

and other nonprofit bank accounts.¹

Like dozens of other California political committees, the Committees reasonably relied on Durkee's representation that she was handling their funds properly and was complying with all applicable Commission regulations. Unfortunately, and contrary to what she represented to her clients, Durkee was instead violating the law. As Exhibits A through E show, Durkee made unauthorized transfers from the Committees' bank accounts to the accounts of other political committees and to her own personal and business accounts, and then used the funds to pay for her own personal and business expenses.² Durkee failed to disclose these unauthorized transfers on the Committees' reports to the Commission. Durkee pleaded guilty to multiple violations of federal criminal law on March 30, 2012.

Despite having safeguards in place, the Committees did not discover this illegal activity until federal authorities arrested Durkee in September 2011. Durkee filed regular disclosure reports with the Commission, which omitted the unauthorized transfers. Likewise, Durkee ensured that the Committees' disbursements were paid fully on time. In addition, Senator Feinstein's campaign staff required Durkee to provide them with regular reports – usually on a weekly basis – detailing the receipts, expenditures, and balances of each Committee's account. These regular reports showed receipts consistent with internal fundraising records maintained by the Committees. The expenditures reported by Durkee were also consistent with the disbursements made by the Committees' staff.

After Durkee was arrested, the Committees immediately replaced her as treasurer and terminated Durkee & Associates as their compliance consultants. The Committees also filed a civil complaint in California state court against Durkee, her business partners, Durkee & Associates, and First California Bank.³ The Committees named William Wardlaw as the new treasurer. The Committees then retained Olson Hagel & Fishburn, a law firm that specializes in campaign finance compliance, to review the Committees' internal records, bank account statements, and disclosure reports, and assist the Committees in filing correct reports and amending errors caused by Durkee's illegal activities.

In September and October of last year, the Senate Committee expended significant resources to

¹ See Compl., *Wardlaw v. First California Bank, et. al.*, SC114232 (Sup. Ct. Cal. Sept. 22, 2011), ¶ 30 (attached as Exhibit A).

² See Compl., *United States v. Durkee*, 2:11-mj-00274-DAD (E.D. Cal. Sept. 6, 2011) ("Criminal Complaint") (attached as Exhibit B); Commission Form 3, October Quarterly Report of Receipts and Disbursements (attached as Exhibit C); Commission Form 3, Amended October Quarterly Report of Receipts and Disbursements (attached as Exhibit D); Information, *United States v. Durkee*, 2:12-cr-123 (E.D. Cal. Mar. 27, 2012) (attached as Exhibit E).

³ See Exhibit A.

collect and review available records, and file a timely third quarter report.⁴ After the report was filed, the Senate Committee obtained additional bank statements and related material and filed an amendment in December, containing a cash-on-hand adjustment (to account for Durkee's unauthorized transfers) and disclosing additional legitimate disbursements that it had discovered.⁵ Likewise, the PAC worked diligently to collect and review available records, and file a timely year-end report for 2011.⁶ Though they remain hampered by the unavailability of certain records, the Committees will continue their internal review and will file any necessary amendments.

II. Analysis

Upon the Committees' discovery of the violations, (1) there was an immediate end to the activity giving rise to the violations; (2) the Committees made a timely and, to the extent possible, complete disclosure and fully intend to cooperate in the disposition of the matter; and (3) the Committees implemented appropriate and timely corrective measures, including internal safeguards intended to prevent these violations from occurring again.⁷

Here is what the Committees have learned, to date, about the nature of the violations at issue:

- *The type of violation:* While the Committees believe that Durkee and her business partners knowingly and willfully violated the Act, the Committees have found no evidence that the Committees' staff knew that the violations were occurring. In fact, the Committees received regular financial reports from Durkee detailing the Committees' activity and, like the other committees victimized by Durkee's scheme, were still unable to detect the violation.
- *The magnitude of violation:* According to the federal criminal complaint, Durkee has been embezzling her clients' funds "for years."⁸ But as stated above, the Committees have found no evidence that the Committees' staff knew that the violations were occurring. And, significantly, by depriving the Committees of millions of dollars of funds, the unauthorized transfers *harmed* the Committees' ability to influence federal elections.

⁴ See Exhibit C.

⁵ See Exhibit D.

⁶ See FEC Form 99, Letter from William J. Wardlaw (Jan. 31, 2012) (attached as Exhibit E).

⁷ See Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement, 72 F.R. 16695 (April 5, 2007).

⁸ Exhibit B, at ¶ 10.

- *The origin of violation:* The conduct was clearly not intended to advance the Committees' interests; it was intended to enrich the perpetrators at the expense of the Committees. As described earlier in the submission, there were compliance procedures in place to prevent embezzlement. But these procedures – like those employed by Durkee's other victims – were clearly not enough to prevent the violations. The Committees have since bolstered their procedures to prevent these violations from occurring in the future.

The Committees have taken significant corrective action and have implemented new governance measures:

- *Investigative and corrective actions:* Immediately upon discovering the illegal activity, the Committees terminated their relationship with Durkee and her firm, and retained outside personnel with reputations for integrity and expertise in this field. The Committees then quickly initiated civil litigation against Durkee, which will help further expose her illegal activities. Based on advice from the Commission, the Committees have already filed reports with the Commission that include an adjusted cash-on-hand figures which represent the actual cash on hand at the end of the reporting periods. It is in the process of reviewing available bank statements, invoices, cancelled checks, and reports, and will continue to review additional records as they become available. As soon as all of the necessary records have been received and reviewed, the Committees will prepare and file any amendments necessary to correct the public record.
- *Post-discovery compliance:* The Committees hired Olson, Hagel & Fishburn, a law firm which specializes in the preparation of campaign disclosure reports, to oversee their compliance and reporting. The law firm now maintains all of the Committees' accounts and has implemented procedures to comply with the Commission's "safe harbor" provisions related to internal financial controls. The Committees' accounts are maintained on, and its campaign reports are generated from, a web-based commercial campaign reporting software which allows direct access to the Committees' account balances and history by the Committees' independent treasurer, William Wardlaw, and authorized Committee representatives. The Committees also are in the process of transferring their principal accounts to a new bank so that the treasurer and other authorized Committee representatives will be able to view the accounts and bank activity online. Olson, Hagel & Fishburn law partners review and approve all disbursements, and then submit the prepared disbursements to the Committees' treasurer for his review and signature. All bank statements are reconciled on a monthly basis by an Olson, Hagel & Fishburn staff person who does not handle the Committees' accounting; the reconciliation is reviewed by a supervisor, and then provided to the treasurer for his review. In addition to the monthly bank reconciliation, the law firm prepares a financial statement of the Committees' accounts on a weekly basis and provides the report to the Committees'

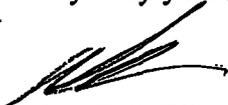
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authorized representatives.

As has been described above, the Committees have voluntarily disclosed – both to the Commission and to the public – the salient facts about Durkee's embezzlement. The Senate Committee's October report included a full disclosure of what the Senate Committee had been able to ascertain at that time and, after obtaining additional documents, filed an amended October quarterly report. The Committees pledge full cooperation with the Commission, and will make available all relevant records in its control and any witnesses who can shed light on the pertinent facts.

Please do not hesitate to contact us with any questions or concerns.

Very truly yours,



Marc Erik Elias