

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)	
)	MUR 7454
DefendArizona and Benjamin)	
Ottenhoff in his official capacity)	
as treasurer)	
)	

CONCILIATION AGREEMENT

This matter was initiated by a Complaint filed with the Federal Election Commission (“Commission”) by the Campaign Legal Center. The Commission found reason to believe that DefendArizona and Benjamin Ottenhoff in his official capacity as treasurer (“Respondents” or “DefendArizona”) violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 110.1(g)(2) and (4).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. DefendArizona is an independent-expenditure-only political committee (“IEOPC”) that registered with the Commission on February 1, 2018. Benjamin Ottenhoff is its treasurer of record.

2. Blue Magnolia Investments, LLC (“Blue Magnolia”) was formed as a limited liability company (“LLC”) under the laws of Delaware on April 24, 2018.
3. Blue Magnolia is not taxed as a corporation and is disregarded for federal tax purposes.
4. Blue Magnolia has a single natural person member, Larry Van Tuyl.
5. Highway 76 LLC (“Highway 76”) was formed as a limited liability company (“LLC”) under the laws of Delaware on May 23, 2018.
6. Highway 76 is not taxed as a corporation and is disregarded for federal tax purposes.
7. Highway 76 has a single member, which is a tax-disregarded single-member LLC (“LLC 2”). LLC 2’s single member is a third LLC (“LLC 3”), which is taxed as a partnership and has two members, both of which are trusts: the 2005-1 Bidwell Family Trust (“Trust 1”) and the 2005-2 Bidwell Family Trust (“Trust 2”). Michael Bidwell is a trustee of both trusts and is the manager of Highway 76, LLC 2, and LLC 3.
8. Under the Federal Election Campaign Act of 1971, as amended, political committees must file periodic disclosure reports with the Commission, which accurately report all contributions received and disbursements made. 52 U.S.C. § 30104(a) and (b).
9. A political contribution by an LLC that is disregarded for tax purposes and does not have a single natural-person member is treated as a partnership contribution, which must be attributed to both the LLC and to each of its partners, either in proportion to their share of the partnership profits or by agreement among the partnership. 11 C.F.R. § 110.1(g)(2); *see* 11 C.F.R. § 110.1(e).

10. A political contribution by an LLC that has a single natural-person member and is not taxed as a corporation shall be attributed only to the LLC's single natural-person member. 11 C.F.R. § 110.1(g)(4).

11. DefendArizona reported receiving a \$100,000 contribution from Blue Magnolia on May 30, 2018, and attributed that contribution only to Blue Magnolia. DefendArizona July 2018 Quarterly Report at 6 (July 15, 2018). At the time the contribution was made, DefendArizona did not inquire with Blue Magnolia to obtain required attribution information.

12. Upon receiving notice of the Complaint in this matter, Blue Magnolia requested that DefendArizona attribute its contribution to Larry Van Tuyl. DefendArizona then amended its July 2018 Quarterly Report to attribute the \$100,000 contribution from Blue Magnolia to Van Tuyl. *See* DefendArizona Amended July 2018 Quarterly Report at 6 (Sept. 11, 2018).

13. DefendArizona reported receiving a \$100,000 contribution from Highway 76 on June 30, 2018, and attributed that contribution only to Highway 76. DefendArizona July 2018 Quarterly Report at 7 (July 15, 2018). At the time the contribution was made, DefendArizona did not inquire with Highway 76 to obtain required attribution information.

14. Respondents contend that DefendArizona subsequently made inquiries with Highway 76 representatives but was unable to determine with certainty whether the contribution could be retained. DefendArizona then refunded the full amount of Highway 76's contribution on August 29, 2018. DefendArizona October 2018 Quarterly Report at 35 (Oct. 15, 2018).

15. Respondents contend that DefendArizona received the information needed to amend its July 2018 Quarterly Report to include additional attribution for the contribution from Highway 76 in January 2022.

16. Respondents contend that Commission regulations do not specifically address whether and how limited liability companies may make contributions to independent-expenditure-only political committees.

V. Under ordinary circumstances, the Commission would seek a civil penalty based on the violations outlined in this agreement. However, based upon the circumstances presented, including a lack of clarity by the Commission concerning the application of 11 C.F.R. 110.1(g)(5) in these circumstances, and based on Respondents' clarification of the public record regarding the Blue Magnolia contribution, and based on Respondents agreeing to clarify the record regarding the Highway 76 contribution by amending the relevant disclosure report, the Commission agrees to depart from the civil penalty that it would normally seek for the violation at issue, and the Commission agrees that no civil penalty will be due for the violations. The Commission reserves its right to seek a money penalty in future matters concerning this violation.

VI. Respondents violated 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 110.1(g)(2) and (4) by filing incomplete disclosure reports with the Commission with respect to the contributions from Blue Magnolia and Highway 76.

VII. 1. Respondents will amend their July 2018 Quarterly Report to include attribution of the contribution from Highway 76.

2. Respondents will cease and desist from committing violations of 52 U.S.C. § 30104(b) and 11 C.F.R. §§ 110.1(g)(2) and (4).

VIII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

X. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.


XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

XII. This agreement shall not be read to waive Respondents' right or ability to assert, without prejudice, any arguments or defenses in any future proceedings that are unrelated to the terms of this agreement and the violations of law described herein.

MUR 7454 (DefendArizona, *et al.*)
Conciliation Agreement
Page 6 of 6

FOR THE COMMISSION:

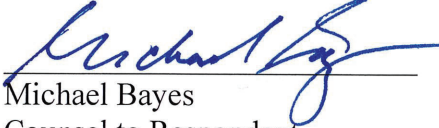
Lisa J. Stevenson
Acting General Counsel

BY: **Charles
Kitcher**  Digitally signed by
Charles Kitcher
Date: 2022.03.18
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Charles Kitcher
Acting Associate General Counsel for Enforcement

3/18/22
Date

FOR THE RESPONDENTS:


Michael Bayes
Counsel to Respondent

2/7/2022
Date