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January 24, 2012

BY HAND DELIVERY

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Washington, D.C. 20463

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OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request

Dear Mr. Herman:

Pursuant to 2 U.S.C. § 437f, we seek an advisory opinion on behalf of Feinstein for Senate (the "Committee"). The Committee recently learned that its former treasurer, Kinde Durkee and her firm, Durkee & Associates embezzled millions of dollars of funds that donors had attempted to contribute to the Committee. The Committee was not alone in placing its trust in Durkee. Before her arrest, Durkee had signing authority for more than four hundred committee and nonprofit bank accounts, and, as of 2010, reportedly had more than twenty employees. According to court filings, Durkee embezzled funds from her other clients as well.

The Committee seeks confirmation that the donors who attempted to contribute to the Committee, but whose funds were embezzled by Durkee, may make replacement contributions to the Committee without the attempted contributions counting against the donors' per election limits.

I. FACTUAL BACKGROUND

Until her arrest in September of this year by federal authorities, Durkee served as treasurer to the Committee. Durkee had provided professional accounting and compliance services to the Committee since Senator Feinstein's first campaign for the U.S. Senate in 1992. As the treasurer, Durkee maintained the bank accounts for the Committee; received and deposited receipts into the bank accounts; issued disbursements from the bank accounts; and filed all required reports with

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the Federal Election Commission ("FEC"). Durkee provided these services to dozens of nonfederal and federal candidates in California, including five presidential campaigns and four gubernatorial campaigns since 1972, and, as stated above, had signing authority for more than four hundred committee and nonprofit bank accounts.¹

Like dozens of other California political committees, the Committee reasonably relied on Durkee's representation that she was handling its funds properly and was complying with all applicable FEC regulations. The Committee took additional precautions as well. For instance, Durkee & Associates provided regular financial statements to Committee personnel, usually on a weekly basis. These reports detailed the cash balances in the Committee's accounts, the Committee's receipts, and the Committee's disbursements, and were consistent with the Committee's internal fundraising records. While Durkee had authority to sign checks after the disbursement had been approved by designated Committee personnel, Durkee did not have authority to authorize disbursements herself. The Committee's bills were generally paid on time.

According to a federal criminal complaint, Durkee embezzled funds from her other clients as well as the Committee.² Durkee apparently "commingled funds belonging to various different campaigns and organizations and made repeated transfers between accounts on which Durkee had signing authority."³ As a result, the "balance credited to any given account did not represent accurately the funds, if any, actually belonging to the campaign or organization named on the account" and "account balances contained funds that had previously been credited to non-related accounts."⁴ In addition, Durkee "transferred money from her clients' bank accounts to her firm's bank accounts without her clients' knowledge or authorization."⁵ Durkee embezzled the funds to pay her personal expenses – including mortgage payments, American Express charges, and daily living expenses for clothing, food, and entertainment – as well as business expenses.⁶

In its July quarterly report to the FEC, the Committee reported having \$5,011,399.45 in cash on hand.⁷ After Durkee's arrest, however, the First California Bank informed the Committee that it

¹ See Compl., *Wardlaw v. First California Bank, et. al.*, SC114232 (Sup. Ct. Cal. Sept. 22, 2011) ("Civil Complaint"), ¶ 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).

³ See Letter from First California Bank to Durkee Client (Sept. 16, 2011) (attached as Exhibit C).

⁴ *Id.*

⁵ See Criminal Complaint, ¶ 7.

⁶ *Id.*, ¶ 9.

⁷ See FEC Form 3, July Quarterly Report of Receipts and Disbursements, at 4.

had only \$662,100.87 in its accounts at the Bank.⁸ Because of Durkee's practice of commingling funds, it is not clear whether some or all of the \$662,100.87 belongs to the Committee or whether there are additional Committee funds in other Durkee client accounts. The Bank has been uncooperative in providing information to the Committee, and froze the Committee's accounts pending resolution of an interpleader action that it filed in Los Angeles Superior Court.

Committee personnel did not have any knowledge or suspicion that Durkee was doing anything improper. Unfortunately, Durkee managed to hide her fraudulent scheme from all of her clients, along with the FEC and the California Fair Practices Political Commission ("FPPC"), until the FPPC referred the matter to the Federal Bureau of Investigation earlier this year.

II. LEGAL DISCUSSION

Based on what the Committee knows to date, Durkee embezzled at least \$4,545,386.12 from the Committee (the "embezzled funds").⁹ The Committee seeks confirmation that the donors who relinquished funds for the purpose of making a contribution to the Committee, but whose funds were instead embezzled by Durkee, may make replacement contributions, without the attempted contributions counting against the donors' per election limits to the Committee.

The Federal Election Campaign Act (the "Act") makes it impermissible for a candidate to "knowingly *accept* any contribution" in excess of the contribution limits.¹⁰ The term "accept" is not defined in the Act or FEC regulations. It is clear, however, that the "acceptance" of a contribution is not synonymous with the "making" or "receipt" of a contribution, nor is it synonymous with the depositing of the contribution.¹¹ For example, if a donor makes a contribution in excess of the contribution limits and that contribution is received by the campaign and deposited in its account, there is no violation of the Act if the contribution is returned to the donor within 30 days because the campaign is not deemed to have "accepted" the contribution.¹²

Where a donor attempts to make a contribution, but the contribution is not "accepted" by the committee, the attempted contribution does not count against the donor's per election limits to that committee. In fact, in "situation[s]" where a committee has received contribution checks, but

⁸ See Letter from Committee Treasurer, William Wardlaw to Federal Election Commission (Oct. 14, 2011). After discovering the embezzlement, Senator Feinstein loaned the Committee \$5,000,000.

⁹ See FEC Form 3, Amended October Quarterly Report of Receipts and Disbursements, at 186.

¹⁰ 2 U.S.C. § 441a(f) (emphasis added).

¹¹ See 11 C.F.R. § 110.1(b)(6) (defining what it means to "make" a contribution), § 102.8(a) (defining what it means to "receive" a contribution).

¹² See 11 C.F.R. § 103.3(b)(1).

then its use or deposit of the contribution checks was interrupted by persons or events," the FEC has permitted the committee to accept "replacement checks," without counting the original checks against the donor's contribution limits.¹³

- *Advisory Opinion 1992-42 (Lewis)*: The committee had received \$6,150 in contributions from four committees and six individuals designated for the 1992 general election, and had mailed the ten checks to its bank. But the checks never arrived at the bank. In late 1992, the committee asked the FEC whether it could seek replacement checks for these missing checks, and have them designated for the 1992 general election. The FEC agreed to the request, provided that "if the original checks are subsequently found they must be returned to the contributors and not deposited."
- *Advisory Opinion 1999-23 (ABPAC)*: Arvest PAC made a \$4,000 contribution to ABPAC in 1998 and a \$5,000 contribution to ABPAC in 1999. ABPAC never received the \$4,000 check. In late 1999, ABPAC asked the FEC whether Arvest PAC could send a replacement check of \$4,000 and count that contribution against its 1998 limits. The FEC agreed to the request.
- *Advisory Opinion 2000-11 (Georgia-Pacific)*: Georgia-Pacific utilized a payroll deposit plan to raise funds for its PAC. From 1997-99, the PAC treasurer failed to deposit \$125,809 in checks sent to her by the company's payroll department. After terminating the treasurer, the PAC asked the FEC whether the company could cut replacement checks. The FEC agreed to the request, as long as certain amendments were filed.

Because the funds embezzled by Durkee were not "accepted" by the Committee or its agents, the donors who provided these funds should be permitted to replace their attempted contributions. And the donors' earlier provision of funds should not count against the donors' per election limits to the Committee.

The FPPC's General Counsel has concluded that nonfederal committees victimized by Durkee's criminal scheme should be permitted to seek replacement contributions from donors whose initial contributions were not deposited.¹⁴ The General Counsel also concluded that replacement contributions could be sought in situations where the "the evidence is sufficient to demonstrate that Durkee was in fact at all relevant times acting with an intent to defraud the candidate or committee and not as an agent such that those deposited and then misappropriated contributions

¹³ Advisory Opinion 1999-23 (ABPAC), n. 1.

¹⁴ The FPPC did not have an opportunity to address the General Counsel's recommendation before adjourning for the year. See Bloomberg BusinessWeek, CA watchdog delays decision on Dem fundraising (Dec. 9, 2011).

would not be considered 'accepted' for purposes of the Act's contribution limits."¹⁵

The General Counsel's recommendation with respect to non-deposited contributions is consistent with FEC regulations. Under FEC regulations, a contribution not deposited by the Committee or an agent acting on the Committee's behalf within 10 days of receipt has not been "accepted."¹⁶ Where the contribution is not deposited, "the transaction has not been completed and there has been no contribution that would be subject to the contribution limit."¹⁷ This conclusion is also consistent with Advisory Opinions 1992-42, 1999-23, and 2000-11, where the committee received – but did not deposit – contributions made by donors. In permitting the committee to seek replacement contributions in each of these requests, the FEC noted the fact that the original contributions had not been deposited.¹⁸

The General Counsel's conclusion with respect to funds deposited by Durkee in situations where she was "at all relevant times acting with an intent to defraud the candidate or committee and not as an agent" is also consistent with FEC regulations. Under FEC regulations, acts taken on behalf of a committee by agents acting within their scope of authority are attributed to the committee. But acts taken by individuals not acting as the committee's agents are *not* attributed to the committee.¹⁹ As a result, when an individual not acting as an agent of the committee intercepts a contribution, and uses the funds for her own benefit, the committee has not accepted a contribution for purposes of 2 U.S.C. § 441a(f).

The FEC has adopted the common law rule that "[a] master is subject to liability for the torts of his servant committed *while acting in the scope of their employment*."²⁰ But Durkee was not

¹⁵ California Fair Practices Political Commission, Memorandum from General Counsel to Commissioners (Oct. 31, 2011), attached as Exhibit D.

¹⁶ See 11 C.F.R. § 103.3(a).

¹⁷ Exhibit D, at 6.

¹⁸ See Advisory Opinion 1992-42 ("the funds in question had not yet been deposited in the campaign account"). See also Advisory Opinion 1993-5 (Fields) (approving request where "funds in question had not yet been deposited in the campaign account").

¹⁹ See, e.g. Final Rule, Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 F.R. 49064, 49083 (July 29, 2002) ("Under the Commission's final rules defining 'agent,' a principal can only be held liable for the actions of an agent when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals. Specifically, it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal.").

²⁰ See Final Rule, Definitions of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 F.R. 4975, 4978 (Jan. 31, 2006) (emphasis added) (internal citations omitted).

acting in the scope of her employment. As two commissioners noted in a 2006 enforcement action, "an agent's embezzlement cannot, by definition, be within the scope of the agent's employment."²¹ Furthermore, if Durkee's criminal acts were not within the scope of her employment, the acts necessary to facilitate the criminal acts – *e.g.* depositing the Committee's receipts – were also not within the scope of its employment, provided that Durkee had criminal intent when she performed these facilitating acts (which Durkee conceded in her interview with the Federal Bureau of Investigation).²² Indeed, the fact that dozens of campaigns were victim to the same criminal scheme demonstrates that Durkee's criminal intent when depositing the Committee's receipts – outside of the knowledge and control of the Committee – was the precipitating cause of the embezzlement.²³

Consequently, donors who relinquished funds for the purpose of making a contribution to the Committee, but whose funds were instead embezzled by Durkee, should be permitted to make replacement contributions to the Committee. Because Durkee was acting with the intent to defraud the Committee and was not acting as its agent, the Committee never "accepted" the attempted contributions for purposes of the Act. This is true, regardless of whether Durkee embezzled the funds before depositing them or whether Durkee embezzled the funds after depositing them.

To identify the individuals and other political committees whose funds comprise the \$4,545,386.12 in embezzled funds, the Committee proposes to use the "first in, first out" accounting method.²⁴ To the extent that any embezzled funds were received by the Committee during a previous election cycle, the Committee would *not* seek replacement contributions for these funds.²⁵ Furthermore, if the Committee recovered any funds from Durkee in a criminal or

²¹ Statement of Reasons of Chairman Michael E. Toner and Commissioner David M. Mason, Statement of Reasons 5721 (July 27, 2006).

²² See Criminal Complaint, ¶ 10 (in an interview with the Federal Bureau of Investigation on September 1, 2011, Durkee admitted that she and her firm had been "misappropriating her clients' money for years and that forms filed with the state were false.").

²³ Compare Advisory Opinions 1992-42 and 1992-29 (Holtzman) (finding that committee could seek replacement checks where loss was "beyond the [c]ommittee's control," but not where it was within committee's control).

²⁴ See, *e.g.*, 11 C.F.R. §§ 104.12, 110.3(c)(4). In other words, the Committee would review its contributions in chronological order, from least recent to most recent (beginning with the donors whose funds comprised its cash on hand once all of the expenses from the 2006 cycle had been paid). The embezzled funds would be comprised of the contributions (totaling \$4,545,386.12) received by the Committee after it had received sufficient contributions to pay for its authorized disbursements for the 2012 cycle (through September 2, 2011, the day on which Durkee was arrested).

²⁵ See Advisory Opinion 1989-10 (DeConcini). In the DeConcini opinion, the FEC determined that funds embezzled from a previous election cycle did not count as "debts" for purposes of determining a committee's "net debts outstanding." In its opinion, the FPPC's General Counsel took the same position, allowing the solicitation of

civil action, or if it is later determined that the amount embezzled by Durkee was less than \$4,545,386.12, the Committee will make appropriate refunds to ensure that it does not receive more than \$2,500 per election from any one contributor. Finally, the Committee agrees to comply with any reporting that the FEC deems appropriate in connection with the acceptance of these replacement contributions.

III. CONCLUSION

The Committee seeks confirmation that:

1. Donors who relinquished funds for the purpose of making a contribution to the Committee, but whose funds were instead embezzled by Durkee, should be permitted to make replacement contributions, without the attempted contributions counting against the donors' per-election limits to the Committee.
2. Alternatively, donors who relinquished funds for the purpose of making a contribution to the Committee, but whose funds were never deposited by Durkee, should be permitted to make replacement contributions, without the non-deposited contributions counting against the donors' per-election limits to the Committee.

The Committee – and its donors – suffered a severe injustice at the hands of Durkee. In the past, the FEC has shown a commendable willingness to rectify wrongful acts, where the law allows it to do so.²⁶ The law clearly allows it to do so here.

Very truly yours,



Marc E. Elias
Kate Sawyer Keane
Jonathan S. Berkon
Counsel to Feinstein for Senate

replacement contributions for funds received this cycle, but finding that embezzlement did not create a "debt" for purposes of determining a committee's "net debts outstanding." See Exhibit D, at 6.

²⁶ See Advisory Opinions 2006-16 (Detert) (allowing parents of former treasurer to repay committee for funds that former treasurer had embezzled); 2011-3 (National Party Committees) (concurring statement of Commissioner Weintraub) (allowing national party committees to use recount funds to defend against litigation seeking repayment of "soft money" contributions that had already been spent).

Exhibit

A

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SEP 23 2011

John A. Clarke, Executive Officer/Clerk

By D. McKianey, Deputy

8
9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 WESTERN DISTRICT

12 WILLIAM WARDLAW, Treasurer
13 for
14 FEINSTEIN FOR SENATE and
15 FUND FOR THE MAJORITY
16 Committee;

17 FEINSTEIN FOR SENATE
18 Committee; and

19 FUND FOR THE MAJORITY
20 Committee,

21 Plaintiffs,

22 vs.

23 FIRST CALIFORNIA BANK;

24 DURKEE & ASSOCIATES, LLC;

25 KINDE DURKEE;

26 JOHN FORGY;

MATTHEW LEMCKE;

AND DOES 1 through 10, inclusive,

Defendants.

JOHN L. SEGAL

Civil Action No.

SC114232

COMPLAINT:

1. FRAUD AND DECEIT;
2. CONVERSION;
3. BREACH OF CONTRACT;
4. BREACH OF IMPLIED
COVENANT OF GOOD
FAITH AND FAIR DEALING;
5. AIDING AND ABETTING
FRAUD;
6. AIDING AND ABETTING
CONVERSION;
7. VIOLATION OF BUSINESS
AND PROFESSIONS CODE
§§ 17200 et seq., UNLAWFUL,
FRAUDULENT AND UNFAIR
BUSINESS ACTS AND
PRACTICE;
8. DECLARATORY RELIEF

JURY TRIAL DEMANDED

CASE MANAGEMENT CONFERENCE

JAN 11 2012

LAW OFFICE
COTCHETT,
PITRE &
MCCARTHY, LLP

Date

COMPLAINT

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1 Plaintiff William Wardlaw, as the Treasurer for Feinstein for Senate and the
2 Fund for the Majority, Feinstein for Senate Committee, and Fund for the Majority
3 Committee (hereinafter collectively referred to as "Plaintiffs"), hereby bring this
4 action for damages and relief against Defendants First California Bank, Durkee &
5 Associates, LLC, Kinde Durkee, John Forgy, and Matthew Lemcke for violations
6 of California common law, as well as violations of the California Unfair
7 Competition Law ("UCL") (Bus. & Prof. Code §§ 17200, *et seq.*). Plaintiffs
8 complain and allege upon information and belief based, *inter alia*, upon
9 investigation conducted by Plaintiffs and their counsel, except as to those
10 allegations pertaining to Plaintiffs personally, which are alleged upon knowledge.
11 All claims are based upon California state law.

12 **I. INTRODUCTION**

13 1. On Friday, September 2, 2011, federal agents arrested Kinde Durkee
14 ("Durkee") in Burbank, California for mail fraud. Durkee was a long-time
15 campaign treasurer and financial manager for political campaigns and non-profit
16 organizations. For over 20 years, Durkee held herself out as a campaign treasurer
17 and financial manager with significant experience in accountancy, from which she
18 built legitimacy for herself and her company within the campaign and non-profit
19 worlds. Durkee had served as the campaign treasurer for dozens of political
20 campaigns over the years and was well-known and well-respected in political
21 circles in California.

22 2. Sadly, Durkee and her company betrayed that respect and trust.
23 According to a federal criminal complaint filed against her by the United States
24 Attorney General, Durkee has embezzled millions of dollars over the years from
25 her clients. As described by U.S. Representative Susan Davis of San Diego, it
26 now appears that Durkee was "the Bernie Madoff of campaign treasurers."

27 3. In the days following her arrest, as Durkee's web of deceit began to
28 unravel, it soon became apparent that there were a number of victims of Durkee's

1 fraud, including three campaign accounts of United States Senator Dianne
2 Feinstein, the long-time Senator for California. Senator Feinstein's strong base of
3 supporters is the result of her dedicated service to Californians and the American
4 public. The fraud alleged herein constitutes not only the personal betrayal of
5 Senator Feinstein, but also an unforgivable crime against the public trust and the
6 millions of California citizens who have long supported Senator Feinstein and
7 other public officials and non-profits in this State.

8 4. From an office in Burbank, California, Durkee operated and
9 masterminded a multimillion dollar fraudulent scheme. Her company, Durkee &
10 Associates ("D&A") was a front for the scheme. Durkee and her partner, John
11 Forgy ("Forgy"), as well as her business associate Matthew Lemcke
12 ("Lemcke"), all conspired and agreed to take part in and assist this fraudulent
13 scheme. A fraudulent scheme of this size and scope took a number of people and
14 entities to operate.

15 5. The scheme also required the assistance of willing financial
16 institutions. In this case, **First California Bank** was at the heart of the illegal
17 transfer of money out of Plaintiffs' accounts. Indeed, First California Bank
18 recently summed it up best, sending a letter to various accounts customers,
19 acknowledging that,

20 . . . it appears that Durkee had comingled funds belonging to
21 various different campaigns and organizations and had made
22 transfers between accounts on which Durkee had signing
23 authority.

24 We concluded that there was a very high likelihood that the
25 balance credited to any given account did not represent
26 accurately the funds, if any, actually belonging to the campaign
27 or organization on the account. In certain circumstances, it is
28 apparent that account balances contained funds that had
previously been credited to non-related accounts. These
conditions appeared to be pervasive in the Durkee controlled
accounts.

6. Despite knowledge of this pervasive pattern of misconduct, First
California Bank continued to provide banking services to Durkee and Durkee &

1 Associates, LLC for many years, happy to collect the fees and interest generated
2 by the scores of accounts Durkee maintained at the Bank. Investigation will reveal
3 other professionals, including attorneys, accountants, and additional banks had
4 full knowledge of the wrongful acts committed by D&A and the individuals.

5 7. For years, Durkee and others took advantage of their positions of trust
6 they were privileged to hold to secretly siphon off money that was intended to
7 support causes that are important to the American people. Over the last two years
8 alone, it is estimated that Durkee and her co-defendants stole millions of dollars
9 from at least two of Senator Feinstein's campaign committees, Feinstein for Senate
10 and Fund for the Majority (hereinafter, "the Feinstein Committees"). In the wake
11 of this massive fraud, investigators are still working to determine the full extent of
12 the harm inflicted by the defendants on the Feinstein Committees and many other
13 entities, including numerous non-profit organizations.

14 8. What is clear, is that Durkee and her cohorts – each with the full
15 knowledge of the other – abused the trust she gained over decades in the political
16 and non-profit world, in order to steal millions of dollars from innocent Americans
17 who have supported the lifetime of good works performed by committed
18 individuals like Senator Feinstein and other public servants and entities. By filing
19 this Complaint, Plaintiffs seek to obtain justice for all who have contributed
20 money in support of Senator Feinstein, other elected officials, and the dozens of
21 non-profits Durkee has defrauded.

22 **II. JURISDICTION AND VENUE**

23 9. Defendants, and each of them, are subject to the jurisdiction of this
24 Court by virtue of their business dealings and transactions in California, by having
25 caused injuries through their acts and omissions throughout the State of California,
26 and by their violation of California common law. Defendant Durkee &
27 Associates, LLC's principal place of business is at 1212 South Victory Boulevard,

1 Burbank, California. Defendants Kinde Durkee, John Forgy, and Matthew
2 Lemcke are all California citizens who reside in the State of California.

3 10. This Court has subject matter jurisdiction over all causes of action
4 asserted herein pursuant to Article VI, § 10 of the California Constitution. Each
5 cause of action asserted, including claims alleging violations of California
6 common law, arise exclusively under the laws of the State of California.

7 11. The damages suffered by Plaintiffs exceed this Court's
8 jurisdictional minimum.

9 12. Each Defendant has sufficient minimum contacts with California, is a
10 citizen of California, is registered to conduct business in California, has property
11 in California, or otherwise purposefully avails itself of benefits from California so
12 as to render the exercise of jurisdiction over it by the California courts consistent
13 with traditional notions of fair play and substantial justice.

14 13. Venue is proper because the First California Bank branch at which
15 the Feinstein Committees' accounts were held, and through which Defendants
16 operated the scheme, is located in Los Angeles County, in the West Division.
17 Furthermore, the headquarters of Defendant Durkee & Associates, LLC is located
18 in Burbank, California, which is located in the County of Los Angeles. The
19 campaign accounts that the Defendants embezzled monies from were all located in
20 the County of Los Angeles. The Defendants all reside in or around the County of
21 Los Angeles. The wrongful acts alleged in this case all occurred in the County of
22 Los Angeles. Venue is proper in the County of Los Angeles Superior Court.

23 **III. THE PARTIES**

24 **A. PLAINTIFFS**

25 14. Plaintiff William Wardlaw is a citizen of the state of California and
26 a resident of the County of Los Angeles.

27
28 ///

1 15. **Feinstein for Senate** is a campaign committee registered with the
2 Federal Elections Committee as a principal campaign committee for the Honorable
3 Dianne Feinstein.

4 16. **Fund for the Majority** is a campaign committee registered with the
5 Federal Elections Committee as a PAC for the Honorable Dianne Feinstein.

6 **B. DEFENDANTS**

7 17. Defendant **Durkee & Associates, LLC ("D&A")** is a California
8 limited liability corporation with a principal place of business in Burbank,
9 California. D&A is a business management firm that specializes in political, non-
10 profit and small business accounting and financial management. D&A was
11 incorporated as a California LLC on September 22, 2003.

12 18. Defendant **First California Bank** is a California bank headquartered
13 in Westlake Village, California and at all times maintained an office in Los
14 Angeles County. First California Bank is a full-service commercial bank
15 chartered under the laws of the State of California and is subject to supervision by
16 the California Department of Financial Institutions. The Federal Deposit
17 Insurance Corporation insures the Bank's deposits up to the maximum legal limit.
18 First California Bank is a wholly-owned subsidiary of First California Financial
19 Group, Inc. (NASDAQ: FCAL).

20 19. Defendant **Kinde Durkee ("DURKEE")**, founder and member of
21 D&A, is a citizen in the State of California and a resident of the County of Los
22 Angeles.

23 20. Defendant **John Forgy ("FORGY")**, a partner at D&A, is a citizen
24 of the State of California and a resident of the County of Los Angeles.

25 21. Defendant **Matthew Lemcke ("LEMCKE")**, Manager of Client
26 Services at D&A, is a citizen of the State of California and a resident of the
27 County of Los Angeles. LEMCKE has been employed by D&A since 2001, and
28

1 was responsible for reviewing client financial reports before submission to upper
2 management including DURKEE.

3 **C. AGENCY, CONSPIRACY, AND AIDING AND ABETTING**

4 22. At all times relevant to this Complaint, Defendants, and each of them,
5 were acting as the agents, servants, employees, joint venturers, and/or
6 representatives of each other, and were acting within the course and scope of their
7 agency, employment and/or joint venture, with the full knowledge, consent,
8 permission, authorization and ratification, either express or implied, of each of the
9 other Defendants in performing the acts alleged in this Complaint.

10 23. Defendants, and each of them, participated as members of a
11 conspiracy and/or aided and abetted one another in furtherance of the schemes
12 herein alleged, or assisted one another in carrying out the purpose of the
13 conspiracy alleged herein, and have performed acts and made statements in
14 furtherance of the conspiracy in violation of California law. Each of the
15 Defendants acted both individually and in concert with the other Defendants with
16 full knowledge of their respective wrongful conduct. As such, the Defendants
17 conspired together, building upon each other's wrongdoing, in order to accomplish
18 the acts outlined in this Complaint. Defendants are individually sued as
19 principals, participants, and/or as aiders and abettors in the wrongful conduct
20 complained of, and the liability of each arises from the fact that each has engaged
21 in all or part of the improper acts, plans, schemes, conspiracies, or transactions
22 complained of herein.

23 **D. UNNAMED PARTICIPANTS**

24 24. Numerous individuals and separate business entities participated
25 actively during the course of and in furtherance of the wrongdoings alleged, and
26 many acts were done in the course of, and in furtherance of, the conspiracy with
27 intent to defraud. The individuals and entities acted pursuant to agreement and in

1 concert with each other. They also acted as agents for principals, in order to
2 advance the objectives of the conspiracy.

3 **E. DOE DEFENDANTS**

4 25. The true names and capacities, whether individual, corporate,
5 associate, or otherwise, of Defendants Doe 1 through Doe 5, inclusive, are
6 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names
7 pursuant to Section 474 of the California Code of Civil Procedure. Plaintiff is
8 informed and believes, and on that basis alleges, that each of said fictitious Doe
9 Defendants is in some manner responsible for the acts, conduct, and occurrences
10 alleged herein, as either actual perpetrators or co-conspirators, aiders and abettors,
11 or primary officers and/or managers with knowledge and control of the
12 perpetrators' activities. Plaintiffs will seek leave of the Court to amend this
13 Complaint to allege the true names and capacities of the Doe Defendants when the
14 same are ascertained, as well as the manner in which each fictitious Defendant is
15 responsible for the damages sustained by Plaintiff.

16 26. Bank Doe Defendants Doe 6 through Doe 10 are financial institutions
17 at which DURKEE, D&A, and/or the other named Defendants maintained
18 accounts into which Plaintiffs' funds were transferred, misappropriated, or co-
19 mingled, without authorization, or which otherwise knowingly provided
20 Defendants with substantial assistance in the course of their scheme.

21 **IV. FACTUAL BACKGROUND**

22 **A. KINDE DURKEE & DURKEE & ASSOCIATES WERE**
23 **TRUSTED AND WELL-REGARDED**

24 27. DURKEE is a veteran campaign treasurer who resides at 3907 Lewis
25 Avenue in Long Beach, California, a property she owns along with her husband
26 and business partner, John Forgy. Durkee is also reported to own another property
27 located at 1212 South Victory Boulevard, in Burbank, California, also with John
28 Forgy, which is the headquarters of D&A. D&A is also reported as having an

1 additional address at 601 South Glen Oaks Blvd., Suite 211, Burbank, CA 91502,
2 and owns numerous other properties.

3 28. According to reports, DURKEE began her career in campaign finance
4 in the 1970s on various campaigns, as a protégé of veteran campaign treasurer
5 Jules Glazer. Due to the relative dearth of professional campaign treasurers in the
6 state, DURKEE and D&A quickly garnered a great number of clients, whom they
7 have maintained over the years, without raising suspicions. As a professional
8 campaign treasurer, D&A functioned as a banker and accountant, which involved
9 keeping track of all of the incoming and outgoing funds and following state and
10 federal guidelines for campaign finance reporting. Professional campaign
11 treasurers typically have full control of a candidate's political accounts.

12 29. In addition to serving as treasurer for numerous campaign committees
13 over the years, DURKEE and D&A managed the finances of dozens of non-profit
14 corporations which include

15 30. Before her arrest, DURKEE, through D&A, had signing authority
16 over 400 committee and non-profit bank accounts. Since 1972, she has worked
17 for 5 presidential campaigns and 4 gubernatorial campaigns. In addition,
18 DURKEE, through D&A, has worked as treasurer for numerous senate,
19 congressional, state and local candidates. DURKEE and D&A reportedly used
20 proprietary reporting software to handle mandatory electronic filings to both the
21 Federal Election Commission and the California Secretary of State.

22 31. It is reported that DURKEE gave no outward sign of lavish spending.
23 However, investigation now shows that DURKEE has transferred thousands of
24 dollars to herself and spent the same on others.

25 **B. DURKEE'S WORK FOR THE FEINSTEIN COMMITTEES**

26 32. DURKEE first worked as treasurer for Senator Diane Feinstein in
27 support of her 1992 campaign for Senate, and has worked on each reelection
28

1 campaign since. DURKEE was working for Senator Feinstein's campaign
2 committees at the time of her arrest.

3 33. As treasurer, one of DURKEE and D&A's principal roles was to
4 ensure that all federal campaign financial disclosures were made timely and
5 accurately. Over the two decades during which they served Senator Feinstein's
6 campaigns, DURKEE and D&A never failed to make those disclosures and always
7 represented that the accounting was accurate.

8 34. Another principal responsibility of DURKEE and D&A was to ensure
9 that all of the campaigns' expenditures were fully paid. Again, over the two
10 decades during which they served Senator Feinstein's campaigns, DURKEE and
11 D&A never failed to cover a requested campaign expenditure. Campaign bills
12 were always paid on time. As such, there was no indication that the Feinstein
13 Committees' balances were less than they were supposed to be.

14 35. As an additional safeguard, and as was standard practice, Senator
15 Feinstein's campaigns required DURKEE and D&A to provide campaign staff
16 with regular reports that detailed the receipts, expenditures, and balances, of each
17 of the Feinstein Committees' accounts. These regular reports showed receipts
18 consistent with internal fundraising records maintained by the Feinstein
19 Committees independent from DURKEE and D&A. Similarly, the expenditures
20 reported by DURKEE and D&A were always consistent with the expectations of
21 the Feinstein Committees' staff.

22 36. Furthermore, the Feinstein Committees' fundraisers had access to
23 DURKEE and D&A's online database of contributions. The records in that
24 database reconciled with both the regular campaign reports, and the Committees'
25 own records.

26 37. Accordingly, until the day of DURKEE's arrest, there was never any
27 indication that the Feinstein Committee's accounts, or any of the accounts
28

1 DURKEE has handled for Senator Feinstein's campaigns over the years, have held
2 less than they were supposed to, or less than what DURKEE and D&A reported.

3 38. DURKEE and D&A's false reporting masked the systematic
4 embezzlement of the Feinstein Committees' funds. As described in the following
5 section, DURKEE and D&A used their web of accounts – primarily held at
6 Defendant First California Bank – to siphon away the money; and it is only First
7 California Bank that had the knowledge to put a stop to the embezzlement.

8 **C. DURKEE'S THEFT FROM THE FEINSTEIN COMMITTEES**

9 39. Over the course of the past year, DURKEE – with the substantial
10 assistance of her co-Defendants – has used the Feinstein Committees' money to
11 cover her personal and business expenses, and to reimburse other elected officials'
12 campaign funds from which she had also embezzled. Examples of the scam
13 include the following:

14 40. On March 10, 2011, DURKEE, through D&A, transferred \$17,000.00
15 into a D&A account number xxx1251 (First California Bank), from the Feinstein
16 for Senate Merchant Account, also at First California Bank. This transfer was not
17 authorized or otherwise necessary or appropriate.

18 41. On May 3, 2011, DURKEE, through D&A, transferred \$6,000 into
19 D&A account number xxx1251 at First California Bank, from a Feinstein for
20 Senate Merchant Account, also at First California Bank. On May 27, 2011
21 DURKEE, through D&A, transferred \$4,000 into D&A account number xxx1251
22 at First California Bank, from a Fund for the Majority account, also at First
23 California Bank.

24 42. On May 2, 2011 DURKEE, through D&A, transferred \$6,000 into
25 D&A account number xxx1251 at First California Bank, from a Feinstein for
26 Senate Account, also at First California Bank.

27 43. In order to conceal these unauthorized transactions, DURKEE,
28 through D&A, systematically and intentionally misrepresented the balances and

1 transactions of the Feinstein Committees' accounts in Profit & Loss ("P&L")
2 statements and account summaries prepared by DURKEE, LEMCKE, and others
3 at D&A, for Senator Feinstein and her campaign staff.

4 44. In a P&L statement dated May 27, 2011, covering the period May 1,
5 2011 to May 27, 2011, Defendants represented that the Feinstein for Senate
6 account had total income of \$118,876.11, and total expenses of \$34,853.31. In
7 actuality, at that time, the account had an ending balance of only \$51,072.15, and
8 total expenses of \$193,671.65. Among those expenses was an unauthorized
9 \$35,000 wire transfer to account number xxx1251, a D&A account at First
10 California Bank.

11 45. In addition, during the same period of time in May 2011, the
12 following checks totaling \$124,000, and all unauthorized, were issued out of the
13 Plaintiffs' account, on information and belief, under DURKEE's signature:

DATE	CHECK NUMBER	AMOUNT
5/2/11	50304	\$10,000
5/3/11	55008	\$10,000
5/11/11	55009	\$24,000
5/16/11	55010	\$20,000
5/23/11	55011	\$40,000
5/27/11	55012	\$20,000

21 46. Similarly, in a P&L statement dated August 4, 2011, Defendants
22 represented that on July 30, 2011, the Feinstein for Senate account had a balance
23 of \$2,455,076.83. In a detailed P&L statement for the period covering June 30,
24 2011 to July 28, 2011, the Defendants represented a total income of \$179,452.33,
25 and total expenses of \$39,111.32. There was an unauthorized check issued out of
26 the account in the amount of \$35,000 (check # 55015), on July 18, 2011.

27 47. In actuality, on July 29, 2011, the account had an ending balance of
28 only \$356,250.47, and total expenses of \$177,360.25. Among those expenses

1 were two unauthorized wire transfers of \$30,000 and \$50,000 to account number
2 xxxxxxxx2092, which is an account not affiliated with Plaintiffs in any way.

3 48. In a Balance Summary dated July 2, 2011, Defendants represented
4 that the Feinstein for Senate account had a balance of \$2,312,402.47. In actuality,
5 on June 30, 2011, the account had an ending balance of \$266,424.67, and total
6 expenses of \$134,303.22. Among those expenses were the following two checks,
7 totaling \$75,000, neither of which was authorized:

8 DATE	CHECK NUMBER	AMOUNT
9 6/1/11	55013	\$50,000
10 6/6/11	55014	\$25,000

11 49. In sum, DURKEE appears to have treated Plaintiffs' accounts in the
12 same way she treated dozens of others, including Assembly members' campaign
13 accounts, as detailed in the Federal Bureau of Investigation's ("FBI") Criminal
14 Complaint against DURKEE.

15 50. According to the affidavit of FBI Special Agent Reginald L.
16 Coleman, DURKEE, through D&A,

17 **transferred money from her clients' bank accounts to her firm's bank**
18 **accounts without her clients' knowledge or authorization. It also**
19 **appeared that DURKEE refunded a portion of the misappropriated**
money when needed to cover checks or when misappropriations had
been detected.

20 DURKEE made such unauthorized transactions and misappropriations on a
21 regular basis, and did not report the transactions on forms required by the
22 California Secretary of State for campaign funds.

23 51. According to the FBI's investigation, the moneys transferred by
24 DURKEE from client accounts **"have been used to pay her personal expenses,**
25 **including mortgage payments and American Express charges, as well as**
26 **business expenses."**

27
28 ///

1 52. According to the criminal complaint, DURKEE admitted to the FBI,
2 **"that she had been misappropriating her clients' money for years and that**
3 **forms she filed with the state were false."**

4 53. With respect to Assemblyman Jose Solorio, the criminal complaint
5 reveals dozens of unauthorized transactions, following a pattern nearly identical to
6 that seen in Plaintiffs' accounts. For example,

7 **on approximately October 1, 2010, a cashier's check made**
8 **payable to Solorio for Assembly 2010 in the amount of**
9 **\$300,000 was deposited into an account for D&A, number**
10 **xxxx83658, at City National Bank. . . . The source of the**
 \$300,000 cashier's check appears from bank records to be
 from a money market account in the name of Solorio for
 Assembly 2010 held at First California Bank.

11 54. Within days of the deposit, DURKEE misappropriated much of the
12 \$300,000 to pay her own expenses, and to cover misappropriations from other
13 accounts. Specifically, a check signed by DURKEE was issued from the Solorio
14 money market account for \$125,000, and payable to the Committee to Re-Elect
15 Loretta Sanchez; and four checks, for \$32,000, \$21,000, \$25,000, and \$15,000,
16 signed by DURKEE, were issued from the Solorio money market account and
17 deposited into D&A's business account.

18 55. The \$32,000 check taken from the Solorio money market account was
19 deposited into a D&A account at First California Bank, account number xxx1251.
20 From that account, DURKEE issued a check for \$36,000, payable to D&A, and
21 deposited the funds,

22 **into a D&A account at First California Bank, account**
23 **number xxx0865. From there, \$30,000 was withdrawn in**
24 **the form of a check apparently signed by KINDE DURKEE**
25 **made payable to D&A and marked for 'payroll.' The**
 \$30,000 check was deposited into First California Bank
 account number xxx9123."

26 56. According to the FBI, the \$30,000 was used by DURKEE to make her
27 payroll.

1 57. Another of the checks originating from the \$300,000 of
2 Assemblyman Solorio's funds, for \$25,000, was used by DURKEE to pay credit
3 card debts. According to the FBI, the \$25,000 check to D&A referenced above
4 was subsequently deposited into First California Bank, account number xxx0865,
5 on approximately October 4, 2010, and two withdrawals were made to pay
6 American Express, one in the amount of \$16,854.76 and another in the amount of
7 \$679.03. The payment for \$16,854.76 paid for a bill which included charges from
8 a variety of different entities.

9 58. Another large deposit into the Solorio for Assembly 2010 fund,
10 during the same time frame, had a similar fate. According to the FBI, on
11 approximately October 8, 2010, a cashier's check made payable to Solorio for
12 Assembly 2010 in the amount of \$377,181.24 was deposited into an account for
13 D&A, number xxxx83658, at City National Bank. The source of the cashier's
14 check for \$377,181.24 appears to be from a money market account in the name of
15 Solorio for Assembly 2010 held at First California Bank.

16 59. According to the FBI, a number of checks were issued from the D&A
17 account, number xxxx83658, into which the \$377,181.24 was deposited: one
18 check for \$45,000 dated October 7, 2010 and payable to D&A, which was
19 apparently signed by KINDE DURKEE; a check for \$45,000 dated October 7,
20 2010 and payable to Committee to Re-Elect Loretta Sanchez; a check for \$60,000
21 dated October 8, 2010 and payable to Beth Krom for Congress; a check for
22 \$40,000 dated October 8, 2010 and payable to Susan Davis for Congress; a check
23 for \$25,000 dated October 11, 2010 and payable to Merchants Account, that was
24 deposited into D&A account number xxx1251, along with numerous other checks
25 to unknown accounts.

26 60. The FBI found numerous checks issued into D&A accounts, the funds
27 from which DURKEE immediately used to cover personal expenses.

1 61. This pattern continued. According to the FBI:

2 **About one week after \$377,181.24 was deposited into the**
3 **D&A account at City National Bank, number xxxx83658, a**
4 **check for \$50,000 on the account of Shallman**
5 **Communications was deposited into that same account. . . .**
6 **A number of checks or debits were issued from that**
7 **account: -one check for \$6,000 dated October 13, 2010 and**
8 **payable to D&A, which was apparently signed by KINDE**
9 **DURKEE; -a debit for \$50,010 dated October 14, 2010 to**
10 **purchase an official check (\$10 fee) made payable to the**
11 **United States Treasury; -a check for \$20,000 dated October**
12 **14, 2010 and payable to D&A Merchants, which was**
13 **apparently signed by KINDE DURKEE; and -a check for**
14 **\$10,000 dated October 14, 2010 and payable to D&A, which**
15 **was apparently signed by KINDE DURKEE. The check for**
16 **\$50,000 made payable to the United States Treasury**
17 **appears to be a tax payment by KINDE DURKEE.**

18 62. DURKEE also used the misappropriated funds to pay the mortgage
19 on D&A's office. According to the FBI, the \$6,000 check referenced above was
20 subsequently deposited into account number xxx0865 at First California Bank on
21 October 13, 2010. Bank records further reveal that a \$5,500 check dated
22 September 29, 2010 (which cleared on October 13, 2010) and apparently signed
23 by KINDE DURKEE was issued from that account and was made payable to MDC
24 Realty Service. KINDE DURKEE had a loan on her business office with MDC
25 Realty Service. DURKEE admitted during the interview on September 1, 2011
26 that she paid all of her mortgages on her personal and business property out of her
27 D&A business accounts.

28 63. DURKEE has admitted using clients' funds for wrongful purposes.
According to the FBI, DURKEE admitted **"that she used the D&A business**
accounts to pay for her daily living expenses, including clothes, food,
entertainment, and mortgages."

 64. As with Plaintiffs, DURKEE misrepresented the expenditures from,
and balances in, other entities' accounts. According to the FBI, the state
dislosure form for Solorio for Assembly 2010 that was signed by KINDE
DURKEE and filed on October 11, 2010 for the period of time July 1, 2010 to

1 September 30, 2010 reported that there was cash-on-hand in the amount of
2 \$729,135.56. Bank records for Solorio for Assembly 2010, however, show that
3 the actual balance as of September 30, 2010 was only \$33,175.81.

4 65. This report was subsequently amended by filings in November 2010,
5 and in none of the amended reports was there any mention of the checks in the
6 amount of \$300,000 and \$377,000.

7 66. Based on its investigation, the FBI concluded that KINDE DURKEE
8 devised a material scheme to defraud Jose Solorio and the Solorio for Assembly
9 2010 campaign, and obtained money from them by means of materially false and
10 fraudulent pretenses, representations, and promises.

11 67. As alleged above, DURKEE and her co-Defendants misappropriated
12 funds from Plaintiffs in the same manner as described by the FBI with respect to
13 other politicians' and non-profits' accounts.

14 **D. FIRST CALIFORNIA BANK HAD KNOWLEDGE OF**
15 **DURKEE'S SCHEME AND KNOWINGLY PROVIDED**
16 **SUBSTANTIAL ASSISTANCE**

17 68. A fraud of the scale alleged herein could not have occurred, and did
18 not occur, without the knowing involvement of First California Bank. In
19 exchange for fees and profits, First California Bank intentionally ignored dozens
20 of red flags, ignored its duties and obligations under state and federal law, and
21 allowed DURKEE to perpetrate the scheme.

22 **1. First California Bank Intentionally Ignored Multiple Red**
23 **Flags and Had Knowledge of the Fraud**

24 69. DURKEE and D&A maintained multiple million-dollar plus accounts
25 with First California Bank, many of them on behalf of well-known political figures
26 in California. DURKEE and D&A used a single branch of First California Bank
27 to conduct its fraudulent operations. That branch office was located at 1888
28

1 Century Park East, Suite. 110 in Los Angeles, California. The manager of that
2 branch was and is Victor Jimenez, who knew DURKEE and D&A personnel well.

3 70. The staff and managers of that branch knew of DURKEE and D&A's
4 misconduct, yet allowed it to continue, and assisted in it, because the accounts
5 DURKEE and D&A handled held millions of dollars and generated thousands of
6 dollars in transaction and overdraft fees for the Bank. DURKEE ensured the
7 branch's cooperation by lavishing the bank with profits.

8 71. Motivated by these profits, the Bank ignored its knowledge of
9 DURKEE and D&A's misconduct, which was evident to the Bank based on basic
10 industry standards and its duty of care under California law.

11 72. Those basic industry standards are reflected in federal law that
12 **requires** banks to review accounts and transactions for suspicious circumstances,
13 and report such suspicious transactions to the Financial Crimes Enforcement
14 Network. Specifically, 12 CFR 208.62 requires charter banks such as First
15 California Bank to monitor and report suspicious activity through submission of a
16 Suspicious Activity Report ("SAR"), any time the bank suspects that it "was used
17 to facilitate a criminal transaction," or that a transaction "involve[s] potential
18 money laundering or violations of the Bank Secrecy Act."

19 73. Monitoring and reporting suspicious activity is a critical and routine
20 function of modern banks, and guidelines for identifying suspicious activity
21 abound. For example, the Bank Secrecy Act/Anti-Money Laundering
22 Examination Manual issued by the Federal Financial Institutions Examination
23 Council publishes a list of "examples of potentially suspicious activities that
24 should raise red flags for further investigation to determine whether the
25 transactions or activities reflect illicit activities." First California Bank failed to
26 adhere to Bank regulations that require an ongoing and regular review of accounts
27 for suspicious activities that include:

1 74. **"Funds transfer activity is unexplained, repetitive, or shows**
2 **unusual patterns."** As described above, DURKEE regularly made highly
3 questionable and suspicious fund transfers among the dozens of accounts she
4 maintained at First California Bank, including frequent transfers out of client
5 accounts and into D&A's accounts, and frequent transfers between client accounts
6 to cover overdrafts.

7 75. **"Payments or receipts with no apparent links to legitimate**
8 **contracts, goods, or services are received."** First Bank of California allowed
9 DURKEE to make regular payments between client accounts, with only one
10 apparent – and illegal – reason: to cover overdrafts.

11 76. **"Funds transfers are sent or received from the same person to or**
12 **from different accounts."** As described above, DURKEE made multiple
13 transfers from client accounts, on the same day, to D&A accounts. For example,
14 on July 5, 2011, DURKEE made two wire transfers from Feinstein for Senate
15 account number xxx9311, one for \$30,000, and the other for \$50,000, both to
16 account xxxxxxxx2092, which is not affiliated with Plaintiffs in any way. Three
17 weeks after the transfers, on July 28, 2011, DURKEE transferred \$80,000 back
18 into account xxx9311 from account xxxxxxxx2092. This movement of money
19 was purely for the purpose of artificially inflating the balance of account
20 xxxxxxxx2092, and any monitoring by a bank officer would have alerted the Bank
21 to the transactions' illegality.

22 77. **"Unusual transfers of funds occur among related accounts or**
23 **among accounts that involve the same or related principals."** As described in
24 prior paragraphs, DURKEE regularly transferred funds among the various
25 accounts at First California Bank that she controlled, for no apparent legitimate
26 reason. As one example, on September 30, 2010, DURKEE deposited a check for
27 \$36,000 misappropriated from Assemblyman Solerio's account into a D&A
28 account at First California Bank, account number xxx0865. The same day,

DURKEE issued a check from account number xxx0865 in the amount of \$30,000, made out to D&A, and deposited that check in yet another First California Bank D&A account, account number xxx9123. There could be no legitimate reason for such transfers, and bank officers knew so.

78. "A customer or group tries to persuade a bank employee not to file required reports or maintain required records. . . . A business or customer ashe to be exempted from reporting er recordkeeping requirements." As discussed in this section, First California Bank failed to follow its own internal guidelines, industry standards, and federal law regarding the monitoring and reporting of suspicious account activity. Whether the Bank did so at the request of DURKEE, or of its own accord, it violated its duties.

79. "Many funds transfers are sent in large, round dollar, hundred dollar, or thousand dollar amounts." A vast majority of the withdrawals and checks issued from the Feinstein Committees' accounts at DURKEE's request were sent in large, round dollar, thousand dollar amounts, as exemplified in the following chart:

ACCOUNT NO. xxx0607		
DATE	CHECK NUMBER	AMOUNT
08/09/10	10131	\$5,000
08/18/10	10132	\$3,000
08/18/10	20014	\$5,000
09/08/10	10133	\$5,000
10/01/10	10136	\$5,000
10/12/10	10134	\$5,000
10/15/10	10139	\$5,000
10/18/10	10142	\$5,000
10/19/10	10140	\$5,000
10/26/10	10143	\$6,000
11/12/10	20016	\$5,000

1	11/19/10	10144	\$3,000
2	11/30/10	20017	\$5,000
3	12/06/10	20018	\$5,000
4	12/17/10	20019	\$10,000
5	12/31/10	10146	\$3,000
6	1/19/11	10147	\$3,000
7	2/23/11	10149	\$3,000
8	3/14/11	Wire transfer	\$1,000
9	3/23/11	10150	\$3,000
10	3/23/11	21000	\$4,000
11	4/18/11	21001	\$5,000
12	4/22/11	10153	\$3,000
13	5/02/11	21003	\$10,000
14	5/18/11	10156	\$3,000
15	5/27/11	Wire transfer	\$4,000
16	6/01/11	10155	\$5,000
17	6/17/11	10158	\$4,500
18	7/08/11	10162	\$2,000
19	7/07/11	10166	\$2,000
20	7/08/11	10164	\$2,000
21	7/11/11	10165	\$2,000
22	7/14/11	10160	\$2,000
23	7/19/11	10159	\$2,000
24	7/19/11	10163	\$2,000
25	7/28/11	10161	\$2,000
26	8/17/11	21002	\$25,000
27	8/30/11	10169	\$9,000

ACCOUNT NO. xxx7787

DATE	CHECK NUMBER	AMOUNT
12/08/10	1001	\$25,000
12/09/10	1002	\$10,000

1	12/17/10	1003	\$10,000
2	2/10/11	1004	\$25,000
3	2/22/11	1005	\$10,000
4	2/28/11	1006	\$3,000
5	2/28/11	1007	\$15,000
6	3/10/11	Wire transfer	\$17,000
7	3/14/11	Wire transfer	\$6,000
8	3/21/11	1008	\$4,000
9	3/28/11	1010	\$18,000
10	3/30/11	1009	\$11,000
11	4/06/11	5102	\$14,000
12	4/18/11	5103	\$5,000
13	4/26/11	5104	\$5,000
14	4/27/11	5105	\$10,000
15	5/2/11	5106	\$10,000
16	5/3/11	Wire transfer	\$6,000
17	5/3/11	5107	\$5,000
18	5/11/11	5108	\$12,000
19	5/23/11	5109	\$10,000
20	8/2/11	Wire transfer	\$100,000

21	ACCOUNT NUMBER xxx9311		
22	DATE	CHECK NUMBER	AMOUNT
23	08/09/10	30963	\$10,000
24	08/09/10	30964	\$10,000
25	08/09/10	30965	\$10,000
26	08/10/10	30966	\$12,000
27	08/12/10	30967	\$10,000
28	08/13/10	30968	\$20,000
29	08/18/10	30969	\$5,000
30	08/18/10	10947	\$3,000
31	08/20/10	10941	\$1,000

1	08/30/10	30970	\$10,000
2	09/07/10	30971	\$8,000
3	09/20/10	20959	\$20,000
4	09/23/10	10954	\$100,000
5	09/27/10	30972	\$14,000
6	09/29/10	20954	\$25,000
7	10/08/10	20955	\$40,000
8	10/08/10	20956	\$4,000
9	10/15/10	10959	\$10,000
10	10/18/10	10960	\$3,000
11	10/25/10	20957	\$20,000
12	11/04/10	20958	\$15,000
13	11/08/10	20960	\$8,000
14	11/09/10	20961	\$10,000
15	11/12/10	20963	\$5,000
16	11/16/10	10961	\$2,600
17	11/19/10	10964	\$3,000
18	11/22/10	20964	\$10,000
19	11/23/10	20965	\$20,000
20	11/30/10	20966	\$5,000
21	12/03/10	20967	\$40,000
22	12/09/10	20968	\$5,000
23	12/17/10	20969	\$15,000
24	12/23/10	20970	\$13,000
25	12/28/10	10965	\$3,200
26	12/31/10	10969	\$3,000
27	02/01/11	20971	\$24,000
28	02/17/11	50285	\$10,000
	02/22/11	50286	\$10,000
	02/23/11	50287	\$13,000
	02/23/11	10977	\$3,000

02/24/11	50288	\$10,000
03/02/11	Wire transfer	\$18,000
03/10/11	Wire transfer	\$50,000
03/14/11	Wire transfer	\$6,000
03/14/11	50289	\$6,000
03/21/11	50290	\$27,000
03/23/11	10980	\$3,000
03/24/11	50292	\$25,000
03/28/11	50294	\$10,000
03/30/11	50295	\$2,000
03/31/11	50296	\$5,000
04/06/11	50291	\$25,000
04/06/11	50291	\$25,000
04/07/11	10997	\$27,500

80. "Suspicious movements of funds occur from one bank to another, and then funds are moved back to the first bank." DURKEE frequently moved the same funds between First California Bank and City National Bank. For example, the criminal complaint against DURKEE describes an unauthorized transfer of \$300,000 from Assemblyman Solorio's account at First California Bank, to a D&A account at City National Bank. Within days of that transfer, most of the \$300,000 was transferred back to various other of DURKEE's accounts at First California Bank. A similar pattern occurred with subsequent misappropriation of a \$377,181 check.

• **Repeatedly overdrawing accounts and "bouncing" checks.** One of the most obvious red flags was DURKEE's repeated overdrawing of accounts. Over the course of one year alone, on the Feinstein Committees' accounts, DURKEE overdrew the accounts, incurring overdraft fees, on 68 occasions. This alone would require an internal review of the activity. First California routinely covered these checks by simply charging the account a "NSF-OD Charge". This

1 frequent overdrafting was blatant and obvious, as exemplified by the following
2 excerpt from one of Plaintiffs' monthly statements:

3
4 FEINSTEIN FOR SENATE

PAGE 2

5 ACCOUNT [REDACTED] 9311

6
7
8
9 WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
04/20/11	NSF-OD CHARGE CHECK #0000010998	35.00
04/20/11	NSF-OD CHARGE CHECK #0000010996	35.00
04/22/11	NSF-OD CHARGE CHECK #0000050302	35.00
04/22/11	NSF-OD CHARGE CHECK #0000011003	35.00

12
13 • **Suspicious intercompany transfers.** As detailed above, DURKEE
14 frequently transferred round sums of money between D&A accounts at First
15 California Bank. All banks review accounts for such intercompany transfers.

16 • **Checks where the signor and payee are the same.** DURKEE
17 signed scores of checks payable to D&A. This is considered by Bank Examiners
18 to be one of the prime indications of fraud.

19 • **Funds stay in accounts for only a very short time.** Often the very
20 same day funds were deposited into client accounts – and even in anticipation of
21 such deposits – DURKEE depleted those funds through checks and transfers to the
22 accounts of D&A and other clients.

23 • **Check kiting (using circular payments among a web of accounts
24 to cover payments made on overdrawn accounts, masking insufficient funds).**
25 DURKEE so thoroughly and rapidly depleted her clients' funds that she constantly
26 had to shuffle money between accounts in order to prevent checks from bouncing.
27 For example, as described above, on July 5, 2011, DURKEE made two wire
28 transfers from Feinstein for Senate account number xxx9311, one for \$30,000, and

1 the other for \$50,000, both to account xxxxxxxx2092, which is not affiliated with
2 Plaintiffs in any way. Three weeks after the transfers, on July 28, 2011, DURKEE
3 transferred \$80,000 back into account xxx9311 from account xxxxxxxx2092.
4 Similarly, on August 31, 2011, DURKEE transferred \$100,000 out of Feinstein for
5 Senate account number xxx7787 and into unaffiliated account number
6 xxxxxxxx8333. The very same day, DURKEE transferred the \$100,000 back into
7 the Feinstein for Senate account number xxx7787 from account number
8 xxxxxxxx8333.

9 **2. First California Bank Violated Office of Controller**
10 **Guidelines For Check-Kiting Detection**

11 81. The Office of the Controller of the Currency ("OCC") publishes
12 detailed guidelines to assist banks in detecting check kiting schemes such as this.
13 According to the OCC, examples of suspicious circumstances which may indicate
14 a check-kiting scheme include:

15 • **"Several accounts with similar names, owned or controlled by the**
16 **same individuals."** As detailed above, DURKEE controlled dozens of accounts
17 held at First California Bank.

18 • **"Regular or excessive drawings against uncollected funds."** As
19 described above, DURKEE regularly drew on funds that were deposited the same
20 day, or not yet even deposited.

21 • **"Frequent daily negative ending balances or overdrafts that**
22 **eventually clear or are covered in a short time frame."** DURKEE incurred
23 overdraft fees on 68 items drawn on the three Feinstein Committee accounts in just
24 one year. Notably, First California Bank does not appear to have prevented her
25 from doing so even once during that time. It is standard banking practice for
26 branch managers to review all overdrafts on the branch's accounts on at least a
27 daily basis. Accordingly, First California Bank knew of this pattern of overdrafts,
28 yet allowed DURKEE to continue overdrawing accounts, unabated.

1 • **“Identifiable patterns of transactions such as deposits, transfers**
2 **between accounts, withdrawals, and wire transfers, often with similar or**
3 **increasing amounts.”** As illustrated in the charts above, DURKEE regularly
4 withdrew round thousand dollar amounts from the Feinstein Committee accounts.

5 • **“Frequent, large deposits drawn on the same institution.”** Again,
6 DURKEE shuffled money between her accounts in large, round thousand dollar
7 amounts.

8 • **“Deposits drawn on other institutions by the same maker or**
9 **signer.”** As described above, DURKEE transferred funds between City National
10 Bank and First California Bank on a regular basis.

11 • **“Large debits and credits of even dollar amounts.”** This was done
12 on a regular basis as detailed above.

13 • **“Frequent check withdrawals to the same institution, with the**
14 **maker listed as payee.”** DURKEE frequently signed checks to D&A, and
15 deposited those checks in D&A accounts held at First California Bank.

16 • **“A low average daily balance in relation to deposit activity.”**
17 Despite receiving regular deposits from donors to the Feinstein Committees, the
18 Feinstein Committee accounts simply never grew, as DURKEE constantly tapped
19 them for her own wrongful use.

20 82. In sum, there were dozens of transactional improprieties, every
21 month, done with the FULL KNOWLEDGE of First California Bank. Yet, as
22 described in the following section, First California Bank failed to report DURKEE
23 or shut down her accounts. Instead, First California continued to actively provide
24 banking assistance to DURKEE and D&A as they raided their clients' coffers, all
25 in the name of profit and greed.

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1 3. **First California Bank Violated Federal Financial**
2 **Institutions Examination Council's Guidelines by**
3 **Intentionally Failing to Report DURKEE or Halt Her**
4 **Activities**

5 83. Had First California Bank complied with its duties under California
6 law, as mirrored in federal law (12 CFR 208.62), and the guidelines described in
7 the foregoing, it would have monitored and reported DURKEE and D&A's
8 wrongful activities, and would have ceased providing assistance to DURKEE and
9 D&A in furtherance of their scheme.

10 84. Such monitoring and reporting of suspicious financial transactions,
11 especially in the post-September 11 era, is an important and routine part of modern
12 banking. Banks are even shielded from liability for reporting. Specifically, 31
13 U.S.C. section 5318(g)(3) provides complete immunity from any claims under
14 state or federal law for reporting, stating, in pertinent part, that anyone reporting
15 suspicious activity "shall not be liable to any person under any law or regulation of
16 the United States, any constitution, law, or regulation of any State or political
17 subdivision of any State, or under any contract or other legally enforceable
18 agreement (including any arbitration agreement), for such disclosure or for any
19 failure to provide notice of such disclosure to the person who is the subject of such
20 disclosure or any other person identified in the disclosure."

21 85. Simply stated, First California Bank had no legitimate reason not to
22 report DURKEE and D&A's activities, except for the continued profit to the Bank.

23 86. Moreover, reporting is simple. The federal SAR form (FinCEN Form
24 109), even provides straightforward instructions, including a section entitled
25 "When To File A Report," and can be filed electronically. (See Exhibit A). The
26 SAR reports provide the federal Financial Crimes Enforcement Network
27 ("FinCEN") with critical and detailed information. For example, the SAR form

1 provides the following guidance for completing the "Narrative" portion of the
2 form:

- 3 • "Describe conduct that raised suspicion.
- 4 • "Explain whether the transaction(s) was completed or only attempted.
- 5 • "Describe supporting documentation and retain such documentation
6 for your file for five years.
- 7 • "Indicate a time period, if it was a factor in the suspicious
8 transaction(s). . . .
- 9 • "Retain any admission or explanation of the transaction(s) provided
10 by the subject(s) or other persons. Indicate when and to whom it was given.
- 11 • "Retain any evidence of cover-up or evidence of an attempt to
12 deceive federal or state examiners, or others.
- 13 • "Indicate where the possible violation of law(s) took place (e.g., main
14 office, branch, agent location, etc.).
- 15 • "Indicate whether the suspicious activity is an isolated incident or
16 relates to another transaction. . . .
- 17 • "Indicate any additional account number(s), and any foreign bank(s)
18 account numbers which may be involved in transfer of money.
- 19 • "Identify any employee or other individual or entity (e.g., agent)
20 suspected of improper involvement in the transaction(s).

21 (Exhibit A).

22 87. Had First California Bank accurately completed and submitted SARs
23 in connection with some or all of DURKEE and D&A's suspicious transactions,
24 the scheme would have been stopped in its tracks.

25 88. Even absent suspicious activities, banks are required to complete a
26 Currency Transaction Report ("CTR") for submission to FinCEN for any
27 transaction over \$10,000.

1 4. First California Failed to Follow Its Own Internal
2 Operations Manuals and Shielded DURKEE's Activities
3 from the California Department of Financial Institutions

4 89. In order to ensure compliance with state and federal law, First
5 California maintains internal operations manuals that provide additional guidance
6 to managers and branch staff regarding suspicious transactions. Standard industry
7 practices dictate that banks have four types of programs in place, known in the
8 industry as the "four pillars," to prevent fraud. Those four pillars are: (a) internal
9 controls to ensure ongoing compliance; (b) independent testing of compliance; ©
10 designation of an personnel responsible for compliance; and (d) training on
11 potentially fraudulent transactions and money laundering activities. The
12 requirements for these pillars have grown increasingly demanding over the past
13 decade, particularly as they relate to recognition of suspicious transactions.

14 90. The Bank Secrecy Act requires banks to adopt internal written
15 policies to monitor and ensure compliance with the Act. The OCC further
16 recommends that the following internal controls be implemented to detect and
17 prevent fraud:

18 • "Officer approval on drawings against uncollected funds, overdrafts,
19 and wire transfers. Such authority should be strictly enforced and not exceed an
20 individual's lending authority.

21 • "Daily reports on drawings against uncollected funds, overdrafts,
22 large items, and significant balance changes.

23 • "Designated individual to regularly review internal reports to spot
24 anomalous conduct and to ensure proper investigation when warranted.

25 • "Secondary level of administrative control that is distinct from other
26 lending functions to promote objectivity when granting significant drawings
27 against uncollected funds or overdrafts.

1 • “Regular overdraft activity reports to the board or an approved
2 committee thereof.

3 • “Periodic review through an independent audit function to assess and
4 report on the adequacy of all established internal controls in this area.”

5 91. According to First California Bank’s latest annual filing with the
6 SEC, it maintains internal controls to protect against fraud. Specifically, the Bank
7 told the SEC and Bank Examiners:

8 We are subject to certain operational risks, including, but not
9 limited to, data processing system failures and errors, **customer**
10 **or employee fraud**, security breaches of our computer systems
11 and catastrophic failures resulting from terrorist acts or natural
12 disasters. **We maintain a system of internal controls to**
13 **mitigate against such occurrences** and maintain insurance
coverage for such risks that are insurable, but should such an
event occur that is not prevented or detected by our internal
controls and uninsured or in excess of applicable insurance
limits, it could have a significant adverse impact on our
business, financial condition or results of operations.

14 92. The transfers and activities undertaken by DURKEE and her
15 associates with the Feinstein Committees’ accounts at First California Bank had
16 many of the features that should have triggered such internal controls, and SAR
17 and CTR reporting, yet First California Bank never reported DURKEE and D&A’s
18 transactions. First California Bank **knowingly ignored and violated its own**
19 **internal policies**, and federal law, that allowed DURKEE and D&A to engage in
20 the highly suspicious and improper transactions described above. First California
21 Bank had the duty and ability to terminate its assistance of DURKEE and D&A’s
22 fraud, and to terminate DURKEE and D&A’s accounts.

23 93. Moreover, First California Bank failed to report DURKEE and
24 D&A’s activities to the California Department of Financial Institutions. First
25 California Bank also concealed DURKEE and D&A’s activities, and the dozens of
26 red flags raised by those activities, from the annual examinations of the Bank
27 conducted by the Department of Financial Institutions pursuant to Section 1900 of
28 the California Financial Code.

1 **5. First California Violated Its Own Terms and Conditions for**
2 **Business Accounts**

3 94. First California Bank's standard terms and conditions for business
4 accounts includes an explicit provision requiring First California Bank to close an
5 account that is being used for fraud or other suspicious activity. The terms and
6 conditions state:

7 **ACCOUNT TERMINATION.** You and we agree that either
8 of us may close your Account and terminate this Agreement at
9 any time with or without cause. We will provide written notice
10 to you in advance if we decide to terminate your Account
11 relationship for any reason other than abuse of the account
12 relationship or to prevent a loss. . . . Further, for security
13 reasons, we may require you to close your Account and to open
14 a new account if: there is a change in authorized signers;
15 **there has been a forgery or fraud reported or committed**
16 **involving your Account;** any Account checks are lost or
17 stolen; **you have too many transfers from your Account; or,**
18 **any other provision of our Agreement with you is violated.**
19 After the Account is closed, we have no obligation to accept
20 deposits or pay any outstanding checks. You agree to hold us
21 harmless for refusing to honor any check drawn on a closed
22 account. In the event that we close your Account, we may mail
23 you a Cashier's Check for the applicable remaining Account
24 balance. The termination of this Agreement and closing of an
25 account will not release you from any fees or other obligations
26 incurred prior to the date upon which this Agreement is
27 terminated and an account is closed, any fees assessed by us in
28 the process of closing an account, or from your responsibility
to maintain sufficient funds in an account to cover any
outstanding checks or other debit items.

....

20 **MISCELLANEOUS PROVISIONS.** If you or your Account
21 becomes involved in any legal proceedings, your use of the
22 Account may be restricted. **You agree not to use the Account**
23 **in any illegal activity.**

23 95. First California Bank knew that DURKEE and D&A were regularly
24 and improperly siphoning money from client accounts to pay for personal and
25 business expenses, and engaging in check kiting and other account manipulations
26 in order to shield their embezzlement. As described above, these were not isolated
27 incidents. DURKEE and D&A engaged in the same conduct with respect to
28

1 dozens of accounts, over several years. First California Bank knew that DURKEE
2 and D&A were defrauding dozens of clients, including Plaintiffs.

3 96. First California Bank allowed this conduct to continue because the
4 accounts DURKEE and D&A controlled were a significant generator of fees for
5 First California Bank, and provided funds that First California Bank could invest
6 at a profit for as long as the funds sat in the accounts.

7 97. Despite its knowledge of the fraud, First California Bank provided
8 substantial assistance to DURKEE and D&A in furtherance of their scheme to
9 defraud and steal from Plaintiffs, other public officials, and non-profits across
10 California. First California Bank failed to comply with any of its responsibilities
11 or obligations with respect to the Feinstein Committees' accounts. Rather, First
12 California Bank was at the center of DURKEE's fraudulent scheme, and far from
13 shutting down the scheme or halting its own involvement in that scheme, it
14 facilitated the scheme by providing DURKEE and D&A with extraordinary access
15 to its employees, infrastructure and banking services.

16 98. First California Bank's assistance allowed DURKEE and D&A to
17 steal millions of dollars from their clients, including Plaintiffs, other elected
18 officials, and non-profits across California and the country. In another example of
19 First California Bank's knowing facilitation of the embezzlement, the Bank
20 reportedly allowed DURKEE to electronically transfer funds in and out of a non-
21 profit organization's account despite the fact that DURKEE **did not have**
22 **signature authority on the account.** Without the knowing cooperation of Bank
23 management, DURKEE could not have done so.

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1 **E. FIRST CALIFORNIA BANK ACKNOWLEDGES THAT**
2 **DURKEE MISAPPROPRIATED AND CO-MINGLED FUNDS.**
3 **YET REFUSES TO GIVE DURKEE CLIENTS ACCESS TO**
4 **THEIR OWN FUNDS**

5 99. Just days after DURKEE's arrest, First California Bank sent Plaintiffs
6 a letter acknowledging that it had allowed DURKEE to misappropriate and co-
7 mingle client funds. The letter states, in pertinent part: "the account balances
8 shown on [the Bank's] records . . . may include funds belonging to other clients
9 of Durkee which were comingled by Durkee with your funds."

10 100. Despite this acknowledgment, the Bank refused to provide Plaintiffs
11 with what little remained of their funds unless Plaintiffs agreed to fully indemnify
12 the Bank. Simply put, the Bank is holding Plaintiffs' funds hostage.

13 101. In a subsequent letter, dated September 16, 2011, First California
14 Bank again acknowledged that it had allowed DURKEE to shuffle money between
15 the accounts to such an extreme degree that the proper balance of the accounts
16 simply cannot be determined. Specifically, it stated:

17 The more we investigated the situation, the more it
18 appears that Durkee had comingled funds belonging to various
19 different campaigns and organizations and had made transfers
20 between accounts on which Durkee had signing authority.

21 We concluded that there was a very high likelihood
22 that the balance credited to any given account did not
23 represent accurately the funds, if any, actually belonging to
24 the campaign or organization on the account. In certain
25 circumstances, it is apparent that account balances
26 contained funds that had previously been credited to non-
27 related accounts. **THESE CONDITIONS APPEARED TO**
28 **BE PERVASIVE IN THE DURKEE-CONTROLLED**
 ACCOUNTS

(Exhibit B).

102. These "pervasive" conditions are precisely the type that led the Bank
to know of DURKEE's scheme years ago.

1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FRAUD AND DECEIT**

4 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**
5 **and DOES 1-10)**

6 103. Plaintiffs incorporate by reference all of the previous allegations as
7 though fully set forth herein.

8 104. As alleged herein, Defendants DURKEE, D&A, FORGY, LEMCKE,
9 and DOES 1-50 provided Plaintiffs with fraudulent account summaries and profit
10 and loss statements, on a weekly or monthly basis, from at least August 2010 to
11 August 2011. Those fraudulent reports and statements misrepresented the amount
12 of withdrawals from the accounts and the account balances. The reports and
13 statements failed to disclose the unauthorized withdrawals from the accounts made
14 by Defendants to cover their own personal and business expenses, and to
15 reimburse other campaign funds for embezzled funds.

16 105. The wrongful acts and omissions on the part of Defendants, as herein
17 alleged, were made with the intent to induce Plaintiffs, and each of them, to
18 continue to utilize Defendants' services and entrust Defendants with campaign
19 contributions and other funds.

20 106. At all times alleged, Plaintiffs were ignorant of Defendants'
21 fraudulent intentions and, in the exercise of reasonable diligence, did not discover
22 or uncover their wrongdoing because Defendants, and each of them, intentionally
23 misreported the available balances, income, and expenses in weekly and monthly
24 statements. Furthermore, on information and belief, Defendants misappropriated
25 funds from other clients' funds when necessary to cover legitimate expenses that
26 needed to be paid from Plaintiffs' accounts.

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1 107. As a direct and legal result of said fraud, deceit, and/or concealment
2 on the part of Defendants, and each of them, Plaintiffs have been damaged in an
3 amount exceeding the jurisdictional minimum, according to proof.

4 108. The above-described fraud, deceit, and/or concealment on the part of
5 Defendants, and each of them, was intended to and did deprive Plaintiffs, and each
6 of them, of millions of dollars. These acts were accomplished by Defendants by
7 means of fraud, deceit, concealment, oppression, and/or malice and, as such,
8 warrant the imposition of exemplary and/or punitive damages as against
9 Defendants, and each of them.

10 109. WHEREFORE, Plaintiffs, and each of them, pray for judgment
11 against Defendants, and each of them, as set forth herein.

12 **SECOND CAUSE OF ACTION**

13 **CONVERSION**

14 (As Against Defendants DURKEE, D&A, FORGY, LEMCKE,
15 and DOES 1-10)

16 110. Plaintiffs incorporate by reference all the allegations contained in the
17 Complaint as though fully set forth herein.

18 111. At all times alleged, Plaintiffs were the owners of the funds
19 maintained in the subject accounts, or had the right to possession of the funds that
20 were maintained in the accounts.

21 112. At all times alleged, Defendants DURKEE, D&A, FORGY,
22 LEMCKE, and DOES 1-50, and each of them, wrongly drew on Plaintiffs' funds
23 without authorization and without permission for their own personal and wrongful
24 use. Defendants, and each of them, were direct beneficiaries of the conversion as
25 they obtained financial benefits including, but not limited to, the payment of
26 personal and business debts and liabilities.

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1 113. As a legal result of the conversion by Defendants, Plaintiffs, and each
2 of them, suffered damages including, but not limited to, the amount of money
3 converted, as well as the time and money expended to recovery said wrongfully
4 converted funds including, but not limited to, attorneys' fees and costs.

5 114. Punitive damages should also be awarded pursuant to Civil Code
6 section 3294 as the conduct of Defendants, and each of them, was malicious,
7 oppressive and/or fraudulent, in conscious disregard for the rights of Plaintiffs.

8 115. WHEREFORE, the Plaintiffs, and each of them, pray for judgment
9 against Defendants, as set forth herein.

10 **THIRD CAUSE OF ACTION**

11 **BREACH OF CONTRACT**

12 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**
13 **and DOES 1-5)**

14 116. Plaintiffs incorporate by reference all the allegations contained in the
15 Complaint as though fully set forth herein.

16 117. Agreements were entered into between Defendants and Plaintiffs for
17 treasury services on behalf of Plaintiffs.

18 118. Plaintiffs fully performed all conditions, covenants, and promises
19 required of them under the Agreements.

20 119. Pursuant to the Agreements, Defendants agreed to process
21 contributions and other income to Plaintiffs, process legitimate expense requests
22 from Plaintiffs' accounts, and provide Plaintiffs' with accurate profit and loss
23 detail and account summaries for each of Plaintiffs' accounts on a regular basis.
24 In return, Plaintiffs paid Defendants for their work.

25 120. In violation of their promises and obligations under the Agreements,
26 Defendants, and each of them, breached their obligations to Plaintiffs by, among
27 other things, making unauthorized withdrawals from the Accounts for their own
28

benefit; converting Plaintiffs' funds for their own use; and failing to provide accurate account summaries and profit and loss statement.

121. As a direct and legal result of Defendants' breach, Plaintiffs, and each of them, have been damaged in the amount exceeding the jurisdictional minimum, according to proof.

122. WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth herein.

FOURTH CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING
(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,
and DOES 1-5)

123. Plaintiffs incorporate by reference all the allegations contained in the Complaint as though fully set forth herein.

124. As alleged herein, agreements were entered into between Defendants and Plaintiffs for treasury services on behalf of Plaintiffs.

125. Plaintiffs fully performed all conditions, covenants, and promises required of them under the Agreements.

126. Pursuant to the Agreements, Defendants agreed to process contributions and other income to Plaintiffs, process legitimate expense requests from Plaintiffs' accounts, and provide Plaintiffs' with accurate profit and loss detail and account summaries for each of Plaintiffs' accounts on a regular basis. In return, Plaintiffs paid Defendants for their services.

127. Implied in the Agreements was a covenant by Defendants that they would act in good faith and deal fairly with Plaintiffs, and each of them, and would not do anything to deprive Plaintiffs, and each of them, of the benefits of the Agreements.

1 128. In violation of the implied covenant of good faith and fair dealing,
2 Defendants, and each of them, made unauthorized withdrawals from the Accounts
3 for their own benefit; converted Plaintiffs' funds for their own use; and failed to
4 provide accurate account summaries and profit and loss statement.

5 129. As a direct and legal result of Defendants' breach, Plaintiffs, and each
6 of them, have been damaged in the amount exceeding the jurisdictional minimum,
7 according to proof.

8 130. WHEREFORE, Plaintiffs pray for judgment against Defendants, and
9 each of them, as set forth herein.

10 **FIFTH CAUSE OF ACTION**

11 **AIDING AND ABETTING FRAUD**

12 **(As Against Defendants FIRST CALIFORNIA BANK and DOES 5-10)**

13 131. Plaintiffs reallege and incorporate all the paragraphs of the
14 Complaint, as though fully set forth hereafter.

15 132. Defendants DURKEE, D&A, FORGY, LEMCKE, and DOES 5-10,
16 as discussed above, made material misrepresentations and omissions to Plaintiffs
17 regarding the status of the funds in accounts held at First California Bank and City
18 National Bank.

19 133. As set forth in the Complaint, First California Bank had **actual**
20 **knowledge** of the fraud being perpetrated on Plaintiffs by DURKEE and her
21 associates.

22 134. As set forth in this Complaint, First California Bank **substantially**
23 **assisted** DURKEE and her associates in perpetrating their fraud upon Plaintiffs.
24 Specifically, First California Bank assisted in the fraudulent scheme in several
25 ways including but not limited to the following.

- 26 a. Opening accounts for DURKEE and D&A and allowing them
27 to deposit Plaintiffs' monies via suspicious wire transfers;

- 1 b. Permitting DURKEE and D&A to commingle Plaintiffs'
2 monies in the accounts of other of Defendants' clients;
3 c. Allowing DURKEE and D&A to transfer large sums of
4 Plaintiffs' monies via suspicious wire transfers and checks to
5 D&A accounts;
6 d. Allowing DURKEE and D&A to misappropriate large sums of
7 Plaintiffs' monies to pay for hundreds of thousands of dollars
8 in personal and business expenses.

9 135. Without First California Bank's substantial assistance, DURKEE and
10 her associates would not have been able to defraud Plaintiffs.

11 136. As a result of DURKEE and D&A's fraud, and First California
12 Bank's assistance thereof, Plaintiffs suffered economic losses in an amount to be
13 proven at trial.

14 137. The wrongful acts of First California Bank were done maliciously,
15 oppressively, and with intent to defraud, and Plaintiffs and Class members are
16 entitled to punitive and exemplary damages in an amount to be ascertained
17 according to proof.

18 138. WHEREFORE, Plaintiffs pray for relief as set forth below.

19 **SIXTH CAUSE OF ACTION**

20 **AIDING AND ABETTING CONVERSION**

21 **(As Against Defendants FIRST CALIFORNIA BANK and DOES 5-10)**

22 139. Plaintiffs incorporate by reference all the allegations contained in the
23 Complaint as though fully set forth herein.

24 140. At all times alleged, Plaintiffs were the owners of the funds
25 maintained in the subject accounts, or had the right to possession of the funds that
26 were maintained in the accounts.

27 141. At all times alleged, Defendants DURKEE, D&A, FORGY,
28 LEMCKE, and DOES 1-5, and each of them, wrongly drew on Plaintiffs' funds

1 without authorization and without permission for their own personal and wrongful
2 use. Defendants, and each of them, were direct beneficiaries of the conversion as
3 they obtained financial benefits including, but not limited to, the payment of
4 personal and business debts and liabilities.

5 142. As set forth in this Complaint, First California Bank had actual
6 knowledge of the wrongful conversion of Plaintiffs' funds by DURKEE and her
7 associates.

8 143. As set forth in the complaint, First California Bank substantially
9 assisted DURKEE and her associates in wrongfully converting Plaintiffs' funds.
10 Specifically, First California Bank assisted in the conversion in several ways
11 including but not limited to the following.

- 12 a. Opening accounts for DURKEE and D&A and allowing them
13 to deposit Plaintiffs' monies via suspicious wire transfers;
- 14 b. Permitting DURKEE and D&A to commingle Plaintiffs'
15 monies in the accounts of other of Defendants' clients;
- 16 c. Allowing DURKEE and D&A to transfer large sums of
17 Plaintiffs' monies via suspicious wire transfers and checks to
18 D&A accounts;
- 19 d. Allowing DURKEE and D&A to misappropriate large sums of
20 Plaintiffs' monies to pay for hundreds of thousands of dollars
21 in personal and business expenses.

22 144. Without First California Bank's substantial assistance, DURKEE and
23 her associates would not have been able to convert Plaintiffs' funds.

24 145. As a result of DURKEE and D&A's conversion, and First California
25 Bank's assistance thereof, Plaintiffs suffered economic losses in an amount to be
26 proven at trial.

27 146. The wrongful acts of First California Bank were done maliciously,
28 oppressively, and with intent to defraud, and Plaintiffs and Class members are

1 entitled to punitive and exemplary damages in an amount to be ascertained
2 according to proof.

3 147. As a legal result of the conversion by Defendants, and First California
4 Bank's assistance thereof, Plaintiffs, and each of them, suffered damages
5 including, but not limited to, the amount of money converted, as well as the time
6 and money expended to recovery said wrongfully converted funds including, but
7 not limited to, attorneys' fees and costs.

8 148. Punitive damages should also be awarded pursuant to Civil Code
9 section 3294 as the conduct of Defendants, and each of them, was malicious,
10 oppressive and/or fraudulent, in conscious disregard for the rights of Plaintiffs.

11 149. WHEREFORE, the Plaintiffs, and each of them, pray for judgment
12 against Defendants, as set forth herein.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 *et seq.***

15 **UNLAWFUL, FRAUDULENT, AND UNFAIR BUSINESS**

16 **ACTS AND PRACTICES**

17 **(As Against All Defendants)**

18 150. Plaintiffs incorporate by reference the allegations contained in all
19 prior paragraphs of this Complaint as though fully set forth herein.

20 151. By their wrongful conduct, as set forth above, Defendants, and each
21 of them, engaged in unfair, unlawful, and/or fraudulent acts in violation of §
22 17200 *et seq.* of the California Business and Professions Code.

23 152. Defendants' practices were unlawful, unfair, and/or fraudulent
24 business practices for the reasons set forth below, without limitation:

- 25 (a) Defendants' acts and practices constitute fraud and deceit;
26 (b) Defendants' acts and practices were unfair in that they offend
27 public policy as expressed in statutes and regulations, and are
28 unscrupulous;

1 (c) Defendants' practices caused injury to Plaintiffs; and

2 (d) Defendants' practices were unlawful.

3 153. Plaintiffs seek restitution from Defendants, and each of them, as a
4 result of their unfair, unlawful, and/or deceptive business acts or practices.

5 154. WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **EIGHTH CAUSE OF ACTION**

7 **DECLARATORY RELIEF**

8 **(As Against FIRST CALIFORNIA BANK and DOES 5-10)**

9 155. Plaintiffs incorporate by reference all the allegations contained in the
10 Complaint as though fully set forth herein.

11 156. An actual controversy has arisen and now exists relating to the rights
12 and duties of the parties herein in that Plaintiffs contend that they are the rightful
13 owners of, and are entitled to immediate access to, funds held various accounts of
14 First California Bank; whereas First California Bank has refused to provide
15 Plaintiffs with access to their accounts, complete information regarding Plaintiffs'
16 accounts, the funds held in those accounts, or Plaintiffs' funds that have been
17 wrongfully transferred into other accounts maintained at First California Bank.

18 157. Plaintiffs desire a judicial determination of their rights and duties, and
19 a declaration as to:

20 (a) Whether the funds currently existing in Plaintiffs' accounts are the
21 rightful property of Plaintiffs;

22 (b) Whether First California Bank should provide Plaintiffs with
23 access to their accounts;

24 (c) Whether First California Bank should immediately distribute to
25 Plaintiffs the balance of their accounts;

26 (d) Whether First California Bank is obligated to provide Plaintiffs
27 with complete information regarding Plaintiffs' accounts, including all bank
28 statements and cancelled checks from the past five years; and

1 (e) Whether First California Bank should provide Plaintiffs with all
2 funds wrongfully transferred from Plaintiffs' accounts to other accounts currently
3 maintained at First California Bank.

4 158. WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **PRAYER FOR RELIEF**

6 **Plaintiffs pray for a judgment:**

- 7 1. For compensatory damages, according to proof;
- 8 2. Punitive and exemplary damages, according to proof;
- 9 3. For a preliminary and permanent injunction against Defendants
10 restraining, preventing and enjoining them and their unnamed co-
11 conspirators and all those acting in concern with them, from engaging
12 in the unlawful, unfair, and/or fraudulent actions alleged in this
13 complaint;
- 14 4. For a preliminary and permanent injunction against Defendants
15 restraining, preventing and enjoining them and their unnamed co-
16 conspirators and all those acting in concern with them, from
17 withdrawing, transferring, or otherwise accessing any funds contained
18 in any of the following accounts:
- 19 5. For restitution of all monies that were unlawfully, unfairly, and/or
20 fraudulently obtained from Plaintiffs or in equity and good
21 conscience Defendants should pay to Plaintiffs pursuant to *Korea*
22 *Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134 (2003).
- 23 6. For pre-judgment and post-judgment interest at the legal rate;
- 24 7. Declaring that the funds currently existing in Plaintiffs' accounts are
25 the rightful property of Plaintiffs;
- 26 8. Requiring First California Bank should provide Plaintiffs with access
27 to their accounts;

- 1 9. Requiring First California Bank to provide Plaintiffs with a complete
2 accounting of all funds currently maintained in Plaintiffs' accounts,
3 and an accounting of all funds transferred from Plaintiffs' account to
4 any other accounts held by First California Bank over the course of
5 the last five years;
- 6 10. Requiring First California Bank to immediately distribute to Plaintiffs
7 the balance of their accounts;
- 8 11. Requiring First California Bank to provide Plaintiffs with complete
9 information regarding Plaintiffs' accounts, including all bank
10 statements and cancelled checks from the past five years;
- 11 12. Declaring that all funds transferred from Plaintiffs' account to any
12 other accounts held by First California Bank remain the rightful
13 property of Plaintiffs;
- 14 13. Requiring First California Bank to provide Plaintiffs with all funds
15 wrongfully transferred from Plaintiffs' accounts to other accounts
16 currently maintained at First California Bank; and
- 17 14. For such other and further relief s the Court may deem just and
18 proper.

19
20 DATED: Sept 22, 2011

COTCHETT, PITRE & McCARTHY, LLP

21
22 By: 

23 JOSEPH W. COTCHETT
24 *Attorneys for Plaintiff*
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JURY DEMAND

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED: Sept 22, 2011

COTCHETT, PITRE & McCARTHY, LLP

By:



JOSEPH W. COTCHETT
Attorneys for Plaintiff

EXHIBIT A

Suspicious Activity Report

March 2011

Previous editions will not be accepted after September 30, 2011

ALWAYS COMPLETE ENTIRE REPORT
(see instructions)

FRB:
FDIC:
OCC:
OTS:
NCUA:
TREASURY:

FR 2230
6710/06
8010-9,8010-1
1601
2362
TD F 90-22.47

OMB No. 7100-0212
OMB No. 3064-0077
OMB No. 1557-0180
OMB No. 1550-0003
OMB No. 3133-0094
OMB No. 1506-0001

1

1 Check box below only if correcting a prior report.

☐ Corrects Prior Report (see instruction #3 under "How to Make a Report")

Part I Reporting Financial Institution Information

2 Name of Financial Institution			3 EIN 		
4 Address of Financial Institution			5 Primary Federal Regulator a <input type="checkbox"/> Federal Reserve d <input type="checkbox"/> OCC b <input type="checkbox"/> FDIC e <input type="checkbox"/> OTS c <input type="checkbox"/> NCUA		
6 City	7 State 	8 Zip Code -			
9 Address of Branch Office(s) where activity occurred <input type="checkbox"/> Multiple Branches (include information in narrative, Part V)					
10 City	11 State 	12 Zip Code -	13 If institution closed, date closed MM / DD / YYYY		
14 Account number(s) affected, if any a _____ Closed? <input type="checkbox"/> Yes <input type="checkbox"/> No b _____ Closed? <input type="checkbox"/> Yes <input type="checkbox"/> No c _____ Closed? <input type="checkbox"/> Yes <input type="checkbox"/> No d _____ Closed? <input type="checkbox"/> Yes <input type="checkbox"/> No					

Part II Suspect Information

☐ Suspect Information Unavailable

15 Last Name or Name of Entity		16 First Name		17 Middle	
18 Address				19 SSN, EIN or TIN 	
20 City	21 State 	22 Zip Code -	23 Country (Enter 2 digit code)		
24 Phone Number - Residence (include area code) ()		25 Phone Number - Work (include area code) ()			
26 Occupation/Type of Business		27 Date of Birth MM / DD / YYYY		28 Admission/Confession? a <input type="checkbox"/> Yes b <input type="checkbox"/> No	
29 Forms of Identification for Suspect: a <input type="checkbox"/> Driver's License/State ID Number _____ b <input type="checkbox"/> Passport Issuing Authority _____ c <input type="checkbox"/> Alien Registration Issuing Authority _____ d <input type="checkbox"/> Other _____					
30 Relationship to Financial Institution: a <input type="checkbox"/> Accountant d <input type="checkbox"/> Attorney g <input type="checkbox"/> Customer j <input type="checkbox"/> Officer b <input type="checkbox"/> Agent e <input type="checkbox"/> Borrower h <input type="checkbox"/> Director k <input type="checkbox"/> Shareholder c <input type="checkbox"/> Appraiser f <input type="checkbox"/> Broker i <input type="checkbox"/> Employee l <input type="checkbox"/> Other _____					
31 Is the relationship an insider relationship? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If Yes specify: c <input type="checkbox"/> Still employed at financial institution e <input type="checkbox"/> Terminated d <input type="checkbox"/> Suspended f <input type="checkbox"/> Resigned				32 Date of Suspension, Termination, Resignation MM / DD / YYYY	

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Explanation/description of known or suspected violation of law or suspicious activity.

This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and complete account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.

- a Describe supporting documentation and retain for 5 years.
- b Explain who benefited, financially or otherwise, from the transaction, how much, and how.
- c Retain any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
- d Retain any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.
- e Retain any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.

- f Indicate where the possible violation took place (e.g., main office, branch, other).
- g Indicate whether the possible violation is an isolated incident or relates to other transactions.
- h Indicate whether there is any related litigation; if so, specify.
- i Recommend any further investigation that might assist law enforcement authorities.
- j Indicate whether any information has been excluded from this report; if so, why?
- k If you are correcting a previously filed report, describe the changes that are being made.

For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:

- l Indicate whether currency and/or monetary instruments were involved. If so, provide the amount and/or description of the instrument (for example, bank draft, letter of credit, domestic or international money order, stocks, bonds, traveler's check, wire transfers sent or received, cash, etc.).
- m Indicate any account number that may be involved or affected.

Tips on SAR Form preparation and filing are available in the SAR Activity Review at www.fincen.gov/pub_reports.html

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3105(c) (2) and 3108(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1766(a), 1766(q). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The Federal financial institutions' regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 30 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington, DC 20552; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183. The agencies may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Suspicious Activity Report Instructions

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:
 - a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.
 - b. **Violations aggregating \$5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as driver's licenses or social security numbers, addresses and telephone numbers, must be reported.
 - c. **Violations aggregating \$25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.
 - d. **Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at

or through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

- i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;
- ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or
- iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Chapter X). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below \$10,000 and is suspicious, the institution should only file a suspicious activity report.

2. **Computer Intrusion.** For purposes of this report, "computer intrusion" is defined as gaining access to a computer system of a financial institution to:

- a. Remove, steal, procure, or otherwise affect funds of the institution or the institution's customers;
- b. Remove, steal, procure or otherwise affect critical information of the institution including customer account information; or
- c. Damage, disable or otherwise affect critical systems of the institution.

For purposes of this reporting requirement, computer intrusion does not mean attempted intrusions of websites or other non-critical information systems of the institution that provide no access to institution or customer financial or other critical information.

3. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.
4. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit, or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232-0980

2. For items that do not apply or for which information is not available, leave blank.
3. If you are correcting a previously filed report, check the box at the top of the report (line 1). Complete the report in its entirety and include the corrected information in the applicable boxes. Then describe the changes that are being made in Part V (Description of Suspicious Activity), line k.
4. **Do not include any supporting documentation with the suspicious activity report.** Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for five (5) years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.
5. If more space is needed to report additional suspects, attach copies of page 1 to provide the additional information. If more space is needed to report additional branch addresses, include this information in the narrative, Part V.
6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.

EXHIBIT B



September 16, 2011

Re: Durkee & Associates

Dear Durkee Client:

We have been working diligently to try to resolve the status of the accounts that were controlled by Durkee & Associates ("Durkee"). The more we investigated the situation, the more it appears that Durkee had comingled funds belonging to various different campaigns and organizations and had made repeated transfers between accounts on which Durkee had signing authority.

We concluded that there was a very high likelihood that the balance credited to any given account did not represent accurately the funds, if any, actually belonging to the campaign or organization named on the account. In certain circumstances, it is apparent that account balances contained funds that had previously been credited to non-related accounts. These conditions appeared to be pervasive in the Durkee controlled accounts.

Faced with grave uncertainties and conflicting, or potentially conflicting, demands, based upon advice of counsel, the Bank determined that it would file an interpleader action in Los Angeles Superior Court with respect to all, or at least the vast majority, of the Durkee controlled accounts.

The Bank will remit the account balances to the appropriate court, which will then be in a position, over time, to determine the specific amounts that are owed to each of the campaigns, candidates and organizations that had utilized the services of Durkee. We believe that this is the best way to ensure that all of the Durkee clients are treated fairly and equitably with full judicial oversight.

Each of the parties to the interpleader action will be receiving service of process. In order to expedite the matter, you might want to provide us with the name of the appropriate person with, or attorney for, the campaign or organization as well as his/her address. To do so, please complete the enclosed form and return it in the envelope provided or you may also email the information to durkeeinfo@fcbank.com or call First California Bank's Client Services Group at 1-800-856-7905.

Very truly yours,

Edmond R. Sahakian
Executive Vice President
Branch Administrator

P. O. Box 5112 Westlake Village, CA 91359-5112

Phone 800-856-7905

Fax 805-437-4358

www.fcbank.com Member FDIC

Exhibit B

UNITED STATES DISTRICT COURT **FILED**

EASTERN DISTRICT OF CALIFORNIA

SEP 06 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY

DEPUTY CLERK

UNITED STATES OF AMERICA

v.

KINDE DURKEE,

CRIMINAL COMPLAINT

CASE NUMBER: 2:11mj274 DAD

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. From on or about September 1, 2010 through September 2, 2011, in the Eastern District of California and elsewhere, defendant did, (Track Statutory Language of Offense)

► ~~Davise and intend to dnvise a material scheme and artifice to defraud Jose Solorio and the Solorio for Assembly 2010 campaign and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises; and that, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, did knowingly cause to be sent or delivered by the Postal Service or any private or commercial interstate carrier, items of mail according to the directions thereon,~~

in violation of Title 18, United States Code, Section 1341. I further state that I am a Special Agent with the Federal Bureau of Investigation Service and that this complaint is based on the following facts:

► See attached affidavit of FBI Special Agent Reginald L. Coleman

Continued on the attached sheet and made a part of this complaint: ☒ 

Signature of Complainant

Reginald L. Coleman
Special Agent
Federal Bureau of InvestigationSworn to before me, and signed in my presence
September 2, 2011

at

Clarksburg, California

Date

City

State

Hon. Dale A. Drozd
United States Magistrate

Name of Judge

Title of Judge

Signature of Judge

AFFIDAVIT

I, Reginald L. Coleman, being duly sworn, depose and state as follows:

BACKGROUND

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI) and have been so employed for nearly 13 years. I am presently assigned to the Public Corruption Squad in the Sacramento Field Division.

2. The information contained in this affidavit comes from information supplied to me by FBI SA Jason Jones and FBI Forensic Accountant (FA) Laurelea Williams, as well as my review of bank records.

3. I am informed by FBI SA Jason Jones that he has been investigating KINDE DURKEE for possible violations of Title 18, United States Code, Section 1341.

4. For the reasons stated herein, I respectfully assert that there is probable cause to believe that between September 1, 2010 and continuing to the present, in the State and Eastern District of California, KINDE DURKEE did devise and intend to devise a material scheme and artifice to defraud Jose Solorio and the Solorio for Assembly 2010 campaign, and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises; and that, for the purpose of executing and attempting to execute the aforementioned scheme and

artifice to defraud, did knowingly cause to be sent or delivered by the Postal Service or any private or commercial interstate carrier, items of mail according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

FACTS

5. According to FBI SA Jones, the investigation of KINDE DURKEE stemmed from a referral by the Fair Political Practices Commission (FPPC) to federal law enforcement. The FPPC reported that based on its investigation, it appeared that KINDE DURKEE, through her firm DURKEE & Associates (D&A), which is located in Burbank, CA, had misappropriated money from her clients' bank accounts and had filed false disclosure reports to hide the misappropriations. Some of the disclosure reports were submitted to the California Secretary of State through the mail.

6. I am informed by FBI SA Jones that Grant Beauchamp is a Program Specialist in the Enforcement Division of the FPPC who has conducted financial investigations into KINDE DURKEE and D&A. FBI SA Jones has further informed me that according to Mr. Beauchamp, KINDE DURKEE operated D&A, and that D&A specialized in providing accounting and campaign reporting services to political committees, including political candidate campaign committees, and non-profit organizations. Mr. Beauchamp said that Ms. DURKEE is normally the committee treasurer for the political campaign committees for which she provides her services. As such, she

signed and submitted campaign disclosure forms for state officials to the California Secretary of State as required by state law.

7. I am also informed by FBI SA Jones that Mr. Beauchamp also reported that it appeared from his review of documents, including bank records, that DURKEE transferred money from her clients' bank accounts to her firm's bank accounts without her clients' knowledge or authorization. It also appeared that DURKEE refunded a portion of the misappropriated money when needed to cover checks or when misappropriations had been detected.

8. I am informed by FA Williams that bank records reviewed by the FBI establish that Ms. DURKEE appears to have signature authority over more than 400 bank accounts, including those for political campaigns, and that substantial sums of money have been routinely moved out of client campaign committees into D&A accounts or into other client campaign committee accounts. FBI SA Jones has informed me that a review of disclosure forms that Ms. DURKEE has apparently signed and submitted to the California Secretary of State for these campaign committees reveals that many of these transactions - both the expenditure and receipt of funds - are not reflected as required on the relevant forms.

9. FA Williams has informed me that bank records reviewed by her establish that money transferred by DURKEE from client

accounts to her business accounts have been used to pay her personal expenses, including mortgage payments and American Express charges, as well as business expenses. The records also indicate that Ms. DURKEE has taken more money out of the committee accounts than she has reported on the disclosure forms.

10. Ms. DURKEE was interviewed by FBI agents, including FBI SA Jones, on September 1, 2011. During the course of that interview, Ms. DURKEE admitted that she had been misappropriating her clients' money for years and that forms she filed with the state were false.

Solorio for Assembly 2010

The Deposit of \$300,000

11. Your affiant has reviewed bank records and schedules for bank records for D&A at City National Bank and First California Bank. Those records reveal that on approximately October 1, 2010, a cashier's check made payable to Solorio for Assembly 2010 in the amount of \$300,000 was deposited into an account for D&A, number xxxx83658, at City National Bank. The deposit of the check brought the balance in the xxxx83658 account to approximately \$308,027. The source of the \$300,000 cashier's check appears from bank records to be from a money market account in the name of Solorio for Assembly 2010 held at First California Bank.

12. A number of checks were issued from the D&A account,

number xxxx83658, into which the \$300,000 was deposited:

- one for \$125,000 dated September 30, 2010 and payable to the Committee to Re-Elect Loretta Sanchez, which was apparently signed by KINDE DURKEE;

- one for \$32,000 dated September 30, 2010 and payable to Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE;

- one for \$21,000 dated October 4, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE;

- one for \$25,000 dated October 4, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE; and

- one for \$15,000 dated October 4, 2010 and payable to Durkee Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE.

The Transfer of \$32,000

13. The check to D&A for \$32,000 was deposited on September 30, 2010 into a D&A account at First California Bank, account number XXX1251, bringing the balance to \$40,693. A number of checks were then issued from the account, including one dated September 30, 2010 and made payable to D&A for \$36,000, which was apparently signed by KINDE DURKEE. This check caused the account number xxx1251 to have a negative balance.

14. The \$36,000 check was deposited on September 30, 2010 into a D&A account at First California Bank, account number

xxx0865. From there, \$30,000 was withdrawn in the form of a check apparently signed by KINDE DURKEE made payable to D&A and marked for "payroll." The \$30,000 check was deposited into First California Bank account number xxx9123. The deposit covered overdrafts including checks to Peter Froelich for \$2,176.08, Adrian Grier for \$1,476.72, and Matt Lemcke for \$1,697.78, and Lydia Almanza \$1,172.50. Your affiant is informed by FA Williams that there is evidence these individuals work as account executives for D&A since she has seen signatures in their names on checks from campaign accounts to D&A, and/or their names appear in the staff directory on the website for D&A.

15. In other words, it appears DURKEE used some of the \$300,000 Solorio for Assembly 2010 check to make her payroll.

The Transfer of \$25,000

16. The \$25,000 check to D&A referenced above was subsequently deposited into First California Bank, account number xxx0865, on approximately October 4, 2010. This brought the balance in that account to approximately \$37,084. From that account, two withdrawals were made to pay American Express, one in the amount of \$16,854.76 and another in the amount of \$679.03.

17. A review of a bill for American Express reveals that the payment for \$16,854.76 paid for a bill which included charges from a variety of entities, including:

Union 76;

Amazon.com (gift cards);
Baskin Robbins;
Ulta (cosmetics);
Turners Outdoorsman;
Valero;
Deckert Surgical;
Ariel's Grotto at Disneyland;
TIVO, Inc.;
Virgin America (for \$3,984.80); and
Bixby Animal Clinic.

18. A review of a bill for American Express reveals that the payment for \$679.03 paid for a bill which included charges to a variety of entities, including Long Beach Aquarium, QVC, Costco, and Crocs.

The Deposit of \$377,181.24

19. Your affiant has reviewed bank records and schedules for bank records for D&A at City National Bank and First California Bank. Those records reveal that on approximately October 8, 2010, a cashier's check made payable to Solorio for Assembly 2010 in the amount of \$377,181.24 was deposited into an account for D&A, number xxxx83658, at City National Bank. The check brought the balance in the account to approximately \$415,458. The source of the cashier's check for \$377,181.24 appears to be from a money market account in the name of Solorio

for Assembly 2010 held at First California Bank.

20. A number of checks were issued from the D&A account, number xxxx83658, into which the \$377,181.24 was deposited:

- one for \$45,000 dated October 7, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE;
- one for \$45,000 dated October 7, 2010 and payable to Committee to Re-Elect Loretta Sanchez;
- one for \$60,000 dated October 8, 2010 and payable to Beth Krom for Congress;
- one for \$40,000 dated October 8, 2010 and payable to Susan Davis for Congress;
- one for \$25,000 dated October 11, 2010 and payable to Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE;
- one for \$25,000 dated October 11, 2010 and payable to Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE; and
- one for \$5,000 dated October 11, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE.

The Transfer of \$45,000

21. The check to D&A for \$45,000 dated October 7, 2010 was deposited into a D&A account at First California Bank, account number XXX0865 on the same date, bringing the balance to \$33,172. A number of checks were issued from the account, including one

dated September 30, 2010 (which cleared on October 7, 2010) and was made payable to Belmont Village for \$4,950. According to Google, Belmont Village is a chain of assisted living facilities. In the memo portion of the check to Belmont Village, there is a notation on it reading "Norma Durkee." I am informed by FBI SA Jones that during the course of the interview with Ms. DURKEE on September 1, 2011, Ms. DURKEE admitted that she helped to pay expenses at an assisted living facility for her mother.

22. Another check issued from account number xxx0865 was one to D&A in the amount of \$25,000 and dated October 7, 2010. The check has a notation "payroll" in the memo portion of the check. The \$25,000 deposit was deposited into First California Bank Account xxx9123 covered overdrafts including checks to Lydia Almanza for \$1,172.50, James Adamo for \$1,110, Timothy Watson for \$1,574.12, and Laura Maccallum for \$1,395.82. Your affiant is informed by FA Williams that there is evidence these individuals work as account executives for D&A since she has seen signatures in their names on checks from campaign accounts to D&A, and/or their names appear in the staff directory on the website for D&A. In other words, it appears DURKEE used some of the \$25,000 of the \$377,181.24 Solorio for Assembly 2010 check to make her payroll.

The Transfer of Two \$25,000 Checks

23. The two \$25,000 checks to the Merchants Account referenced above were subsequently deposited into D&A account

number xxx1251 at First California Bank on approximately October 12, 2010. The deposit of these two checks covered a negative balance and were also used to make payments to Democratic Foundation of Orange County - Voter Guide (\$13,000) and National Popular Vote (\$5,000).

The Deposit of \$50,000 from Shallman Communications

24. About one week after \$377,181.24 was deposited into the D&A account at City National Bank, number xxxx83658, a check for \$50,000 on the account of Shallman Communications was deposited into that same account. This latter check brought the balance to \$220,458.06.

25. A number of checks or debits were issued from that account:

- one check for \$6,000 dated October 13, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE;
- a debit for \$50,010 dated October 14, 2010 to purchase an official check (\$10 fee) made payable to the United States Treasury;
- a check for \$20,000 dated October 14, 2010 and payable to D&A Merchants, which was apparently signed by KINDE DURKEE; and
- a check for \$10,000 dated October 14, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE.

The check for \$50,000 made payable to the United States

Treasury appears to be a tax payment by KINDE DURKEE. I am informed by FBI SA Jones that Ms. Durkee admitted to the agents that she had personal and business tax problems.

The Transfer of \$6,000

26. Bank records reveal that the \$6,000 check referenced above was subsequently deposited into account number xxx0865 at First California Bank on October 13, 2010. Bank records further reveal that a \$5,500 check dated September 29, 2010 (which cleared on October 13, 2010) and apparently signed by KINDE DURKEE was issued from that account and was made payable to MDC Realty Service. I am informed by FA Williams that other records reveal that KINDE DURKEE had a loan on her business office with MDC Realty Service. FBI SA Jones has informed your affiant that Ms. DURKEE admitted during the interview on September 1, 2011 that she paid all of her mortgages on her personal and business property out of her D&A business accounts.

The Transfer of \$20,000

27. Bank records reveal that the \$20,000 check to D&A Merchants referenced above was subsequently deposited into account number xxx1251 at First California Bank on October 14, 2010. That check covered a negative balance and was also used to make a payment to American Express in the amount of \$1,284.59. FA Williams informed your affiant that this appears to be a payment for a processing fee to American Express.

Interview with Assemblymember Jose Solorio

28. On September 2, 2011, your affiant spoke with Assemblymember Jose Solorio. He informed your affiant that he was not aware of the checks for \$300,000 and \$377,181.24 that were withdrawn from his money market account, and he did not authorize those withdrawals from that account.

Interview of KINDE DURKEE

29. According to FBI SA Jones, Ms. DURKEE informed him that she used the D&A business accounts to pay for her daily living expenses, including clothes, food, entertainment, and mortgages.

Reports filed with the California Secretary of State

October 11, 2010

30. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately October 11, 2010 for the period of time July 1, 2010 to September 30, 2010 reported that there was cash-on-hand in the amount of \$729,135.56. According to bank records for Solorio for Assembly 2010, however, the actual balance as of September 30, 2010 was only \$33,175.81. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. This report was delivered by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

31. This report was subsequently amended by filings made on

November 5, 2010, November 15, 2010, and November 18, 2010. In none of those amended reports was there any mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. All three reports were delivered by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

October 21, 2010 *RC/000*

32. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately October 21, 2010 for the period of time October 1, 2010 to October 16, 2010 reported that there was cash-on-hand in the amount of \$747,712.73. According to bank records for Solorio for Assembly 2010, however, the actual balance as of October 15, 2010 was only \$63,216.88. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. The report was delivered by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

33. This report was subsequently amended by the filings made on November 5, 2010, November 15, 2010, and November 18, 2010 referenced above. As noted, in none of those reports was there any mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. And, as noted, all three reports were delivered by the Postal Service or a private or commercial

interstate carrier to the California Secretary of State's office in Sacramento.

February 2, 2011

34. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately February 2, 2011 for the period of time October 17, 2010 to December 31, 2010 reported that there was cash-on-hand in the amount of \$744,886.80. According to bank records for Solorio for Assembly 2010, however, the actual balance as of December 31, 2010 was only \$62,407.60. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. The report was delivered by the Postal Service or a private or commercial interstate carrier to the California California Secretary of State's office in Sacramento.

August 4, 2011

35. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately August 4, 2011 for the period of time January 1, 2011 to June 30, 2011 reported that there was cash-on-hand in the amount of \$688,186.54. According to bank records for Solorio for Assembly 2010, however, the actual balance as of June 30, 2011 was \$7,076.38, and on July 29, 2011 was only \$26,446.83. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. The report was delivered

by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

CONCLUSION

36. For the reasons stated above, I respectfully assert that there is probable cause to believe that between September 1, 2010 and continuing to the present, in the State and Eastern District of California, KINDE DURKEE did devise and intend to devise a material scheme and artifice to defraud Jose Solorio and the Solorio for Assembly 2010 campaign, and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises; and that, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, did knowingly cause to be sent or delivered by the Postal Service or any private or commercial interstate carrier, items of mail according to the directions thereon, in

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violation of Title 18, United States Code, Section 1341.

I ask that this complaint be filed and that an arrest warrant issue for KINDE DURKEE in this matter.

DATED: September 2, 2011



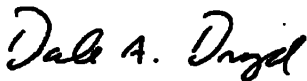
Reginald L. Coleman
Special Agent
Federal Bureau of Investigation

Approved as to form:



John K. Vincent
Assistant U.S. Attorney

Sworn and Subscribed to me on
September 2, 2011



DALE A. DROZD
United States Magistrate Judge

Exhibit C



FIRST CALIFORNIA BANK

September 16, 2011

Re: Durkee & Associates

Dear Durkee Client:

We have been working diligently to try to resolve the status of the accounts that were controlled by Durkee & Associates ("Durkee"). The more we investigated the situation, the more it appears that Durkee had comingled funds belonging to various different campaigns and organizations and had made repeated transfers between accounts on which Durkee had signing authority.

We concluded that there was a very high likelihood that the balance credited to any given account did not represent accurately the funds, if any, actually belonging to the campaign or organization named on the account. In certain circumstances, it is apparent that account balances contained funds that had previously been credited to non-related accounts. These conditions appeared to be pervasive in the Durkee controlled accounts.

Faced with grave uncertainties and conflicting, or potentially conflicting, demands, based upon advice of counsel, the Bank determined that it would file an interpleader action in Los Angeles Superior Court with respect to all, or at least the vast majority, of the Durkee controlled accounts.

The Bank will remit the account balances to the appropriate court, which will then be in a position, over time, to determine the specific amounts that are owed to each of the campaigns, candidates and organizations that had utilized the services of Durkee. We believe that this is the best way to ensure that all of the Durkee clients are treated fairly and equitably with full judicial oversight.

Each of the parties to the interpleader action will be receiving service of process. In order to expedite the matter, you might want to provide us with the name of the appropriate person with, or attorney for, the campaign or organization as well as his/her address. To do so, please complete the enclosed form and return it in the envelope provided or you may also email the information to durkeeinfo@fcbank.com or call First California Bank's Client Services Group at 1-800-856-7905.

Very truly yours,

Edmond R. Sahakian
Executive Vice President
Branch Administrator

P. O. Box 5112 Westlake Village, CA 91359-5112

Phone 800-856-7905

Fax 805-437-4358

www.fcbank.com Member FDIC

Exhibit D



FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

To: Chair Ravel and Commissioners Eskovitz, Garrett, Montgomery and Rotunda

From: Zackery P. Morazzini, General Counsel

Subject: Legal Division Analysis of Contribution Limits and LDFs in Wake of Recent Accounts of Widespread Campaign Fraud and Pending Interpleader Action

Date: October 31, 2011

The Commission has asked that the Legal Division analyze the legal issues regarding application of campaign contribution limits for donors that have already contributed to state officers, candidates, or committees¹ given the alleged widespread fraud perpetrated by political treasurer Kindee Durkee and her firm Durkee & Associates. We have also been asked to discuss the scope of the proper use of contributions raised through Legal Defense Funds, and anticipate issuing an Advice Letter on this topic.

SUMMARY OF CONCLUSIONS

The Commission is bound by the Political Reform Act and does not have independent authority to waive contribution limits or the post-election fundraising prohibitions to allow candidates to raise replacement funds in the event of treasurer malfeasance. However, under the unique circumstances being faced by many candidates and committees that previously employed Durkee as their treasurer, the Act's contribution limits and implementing regulations can be interpreted to not apply where a contribution for an upcoming election was delivered to Durkee, but the contribution was never deposited into the intended candidate or committee account, and was instead misappropriated by Durkee. Under these facts, it appears to staff that, given the breadth of the alleged criminal conduct by Durkee, she was not acting as an agent for the candidate or committee when she received these contributions, but rather was acting with the intent to defraud her clients at the time of receipt. Therefore, these contributions were never accepted for purposes of the Act's contribution limits. However, once a contribution is deposited into the candidate or committee's account, the contribution is considered made and accepted and the Act's contribution limits apply, regardless of whether funds are thereafter misappropriated from the account. The Act provides no

¹ The Act's contribution limits apply per election, and do not apply to federal or local officers or candidates.

exception for the misappropriation of contributions once they are made and accepted. Any such exception would have to be enacted through legislation and further the purposes of the Act. There may, however, be instances where the evidence demonstrates that Durkee was in fact never acting as an agent for a candidate or committee, made no proper expenditures from their campaign accounts, and gave them no access to their accounts prior to misappropriating funds. Staff would consider such facts on a case-by-case basis to determine whether contributions were "accepted" for purposes of the Act's contribution limits.

Candidates and committees that have been named as defendants in the interpleader action filed by First California Bank may establish Legal Defense Funds to pay for attorneys' fees and legal costs related to their defense in that action. Candidates and committees interested in using these funds to pay for such costs in pursuing a cross-complaint against Durkee as part of their defense in the interpleader action are encouraged to request advice from Commission staff based upon the specific facts of their case.

However, a Legal Defense Fund cannot be used to pay attorneys' fees or costs incurred if a candidate or committee brings a separate plaintiff's action against Durkee seeking restitution of misappropriated contributions. The Act strictly limits the use of such funds to a candidate or officer's "legal defense" if they are "subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign...." Any exception for a plaintiff's action filed by a candidate or committee against Durkee would have to be enacted through legislation and further the purposes of the Act.

FACTUAL ALLEGATIONS

As discovered during an audit by the Commission's Enforcement Division, and as alleged in the federal complaint against Durkee filed by the United States Attorney's Office, Durkee engaged in an illegal scheme whereby she transferred campaign funds from committee accounts for Assemblymember Jose Solorio to her firm's account without the knowledge or consent of her client. She also is alleged to have improperly transferred funds between accounts, sometime transferring funds from federal committee accounts to state committee accounts and vice versa, in an attempt to cover up her actions. It has also been reported that Durkee misappropriated contributions prior to depositing them into her clients' accounts.

Federal prosecutors accuse Durkee of misappropriating over \$670,000 from Assemblymember Solorio alone. Representatives of Senator Diane Feinstein have reported that Durkee misappropriated approximately \$4.7 million in federal contributions. Having signatory authority for nearly 400 committee accounts, some estimate that Durkee could have stolen as much as \$25 million in campaign funds over the past few years.

In September of 2011, First California Bank² filed an interpleader action in the Los Angeles County Superior Court, naming nearly 400 officers, candidates, and committees

² We are informed that Durkee maintained most or all of her clients' campaign accounts at First California Bank.

as defendants, and remitting the remaining balance of each account to the court. As discussed more fully below, should that action proceed as a proper interpleader action, the candidates and committees named as defendants will have an opportunity to establish their entitlement to the remaining funds.

CONTRIBUTION LIMITS UNDER THE POLITICAL REFORM ACT

The Supreme Court of the United States has recognized that limits on political contributions serve the government's important interest in preventing corruption because they reduce the risk of *quid pro quo* arrangements and mitigate "the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." (*Buckley v. Valeo* (1976) 424 U.S. 1, 25.)

Most recently, in *Citizens United v. Federal Election Commission* (2010) 130 S.Ct. 876, the Supreme Court reaffirmed the *Buckley* Court's holding with regard to the corrupting potential of large direct contributions. (*Id.*, at 908 ["The *Buckley* Court ... sustained limits on direct contributions in order to ensure against the reality or appearance of corruption."].) It is the state's interest in preventing candidate corruption, or the appearance thereof, that supports the Act's limits on political contributions.

The Act imposes limits on direct contributions to state officers and candidates. These limits apply per election. Section 85301³ provides:

(a) A person, other than a small contributor committee or political party committee, **may not make** to any candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office **may not accept** from a person, any contribution totaling more than three thousand dollars (\$3,000) **per election**.

(b) Except to a candidate for Governor, a person, other than a small contributor committee or political party committee, **may not make** to any candidate for statewide elective office, and except a candidate for Governor, a candidate for statewide elective office **may not accept** from a person other than a small contributor committee or a political party committee, any contribution totaling more than five thousand dollars (\$5,000) **per election**.

(c) A person, other than a small contributor committee or political party committee, **may not make** to any candidate for Governor, and a candidate for governor **may not accept** from any person other than a small contributor committee or political party committee, any contribution totaling more than twenty thousand dollars (\$20,000) **per election**.

³ The limits set forth in this Section apply per election and are adjusted biennially by the Commission based upon changes to the Consumer Price Index. The limits applicable for the 2011 -12 election cycle are \$3,900 for legislative candidates, \$6,500 for statewide candidates except governor, and \$26,000 for candidates for governor. (Section 83124; Regulation 18544.)

(d) The provisions of this section do not apply to a candidate's contributions of his or her personal funds to his or her own campaign.

Under Section 85302, "small contributor committees" are subject to separate contribution limits for various candidates, as are individual contributions to committees and political parties under Section 85303. This legal analysis applies equally to these provisions to the extent Durkee was the treasurer for the intended recipients of the contributions and the recipients were victims of the alleged fraud.

Under the relevant provisions of Regulation 18421.1, appearing within the campaign reporting provisions of the Commission's regulations, the following standards apply to the making and receipt of monetary contributions:

(a) A monetary contribution, including one made through wire transfer, credit card transaction, debit account transaction or similar electronic payment option (including one made via the Internet), is "made" on the date that the contribution is mailed, delivered, or otherwise transmitted to the candidate or committee. Alternatively, the date of the check or other negotiable instrument by which the contribution is made may be used in lieu of the date on which the contribution is mailed, delivered, or otherwise transmitted, provided it is no later than the date the contribution is mailed, delivered, or otherwise transmitted.

(b) Notwithstanding subdivision (a), for purposes of the disclosure of late contributions, as defined in Government Code section 82036 and pursuant to Government Code section 84203, a monetary contribution is "made" on the date the contribution is mailed, delivered, or otherwise transmitted to the candidate or committee. Consistent with 2 Cal. Code Regs. section 18401, the candidate or committee shall maintain documentation to support the date the contribution was made.

(c) A monetary contribution is "received" on the date that the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. All contributions received by a person acting as an agent of a candidate or committee shall be reported to and disclosed by the candidate or committee, or by the committee's treasurer, no later than the closing date of the next campaign statement that the committee or candidate is required to file.

ANALYSIS

At the Commission's October 13, 2011 public hearing in Los Angeles, staff's earlier Interested Persons meeting in Sacramento, and through written correspondence, members of the regulated community, the public, and representatives of candidates and committees previously represented by Durkee provided comments regarding potential action or non-action by the Commission with regard to application of the Act's contribution limits and the use of Legal Defense Funds. Specifically, it has been suggested that the contribution limits should not be applied in instances where a contribution was delivered to Durkee but never deposited into the candidate's account, but was instead either stolen by Durkee

for her personal use or deposited into another client's account without the knowledge or consent of the candidate, or a contribution was delivered to Durkee and deposited into the candidate's account but thereafter transferred to Durkee's account, another client's account, or otherwise misappropriated. It has also been suggested that contribution limits should not be applied to those whose accounts are frozen and their assets have been remitted by the bank to the Superior Court as part of the interpleader action.

The question is whether under any of these scenarios the Commission has the authority to apply the Act and Regulations, or amend the Regulations, in a manner that permits contributors that have already "maxed out" to a candidate or committee to again contribute up to the contribution limit for the same election. Each scenario will be addressed below.

1) Contributions Delivered to Durkee But Never Deposited Into Candidate or Committee Account

The audit findings, criminal allegations, and resulting interpleader action all indicate that Durkee was not acting as an agent for a candidate or committee for purposes of receiving the contributions that were never deposited into the clients' accounts, but was instead acting with the intent to misappropriate the contributions for her personal benefit at the time she received them.

The Act's contribution limits prohibit the completion of a transaction: the making and accepting of a contribution above the set limit. It is upon completion of the transaction that the possibility of corruption, which the limits are intended to prevent, comes into being. When receiving campaign contributions, treasurers are acting as agents of the candidate or committee for purposes of this transaction. Thus, a contribution is considered "received" on the date that "the candidate or committee, or the agent of the candidate or committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made...." (Regulation 18421.1, subd. (c).)

In California, "An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." (Civ. Code, § 2295.) However, an agent can never have authority to commit fraud upon the principal. (*Meyer v. Glenmoor Homes, Inc.* (1966) 246 Cal.App.2d 242, 264.) Those committing fraud against the principal are not acting as agents, as "an agency can be created only for the performance of lawful acts." (*Vaughan v. People's Mortg. Co.* (1933) 130 Cal.App. 632, 644 [internal citation omitted].)

The wide spread pattern and practice of fraud alleged to have been employed by Durkee indicates that, in instances where she never deposited the contributions into her clients' accounts, she was committing fraud at the outset and thus did not "receive" these contributions as an agent for the candidate or committee. Agents have no authority to defraud the principal. Therefore, under these specific circumstances, prior to deposit the candidate or committee had no possession or control of the contributions. As such, although those contributions that were given to Durkee were "made," they were never "accepted" or "received" as set forth in Section 85301 and Regulation 18421.1, subdivision (c), because neither the candidate, committee, nor proper agent "obtain[ed]"

possession or control of the check or other negotiable instrument by which the contribution is made.” Absent acceptance or receipt by the candidate, committee, or proper agent, the transaction has not been completed and there has been no contribution that would be subject to the contribution limit.

This analysis only applies to contributions to a candidate or committee being raised for the current election cycle. The Act’s ban on post-election fundraising presents a barrier to applying this analysis to contributions received for prior elections, unless a committee had debt. The prohibition on post-election fundraising set forth in Section 85316, subdivision (a) states:

[A] contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

The misappropriation of funds by the Durkee firm does not create a “debt” that a candidate or committee owes. Rather, those who had funds misappropriated by Durkee may be owed money by the firm. For purposes of the post-election fundraising ban, the Durkee firm’s activities do not give rise to new debts for the affected candidates and committees.

Importantly, in the event a candidate or committee recovers from Durkee, through the interpleader action, or otherwise misappropriated funds that were never deposited into their account, any such recovery must be returned to the contributor if the contributor to which the amount of recovery can be attributed has contributed again and the combined total would violate the applicable contribution limit.

2) Contributions Delivered to Durkee and Deposited Into Candidate or Committee Accounts

Even under the unique facts presented, once a contribution is deposited into a candidate or committee account, it is considered “made” and “accepted” under the plain language of the Act and is therefore subject to contribution limits.⁴ Once the contribution is deposited, the transaction is complete and the candidate or committee has actual possession and control of the contribution – even if only for a limited time. The Act’s language appears to provide no exception for contributions that are misappropriated from the account prior to use by the candidate or committee. Any such exception would require a legislative amendment to the Act, and would have to further its purposes.

⁴ There may be instances where the evidence demonstrates that Durkee accepted and deposited contributions into a candidate or committee account over which the client had no control or signatory authority, yet she made no expenditures from the account for campaign purposes but instead misappropriated all contributions for her own personal benefit. Staff would consider such facts on a case-by-case basis to determine whether the evidence is sufficient to demonstrate that Durkee was in fact at all relevant times acting with an intent to defraud the candidate or committee and not as an agent such that those deposited and then misappropriated contributions would not be considered “accepted” for purposes of the Act’s contribution limits.

3) Candidate or Committee Accounts Frozen or Remitted to Court Due to Interpleader Action

Because a contribution remaining in a frozen account, or remitted to the court as part of the interpleader action, was necessarily deposited into the account, it would be considered "made" and "accepted" under the plain language of the Act and therefore subject to contribution limits. Once the contribution is deposited, the transaction is complete and the candidate or committee has actual possession and control of the contribution – even if only for a limited time before the account is frozen or the funds are remitted to the court. The Act's language appears to provide no exception for contributions that are frozen or remitted to a court prior to use by the candidate or committee. Any such exception would require a legislative amendment to the Act, and would have to further its purposes.

PROPER USE OF LEGAL DEFENSE FUNDS

Commission staff also anticipates receiving a request for an Advice Letter regarding the proper use of Legal Defense Funds (LDFs) under the circumstances described herein. Below is the analysis that will be employed in responding to any such request.

The Act permits candidates to establish LDFs for certain purposes. Contributions to LDFs are not subject to limits. Section 85304 states:

(a) A candidate for elective state office or an elected state officer may establish a separate account to defray attorney's fees and other related legal costs incurred for the candidate's or officer's legal defense if the candidate or officer is subject to one or more civil or criminal proceedings or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. These funds may be used only to defray those attorney fees and other related legal costs.

(b) A candidate may receive contributions to this account that are not subject to the contribution limits set forth in this article. However, all contributions shall be reported in a manner prescribed by the commission.

(c) Once the legal dispute is resolved, the candidate shall dispose of any funds remaining after all expenses associated with the dispute are discharged for one or more of the purposes set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 89519.

(Emphasis added.) The Act was amended to provide for the establishment of LDFs by local candidates under the same terms as set forth in Section 85304 (see Section 85304.5). Regulation 18530.45 further identifies what procedures must be used in establishing an LDF at the local level.

Regulation 18530.4, in relevant part, implements Section 85304 for state candidates and officers and clarifies the proper uses of and limitations on LDFs:

(g) Limitations. For the purposes of Section 85304(a), the following limitations apply:

(1) Legal defense funds may only be raised in an amount reasonably calculated to pay, and may only be expended for, attorney's fees and other related legal costs.

(A) "Attorney's fees and other related legal costs" includes only the following:

- (i) Attorney's fees and other legal costs related to the defense of the candidate or officer.
- (ii) Administrative costs directly related to compliance with the requirements of subdivisions (b) and (d) and the recordkeeping requirements of subdivision (c) of this regulation.

(B) "Attorney's fees and other related legal costs" does not include for example expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.

(2) A candidate or officer may only raise funds under this regulation for defense against a civil or criminal proceeding, or for defense against a government agency's administrative enforcement proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officer's governmental activities and duties. [...]

(3) Legal defense funds may not be raised in connection with a proceeding until the following has occurred:

(A) In a proceeding brought by a government agency, when the candidate or officer reasonably concludes the agency has commenced an investigation or the agency formally commences the proceeding, whichever is earlier.

(B) In a civil proceeding brought by a private person, after the person files the civil action.

The plain language of both the statute and the implementing regulation is clear that LDF funds may only be used in connection with a candidate or officer's "legal defense" if the

candidate or officer is "subject to" a "civil or criminal proceeding or administrative proceeding."

Use of LDFs to Pay for Attorneys' Fees and Legal Costs Related to the Interpleader Action

Soon after the federal complaint was filed against Durkee, First California Bank filed an interpleader action and remitted to the superior court all the remaining funds in the approximately 400 accounts managed by Durkee, totaling nearly \$2.5 million. It is our understanding that all, or nearly all, alleged victims of Durkee are named as defendants in the action.

An interpleader action is a procedure whereby a person holding money or personal property to which conflicting claims are being made by others can join all claimants and force them to litigate their claims among themselves. Interpleader is proper whenever multiple claims are made by two or more persons such that they may expose the person against whom the claims are asserted to multiple liability. (*Id.*; see also Ca. Code Civ. Proc., § 386, subd. (b).)

Under such circumstances, it appears that the persons named in the interpleader action, including those named by reference to their candidate controlled committee, are defendants in a civil action directly related to the conduct of an election campaign for purposes of Section 85304, and may use funds raised through an LDF to pay attorneys' fees and legal costs related to the interpleader action. Such costs could include fees for auditors to examine bank records for purposes of establishing the amount of funds embezzled or otherwise misappropriated by Durkee or others, and other matters related to proving up the amount of money to which the defendant is entitled.

Additionally, because Durkee & Associates are also named as defendants in the interpleader action, we believe LDF funds may properly be used by candidates or committees that wish to file cross-complaints in that action against Durkee, to the extent appropriate or permitted in the interpleader action.⁵ Defendants in an interpleader action may file claims against each other as part of the action. (Ca. Code Civ. Proc., § 386.) In fact, those interpleader defendants having claims against each other may be required to assert such claims through a cross-complaint. (Compare *Cheiker v. Prudential Ins. Co. of America* (9th Cir. 1987) 820 F.2d 334, 336 [cross-complaint compulsory in interpleader action] with *State Farm Fire & Cas. Co. v. Pietak* (2001) 90 Cal.App.4th 600, 615 [arguably not].) Under such circumstances, we believe LDF funds may be properly used for attorneys' fees and legal costs related to both the defense of the interpleader action and the directly related, and perhaps compulsory, cross-complaint to the extent necessary to defend one's rights. Establishing all claims against the other defendants in an interpleader action would appear to be part and parcel to one's legal defense in such an action. Therefore, such use would appear to be directly related to the legal defense of a candidate or officer subject to a civil proceeding in accordance with Section 85304. Candidates or committees interested in using LDF funds to pursue such a cross-complaint

⁵ The extent to which a cross-complaint may be a legally or procedurally appropriate vehicle for seeking recovery or restitution from Durkee is beyond the scope of this memorandum.

are encouraged to seek advice from Commission staff based upon the individual facts of their case so staff can make a determination based upon concrete facts.

Use of LDFs to Pay for Attorneys' Fees and Legal Costs Related to Defending the Victim's Federal Rights During the Course of a Federal Prosecution of Durkee in Which the Candidate or Committee is a Victim in the Specific Case

Federal law (18 U.S.C. § 3771) provides enumerated rights for crime victims. Specifically, this law states, in relevant part:

- (a) Rights of crime victims. -- A crime victim has the following rights: [¶¶]
 - (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
 - (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
 - (5) The reasonable right to confer with the attorney for the Government in the case.
 - (6) The right to full and timely restitution as provided in law. [¶¶]
- (c) ... (2) Advice of attorney. -- The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).
- (d) ... (1) Rights. -- The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a).

Section 3771, subdivision (e) defines "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense...."

The language of Section 3771 contemplates the existence of formal charges pending against the accused (see § 3771, subd. (a)(2) [right to timely notice of public court proceeding]; (a)(3) [right not to be excluded from public court proceedings]) and for purposes of Section 85304, formal charges are necessary to qualify the candidate or committee as being subject to a criminal proceeding. Thus, under federal law, crime victims may defend their rights with the assistance of an attorney, including the right to restitution, in the course of a federal prosecution. We believe that LDF funds may properly be used by a candidate or officer that meets the definition of "crime victim" to cover attorneys' fees and related legal costs in a federal criminal action against Durkee under the facts described herein, because such use is directly related to the legal defense of a candidate or officer's rights, and the candidate or officer is subject to the criminal proceeding, in accordance with Section 85304.

Use of LDFs to Pay for Attorneys' Fees and Costs Related to a Separate Civil Action to Recover Contributions

It has also been asked whether LDF funds could be used by a candidate or officer to institute a separate civil action against Durkee for purposes of pursuing recovery of misappropriated contributions. The answer appears to be no.

Under the Section 85304, as discussed above, use of such funds is strictly limited to a candidate or officer's "legal defense" if the candidate or officer is "subject to" a "civil or criminal proceeding or administrative proceeding." Given the strict language of the statute and implementing regulations, the Commission receives very few requests for legal opinions on the proper use of LDFs. Therefore, we find no guidance in our prior opinions. However, under these facts, we do not see how instituting a plaintiff's action against Durkee to recover misappropriated contributions would meet the plain terms of the Act. Unlike an interpleader action where a candidate or officer is named as a defendant, a plaintiff's suit is not a "legal defense," nor does it make the candidate or officer "subject to" a civil action. To the contrary; the candidate or officer would be the prosecutor of, rather than subject to, the civil suit. Therefore, we do not believe LDF funds may be used for such purposes under the present statutory language. We believe a legislative amendment to Section 85304 would be necessary in order to authorize such use.

Potential LDF Legislation

The Commission may wish to support legislation to amend Section 85304 to authorize the use of LDF funds to pursue civil restitution actions against treasurers or others accused of misappropriating contributions. A narrowly-drawn amendment could be put forth that would authorize such use. We believe such an amendment would further the purposes of the Act in that candidates or officers would be using such funds to recover contributions. Pursuant to Section 89510, contributions are deemed to be held in "trust for expenses associated with the election of the candidate or for expenses associated with holding office." Permitting LDF funds to be used to recover misappropriated contributions that were held in trust would fit within the intent expressed in Section 85304, because the recovery of contributions "aris[es] directly out of the conduct of an election campaign" and serves the purpose of ensuring that elections are conducted more fairly by not disadvantaging a candidate or officer by requiring either personal or campaign funds to be used to recover funds held in trust. (Section 81002, subd. (e).)



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02/17/2012 08:39 AM

To "JSelinkoff@fec.gov" <JSelinkoff@fec.gov>,
"ARothstein@fec.gov" <ARothstein@fec.gov>
cc "Elias, Marc (Perkins Coie)" <MElias@perkinscoie.com>

Subject: Feinstein for Senate AOR

Wanted to follow up on our conversation regarding the Feinstein for Senate AOR.

The review, to date, shows a significant mismatch between (1) reported contributions to the Committee and (2) deposits into the Committee's First California Bank accounts. In most quarters, the deposits exceeded the reported contributions (likely due to repeated unauthorized transfers in and out of the account), but in some quarters, the reported contributions exceeded the deposits, which suggests that some contributions to the Committee may never have been deposited into the Committee's accounts by Durkee. We do not know exact percentages yet.

With respect to the exhibits, each is a public document:

- **Exhibit A:** The document is public. Court documents for this court can generally be found here: <https://www.lasuperiorcourt.org/onlineServices/civilImages/>. The website requires a fee to access documents. I do not know whether this particular document is available on the website or whether one must obtain it directly from the court.
- **Exhibit B:** The document is public. It can be found on <http://pacer.psc.uscourts.gov>, which requires a fee to access documents.
- **Exhibit C:** The document is public. It is part of the Plaintiffs' complaint in the civil matter (see Exhibit A).
- **Exhibit D:** The document is public. It can be found here: <http://www.fppc.ca.gov/agendas/11-11/26CampaignFraudMemo.pdf>.

With this information, it is our expectation that the request will be deemed "complete" and the AOR will be posted. Please let us know if you have any further questions.

Thanks,

Jonathan S. Berkon | Perkins Coie LLP

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02/22/2012 04:54 PM

To "ARothstein@fec.gov" <ARothstein@fec.gov>
cc "Elias, Marc (Perkins Coie)" <MElias@perkinscoie.com>,
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<KSKeane@perkinscoie.com>, "JSelinkoff@fec.gov"

bcc

Subject RE: Feinstein for Senate Advisory Opinion Request

Ms. Rothstein:

1) The first question presented in the AOR concerns both donor funds that were deposited into the Committee's accounts and donor funds that were not deposited into the Committee's accounts; the second questions concerns only those funds that were not deposited into the Committee's accounts.

2) Under the Committee's proposed method, the Committee would deem its earliest contributions for the 2012 election cycle to have been used to fund its authorized disbursements for the 2012 election cycle, until all of its authorized disbursements have been accounted for. For example, if the Committee made authorized disbursements of \$1,000,000, then it would not seek to resolicit the first \$1,000,000 of contributions received in the 2012 election cycle.

3) The AOR concerns donor funds relinquished in any form, including via check and credit card.

With this response, we assume that the advisory opinion request will be deemed complete and posted on the FEC's website.

Regards,
Jon Berkon