)(4).
2. Find reason to believe that James Huffman violated 2 U.S.C. § 441a(f).
3. Find reason to believe that Leslie Spencer violated 2 U.S.C. § 441a(a).
- 4.
- 5.
6. Approve the attached Factual and Legal Analysis.

7. Approve the appropriate letter.

4-28-2011
Date

Christopher Hughey
Christopher Hughey
Acting General Counsel

Kathleen Guith
Kathleen Guith
Acting Associate General Counsel for
Enforcement

Susan L. Lebeaux
Susan L. Lebeaux
Acting Deputy Associate General Counsel
for Enforcement

Delbert K. Rigsby
Delbert K. Rigsby
Attorney

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