Federal Election Commission
Washington, DC 20463

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

June 4, 2007

Gary Prost
McNerney for Congress
P.O. Box 12022
Pleasanton, CA 94588

Re: ADR 389 (MUR 5857)

Dear Mr. Prost:

On October 23, 2006 the Federal Election Commission ("FEC" or "Commission") received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and take no action against the Respondents, Richard Pombo for Congress and David Bauer, Treasurer. In its memorandum to the Commission, dated May 22, 2007, this office stated:

> **Summary:** The FECA requires all television communications for which a political committee makes a disbursement to include written and oral disclaimers. If the communication is paid for and authorized by a candidate or an authorized committee of the candidate, or any agent of the foregoing: (i) the candidate must orally identify himself and state that he approved the advertisement; (ii) this statement must be accompanied by a full on-screen view of the candidate or a voice-over with a photographic image or similar image; (iii) and at the end of the ad, there must be a written statement that the committee paid for the ad. The written disclaimer must be clear and conspicuous.
>
> In this case, Complainants alleges that Richard Pombo, a candidate for the 11th Congressional District in California, and his campaign ran an advertisement on six broadcast and/or cable stations in the Sacramento media market on October 20, 2006 without any written disclaimer at the end of the ad, as the FECA requires. The Complainants also allege that the advertisement violated the Federal

Communications Act's disclaimer requirements.[1] The Respondents state that the Committee campaign consultant thought that the disclaimers could be at either end of the advertisement. The Committee further states that it modified the ad to place the disclaimers at the end of the ad two to three days after the advertisement first aired. The Committee alleges that that the affected commercial cost $20,000 to $30,000 out of the total air time cost of $900,000. Finally, the Respondents contend that the commercial did have the appropriate disclaimer at one end or the other during the entire course of the air time.

Accordingly, the Commission closed its file in this matter on May 25, 2007.

The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, the Commission will also place on the record copies of the complaint, correspondence exchanged between Respondents and the Commission, and reports prepared for the Commission by this office to assist in its consideration of this matter. Accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Deborah Ruth Kant, Director
Alternative Dispute Resolution Office

[1] The Federal Communications Act provides for similar, but not identical, disclaimer requirements for political advertisements. *See* A.O. 2004-43; 47 U.S.C. § 315(b). In contrast to the FECA, the disclaimer requirements apply only when, *inter alia*, the commercial makes a direct reference to the federal candidate's opponent. In addition, the Federal Communications Act requires **both** the written and oral disclaimers to be at the end of the ad in order to receive the lowest unit charge for purchasing advertising time. *Ibid*

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