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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 6523

DATE COMPLAINT FILED: January 20, 2012

DATE OF NOTIFICATION: January 26, 2012

LAST RESPONSE RECEIVED: March 16, 2012

DATE ACTIVATED: April 12, 2012

EXPIRATION OF SOL: May 25, 2016 (earliest)
Sept. 30, 2016 (latest)

COMPLAINANT:

David E. Smith

RESPONDENTS:

Wilford R. Cardon
Wil Cardon for U.S. Senate and Kevin Wolfe,
in his official capacity as treasurer
Boa Sorte, LLC
Rio Claro, Inc.
The Cardon Family, LLC
Comerica Bank

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)(B)(vii)
2 U.S.C. § 441b(a)
11 C.F.R. § 100.33
11 C.F.R. § 100.82
11 C.F.R. § 110.10

INTERNAL REPORTS CHECKED:

Disclosure Reports

AGENCIES CHECKED:

Arizona Corporation Commission

I. INTRODUCTION

The Complaint in this matter raises questions about certain loans that Wilford R. Cardon made to his authorized committee, Wil Cardon for U.S. Senate and Kevin Wolfe, in his official capacity as treasurer (the "Committee"), in connection with Cardon's 2012 campaign for U.S. Senate. The Complaint alleges that Cardon's loans to the Committee totaling \$815,709.60 were

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1 improper because those funds were not his "personal funds" but belonged to several companies
2 he controlled. The Complaint further contends that the timing of the loans suggests that some
3 portion was funded from proceeds of a bank loan Cardon's companies had obtained without
4 sufficient collateral. In either case, according to the Complaint, the loans constitute illegal
5 corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended
6 (the "Act").

7 The Respondents deny the allegations and provide affidavit and documentary support
8 demonstrating that the loans complied with the Act and Commission regulations. Accordingly,
9 we recommend that the Commission find no reason to believe that Cardon, the Committee, Boa
10 Sorte, LLC, Rio Claro, Inc., The Cardon Family, LLC, or Comerica Bank violated 2 U.S.C.
11 § 441b(a).

12 II. FACTUAL BACKGROUND

13 Wilford R. Cardon is a candidate for the 2012 Republican primary election for U.S.
14 Senate in Arizona to be held on August 28. *See* Wilford R. Cardon, Statement of Candidacy
15 (Aug. 12, 2011). He is President and CEO of The Cardon Group, a family-owned real estate
16 development company that operates a number of related businesses. *See* THE CARDON GROUP,
17 <http://cardon.com/> (last visited June 25, 2012). These businesses include Rio Claro, Inc. ("Rio
18 Claro"),¹ The Cardon Family, LLC, and Boa Sorte, LLC ("Boa Sorte"). Cardon is Chairman,
19 President, Secretary and Director of Rio Claro, and Manager of The Cardon Family, LLC, and
20 Boa Sorte. *See* STARPAS Business Entity Search, ARIZ. CORP. COMM., <http://www.azcc.gov/>
21 (last visited June 25, 2012).

¹ Rio Claro incorporated in Arizona on June 28, 2004. The Cardon Family, LLC and Boa Sorte were established as Arizona domestic limited liability companies on February 5, 2002, and December 28, 1995, respectively. *See* STARPAS Business Entity Search, ARIZ. CORP. COMM., <http://www.azcc.gov/> (last visited June 25, 2012).

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The Complaint concerns certain candidate loans disclosed on reports the Committee filed with the Commission. Since Cardon declared his candidacy on August 12, 2011, the Committee has reported six loans from Cardon, totaling \$4,265,709.60:

DATE	REPORT	AMOUNT
5/26/2011	2011 October Quarterly ²	\$10,967.75
7/01/2011	2011 October Quarterly	\$34,741.85
8/29/2011	2011 October Quarterly	\$20,000.00
9/30/2011	2011 October Quarterly	\$750,000.00
12/31/2011	2011 Year End	\$450,000.00
3/30/2012	2012 April Quarterly	\$3,000,000.00
	TOTAL	\$4,265,709.60

The Complaint alleges that the first four loans, totaling \$815,709.60, were not made with personal funds, but with the funds of three of his family-owned companies. Compl. at 1-3. The Complaint observes that Cardon made the loans between May and August 2011, the same period during which those three companies — Boa Sorte, Rio Claro, and The Cardon Family, LLC — executed real estate transactions that resulted in the companies obtaining ownership interests in Cardon's personal residence. *Id.* at 2. Based on the timing of these activities, the Complainant infers that the funds used to make the candidate loans were in fact derived in part from funds of those companies. *Id.*

The Complaint also contends that Cardon loaned his Committee funds that he obtained from an inadequately secured bank loan, thus constituting an unlawful contribution by the lending institution. Specifically, the Complaint asserts that Boa Sorte and Rio Claro obtained a \$2.5 million line of credit from Comerica Bank on May 25, 2011, without adequate collateral as set forth in 11 C.F.R. § 100.82. Compl. at 2-3. The Complaint alleges that the loan was secured

² The Committee's 2011 October Quarterly Report notes that some transactions were not disclosed in earlier reports "because the candidate had not yet made the decision to form a committee. These expenses were paid by the Candidate and are now reflected as loans from the candidate's personal funds." 2011 Oct. Quarterly Rpt. at 5 (Oct. 14, 2011).

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1 only with Cardon's residence, valued in 2011 at \$710,800, or "less than one third the amount of
2 the maximum loan disbursements." *Id.* at 2. The Complaint argues that Cardon therefore
3 violated 2 U.S.C. § 441b by making loans to his campaign using corporate funds derived from
4 the line of credit Comerica Bank issued to Boa Sorte and Rio Claro. *Id.*³

5 The Complaint provides a timeline of transactions involving Cardon's personal residence,
6 copies of the deed reflecting the line of credit, a property assessment, and a Financial Disclosure
7 Statement that Cardon filed with the Senate on December 14, 2011. Compl., Attach. A-C. The
8 timeline indicates that Cardon's residence was transferred to Boa Sorte, Rio Claro, and the
9 Cardon Family, LLC on November 5, 2010, and reflects additional transactions relating to the
10 same property in July and August 2011.⁴ Compl., Attach. A. The Financial Disclosure
11 Statement also discloses substantial income and assets under Cardon's control, including salary
12 exceeding \$177,000 and "Unearned Income" exceeding \$3 million from distributions from
13 personal trust accounts, among numerous other personal assets. Compl., Attach. C.

14 The Committee and Comerica Bank each submitted responses to the Complaint. Boa
15 Sorte, Rio Claro, and The Cardon Family, LLC, did not submit responses, but the Committee's
16 response attaches an affidavit from the controller of Boa Sorte and Rio Claro.⁵ The Committee
17 response states that Cardon "indeed loaned personal funds to his campaign" and asserts that the

³ The Complaint also asserts that, if additional collateral was used to secure the loan, the Committee failed to report it to the Commission, and thus violated the Act. *Id.* at 2. As noted below, there is no FEC obligation to report the security on the line of credit because it was not used to fund Cardon's loans to the Committee.

⁴ Public property records indicate that Cardon's personal residence was first sold to Boa Sorte and Rio Claro on April 13, 2010, not in November 2010, the date identified in the timeline attached to the Complaint.

⁵ Before reaching the legal questions, the Committee's response states that the complainant is involved in a business dispute with Cardon Homes Corp. Comm. Resp. at 1 (Mar. 16, 2012); see *Cardon Accused of FEC Violation*, USA TODAY (Jan. 21, 2012), available at <http://www.usatoday.com/USCP/PNI/NEWS/2012-01-21-PNI0121met-Cardon-complaintPNI0121U.htm> (reporting that Complainant disclosed "a longstanding business grievance with the Cardon family" involving \$74,000 on a plumbing contract, and stated "I just figured if he's got that much to put in his campaign, maybe the Cardon family could pay some of the bills that they owe their subcontractors").

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1 Comerica Bank line of credit was a separate, unrelated business transaction, which "Boa Sorte
2 and Rio Claro sought . . . strictly for business purposes." Comm. Resp. at 1-2. Comerica
3 Bank's response denies that the line of credit was insufficiently collateralized and provides
4 supporting documentation to demonstrate that it "was in full conformance with the Act." See
5 Bank Resp. (Feb. 13, 2012); Bank Supp. Resp. (Mar. 9, 2012).

6 The Committee provided a sworn affidavit from Cardon, in which he states that he
7 "contributed or loaned to [his] authorized campaign committee 'personal funds,' as that term is
8 used in 11 C.F.R. § 100.33," that the companies he controls "did not disburse to [him] any
9 proceeds" from the Comerica Bank line of credit, and that those companies have not "paid any
10 funds to [him] in 2011 or 2012." Wilford R. Cardon Aff. ¶¶ 3-5 (Mar. 14, 2012).

11 Cardon's affidavit, however, did not identify the source of the funds that he loaned the
12 Committee, and his characterization of "personal funds" was made in the form of a legal
13 conclusion. Thus, this Office invited further response from the Committee. See Letter from
14 Daniel A. Petalas, Assoc. Gen. Counsel, FEC, to Kirk L. Jowers and Matthew T. Sanderson,
15 Counsel to Committee (May 4, 2012). In response, the Committee explained that the funds it
16 borrowed from Cardon "were disbursed from Mr. Cardon's personal bank account at Johnson
17 Bank, which holds Mr. Cardon's earned compensation, investment proceeds, and income from
18 trusts established before the 2012 election cycle." Letter from Kirk L. Jowers and Matthew T.
19 Sanderson, Counsel for Committee, to Daniel A. Petalas, Assoc. Gen. Counsel, FEC (May 14,
20 2012) ("Comm. Supp."). It also stated that none of the three companies at issue "disbursed any
21 monies to Mr. Cardon for any purpose during 2011 or 2012." *Id.* That response is consistent
22 with the sworn affidavit of Carla Frick, the controller of Boa Sorte and Rio Claro, which states

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1 that "Boa Sorte and Rio Claro have not paid any funds to Wilford R. Cardon in 2011 or 2012."
2 Carla Frick Aff. ¶ 13 (Mar. 14, 2012).

3 Concerning the bank loan, the Committee explains that Boa Sorte and Rio Claro began
4 loan discussions with a number of banks in 2009, before Senator Jon Kyl announced his plans
5 not to seek reelection to the Senate seat that Cardon now seeks.⁶ Comm. Resp. at 2. According
6 to Frick, the negotiations for a line a credit with Comerica Bank took place between October
7 2009 and May 2011. Frick Aff. ¶ 7. Frick attests that, as of March 2012, Boa Sorte and Rio
8 Claro had drawn on the line of credit only three times: a draw of \$377,377 in July 2011, and two
9 draws totaling \$1.5 million in December 2011 that were paid back in full on January 12, 2012.
10 *Id.* ¶¶ 10-11. Consistent with Frick's affidavit, the Committee stated that Boa Sorte and Rio
11 Claro have used the Comerica Bank line of credit for business purposes only, to fund a third-
12 party real estate partner in July 2011 and to fund short-term business expenses in December
13 2011. Comm. Resp. at 2.

14 Finally, the Committee denies the allegation that the Comerica Bank line of credit was
15 insufficiently collateralized, noting that the line of credit was secured by four separate properties,
16 not just one as the Complainant claims. Comm. Resp. at 2-3. Comerica Bank's response
17 supports that contention. A sworn declaration signed by DJ Culkar, the bank's Senior Vice
18 President and Assistant General Counsel, attests that the credit arrangement was secured by four
19 properties Cardon's business entities owned, and provides copies of the appraisals and deeds of
20 trust for each. Bank Resp., Culkar Aff. ¶ 4, Attach. A-H. Appraisals performed on each
21 property in May and August 2010 assessed their total value at \$3,685,000. On March 29, 2011,
22 Comerica Bank approved a revolving line of credit for \$2,550,000 secured by those properties,

⁶ See *Jon Kyl Will Not Seek Reelection in 2012*, SENATOR JON KYL'S WEBSITE, (Feb. 10, 2011),
<http://www.kyl.senate.gov/record.cfm?id=331050>.

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1 with a loan-to-value ratio of 70 percent. *Id.* ¶ 4. While the bank did not provide a copy of the
2 promissory note relating to the line of credit, it submitted a screen capture of the line of credit
3 account showing disbursements and repayments as of January 31, 2012. Bank. Supp. Resp.,
4 Attach. That document reflects a 4.25 percent interest rate and four withdrawals: \$12,750 on
5 May 25, 2011, repaid July 11, 2011; \$377,337 on July 12, 2011; \$1,000,000, on December 28,
6 2011; and \$500,000 on December 29, 2011. The screen print reflects that the December 2011
7 advances were repaid on January 12, 2012, with a current balance of \$377,337.

8 III LEGAL ANALYSIS

9 The Act permits candidates to make unlimited expenditures from personal funds in
10 connection with their campaigns. 11 C.F.R. § 110.10; *see also Buckley v. Valeo*, 424 U.S. 1, 54
11 (1976) (holding restrictions on candidates' expenditures from personal funds unconstitutional).
12 "Personal funds" include assets that, at the time the individual became a candidate, "the
13 candidate had legal right of access to or control over, and with respect to which the candidate had
14 (1) legal and rightful title; or (2) an equitable interest." 11 C.F.R. § 100.33(a). "Personal funds"
15 specifically include "income from trusts established before the beginning of the election cycle."
16 *Id.* § 100.33(b).

17 The Act prohibits national banks and corporations from making contributions in
18 connection with any federal election and prohibits candidates from knowingly accepting or
19 receiving such contributions. 2 U.S.C. § 441b(a). In determining whether a payment constitutes
20 a corporate contribution in the context of candidate loans or expenditures, the Commission
21 considers whether the funds the candidate used were "personal funds" under 11 C.F.R.

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1 § 100.33(a) as well as the process by which a corporation distributed the funds to a shareholder
2 candidate that ultimately were used to benefit the candidate's political committee.⁷

3 Here, there is no basis to conclude that the loans referenced in the Complaint were made
4 using funds from an improper source. Without question, Rio Claro, a corporation, was
5 prohibited from making a contribution in connection with an election, and Cardon and his
6 Committee were prohibited from accepting any such contribution. 2 U.S.C. § 441b. Cardon
7 denies, however, that either Rio Claro, Boa Sorte, or The Cardon Family, LLC made any
8 payments to him in 2011 or 2012. Cardon Aff. ¶¶ 3-5. And the controller for Boa Sorte and Rio
9 Claro provided a sworn statement supporting Cardon's contention that neither company paid
10 Cardon in 2011 or 2012. *Id.* at 6-7. Further, according to the Committee, the funds it received
11 from Cardon came from his personal bank account, "which holds Mr. Cardon's earned
12 compensation, investment proceeds, and income from trusts established before the 2012 election
13 cycle." Comm. Supp. at 1. And Cardon's Financial Disclosure Statement reflects that he
14 possessed sufficient income and assets to make those loans using exclusively personal funds. *Id.*
15 at 4-5. Finally, the Complaint's allegations concerning the bank loan are also without merit. As
16 an initial matter, the allegations concerning the line of credit are premised on the claim that the
17 loans to the Committee were not made with personal funds, a proposition the available

⁷ See, e.g., MUR 6102 (Oliver for Congress) (Commission dismissed matter based on candidate's sworn statement that the distribution was proper); MUR 5655 (Rick Renzi) (Commission took no further action after investigation revealed the distributions had been properly made: they were loan repayments and thus personal funds); MURs 5283/5285 (Forrester) (Commission found no reason to believe that the candidate had made loans to his committee with corporate funds based on detailed information from the candidate regarding how he paid personal income tax on his subchapter S corporation's earnings and how the board of directors authorized certain distributions to him and other shareholders); MUR 3191 (Friends of Bill Zeliff) (Commission found reason to believe that the candidate used corporate funds to make loans to his committee where the candidate's draw on equity of a subchapter S corporation in which he was a shareholder had the effect of a loan); MUR 3119 (Chandler for Congress) (Commission found reason to believe that money used to make loans to candidate's campaign was corporate where the candidate conceded that she borrowed money from her subchapter S corporation and would have to repay it).

1 information refutes.⁸ Because we conclude the loans to the Committee appear to have been
2 made with personal funds — and not derived from the line of credit — that resolves the inquiry
3 into the line of credit as well.

4 Nor is there any basis to believe that, as alleged, Comerica Bank extended its \$2.5 million
5 line of credit to Cardon's companies without sufficient collateral and thus outside the ordinary
6 course of business. Under the Act, bank loans that are extended in "accordance with applicable
7 banking laws and regulations" and "in the ordinary course of business" are not "contributions."
8 2 U.S.C. § 431(8)(B)(vii). A loan is made in the ordinary course of business if: (1) it bears the
9 usual and customary interest rate of the lending institution for the category of loan involved; (2)
10 is made on a basis that assures repayment; (3) is evidenced by a written instrument; and (4) is
11 subject to a due date or amortization schedule. 11 C.F.R. § 100.82(a). A loan is considered to be
12 made on a basis that reassures payment if, *inter alia*, the lending institution making the loan has
13 perfected a security interest in collateral owned by the candidate, the fair market value of the
14 collateral is equal to or greater than the loan amount, and the candidate provides documentation
15 to show that the lending institution has a perfected security interest in the collateral. 11 C.F.R.
16 § 100.82(e)(1)(i).

17 The Complaint contends that Comerica Bank's loan to Boa Sorte and Rio Claro was not
18 made in the ordinary course of business because the bank did not secure adequate collateral
19 owned by the candidate.⁹ But Comerica Bank provided documentation indicating that four
20 properties secured the line of credit, with a total value exceeding the maximum credit amount by

⁸ The Complaint questions whether the Committee properly reported the collateral used to secure the line of credit. Because the loans to the Committee appear to have been made from Cardon's personal funds and not from the line of credit, the Committee was not required to disclose that collateral to the Commission, and accordingly, the failure to disclose is not a violation of 2 U.S.C. § 434(b).

⁹ The Complaint does not allege that the loan did not meet the other requirements of section 100.82, and we have not discovered any evidence showing otherwise.

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1 \$1 million, a 70 percent loan-to-value ratio. And that submission demonstrates that the lending
2 institution owns a perfected security interest in collateral and that the fair market value of the
3 collateral is equal to or greater than the loan amount, thereby satisfying 11 C.F.R.
4 § 100.82(e)(1)(i).

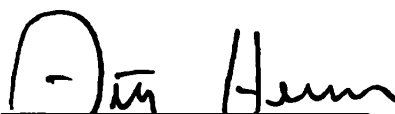
5 Accordingly, for the foregoing reasons, we recommend that the Commission find no
6 reason to believe that Cardon, the Committee, Boa Sorte, Rio Claro, The Cardon Family, LLC,
7 or Comerica Bank violated 2 U.S.C. § 441b(a).

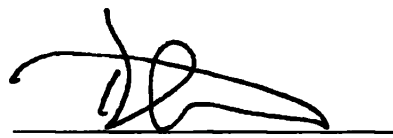
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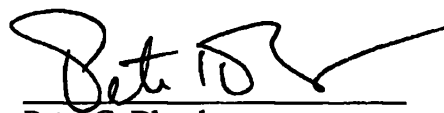
IV. RECOMMENDATIONS

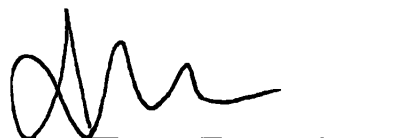
1. Find no reason to believe that Wilford R. Cardon, Wil Cardon for U.S. Senate and Kevin Wolfe, in his official capacity as treasurer, Boa Sorte, LLC, Rio Claro, Inc., The Cardon Family, LLC, or Comerica Bank violated 2 U.S.C. § 441b(a).
2. Approve the attached Factual and Legal Analyses.
3. Approve the appropriate letters.
4. Close the file.

Jul 11, 2012
Date


Anthony Herman
General Counsel


Daniel A. Petalas
Associate General Counsel for Enforcement


Peter G. Blumberg
Assistant General Counsel


Ana J. Peña-Wallace
Attorney

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