



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
Press Office
Public Disclosure

FROM: Commission Secretary *(Signature)*

DATE: April 11, 2012

SUBJECT: Comment on Draft AO 2012-07
(Feinstein for Senate)

Transmitted herewith is a timely submitted comment from Marc E. Elias, Kate S. Keane, and Jonathan S. Berkon, counsel for Feinstein for Senate.

Draft Advisory Opinion 2012-07 is on the agenda for April 12, 2012.

Attachment



RECEIVED

2012 APR 11 PM 12:12

FEC MAIL CENTER

2012 APR 11 PM 12:22

Marc Erik Elias

PHONE: (202) 434-1609

FAX: (202) 654-9126

EMAIL: MElias@perkinscoie.com

700 Thirteenth Street, N.W., Suite 600

Washington, D.C. 20005-3960

PHONE: 202.654.6200

FAX: 202.654.6211

www.perkinscoie.com

April 11, 2012

BY HAND DELIVERY

Shawn Woodhead Werth
Commission Secretary
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request 2012-07

Dear Ms. Werth:

We are writing on behalf of Feinstein for Senate (the "Committee") in response to the draft of Advisory Opinion 2012-07 circulated on April 6, 2012 (the "Draft").

The Draft concludes that the Committee may not accept replacement contributions from contributors whose funds were embezzled by Kinde Durkee. This Draft, if adopted, would deprive hundreds of donors of their statutory and constitutional right to provide direct financial support to their candidate of choice, and would prevent the Committee from recouping the funds that Ms. Durkee embezzled. Basic principles of equity compel a different result than the Draft reaches and, as explained below, so do the Commission's regulations and precedent.

The Committee requests that the Commission reject the Draft, and instead permit the Committee to accept the replacement contributions. In the event the Commission rejects the Committee's first request, the final opinion should grant its second request – to permit the Committee to accept replacement contributions from contributors whose funds were never deposited in the Committee's account, but were instead deposited in Ms. Durkee's account or the account of another entity. The current Draft does not set forth a clear response to the Committee's second request.

On March 30, Ms. Durkee pleaded guilty to five counts of mail fraud, in violation of 18 U.S.C. § 1341. The information accompanying the plea concludes that Ms. Durkee "routinely

77015-0001/LEGAL23338734.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DALLAS • DENVER • LOS ANGELES • MADISON • PALO ALTO
PHOENIX • PORTLAND • SAN DIEGO • SAN FRANCISCO • SEATTLE • SHANGHAI • WASHINGTON, D.C.

Perkins Coie LLP

April 11, 2012

Page 2

misappropriated client funds by moving without authorization substantial sums of money out of client accounts, including political campaign accounts, into Durkee & Associates', or into other clients' accounts.¹ Ms. Durkee "caused, *without authorization*, the deposit" of checks, on the Committee's account, to be deposited into Durkee & Associates accounts, and used the money "to pay her personal expenses ... to pay business expenses ... [and] to repay unauthorized withdrawals from other client accounts."² As a result of Ms. Durkee's criminal activities, hundreds of donors have been deprived of their statutory and constitutional right to provide direct financial support to the Committee, and the Committee has been deprived of its right to accept such contributions.

The legal question presented by this request is whether funds provided to the Committee and subsequently stolen by Ms. Durkee before they could be utilized for authorized campaign purposes were "accepted" by the Committee under the Federal Election Campaign Act (the "Act"). The Act makes it impermissible for the Committee to "knowingly *accept* any contribution" in excess of the statutory limits.³ If the Committee did not "accept" the embezzled funds, there is no statutory basis to prevent the Committee from accepting additional contributions from the donors who provided these funds.

The Draft sidesteps this question, however, and instead asks whether the donors who provided the funds "made" contributions to the Committee. This is the wrong question to ask, as the Commission's precedents make clear. In Advisory Opinion 1992-42 (Lewis), the donors "made" contributions to the committee upon relinquishing the funds. Yet because the funds were never deposited in the committee's account, the Commission concluded that the donors could provide replacement checks and that the contributions would not count against the current election's limits. In Advisory Opinion 1999-23 (ABPAC), Arrest PAC "made" a contribution when it mailed a \$4,000 check to ABPAC. Yet because the funds were never deposited in the PAC's account, the Commission concluded that the PAC could replace the original \$4,000 check and that the contribution would not count against the current calendar year limits. And in Advisory Opinion 2000-11 (Georgia Pacific), the Georgia Pacific employees "made" contributions to the PAC when they had funds deducted from their salaries. Yet because the funds were never utilized by the PAC, the Commission concluded that Georgia Pacific could cut replacement checks and that the contributions would not count against the current calendar year limits.

To "accept" a contribution, in other words, the Committee must take some affirmative step to receive the funds for authorized campaign purposes. In each of the above-cited opinions, the

¹ Information, *United States v. Durkee*, 2:12-cr-123 (E.D. Cal. Mar. 27, 2012), ¶ 13 (attached as Exhibit A).

² *Id.*, ¶¶ 25, 27, 29, 31, 39, 52 (emphasis added).

³ See 2 U.S.C. § 441a(f) (emphasis added).

April 11, 2012

Page 3

Commission permitted donors to provide replacement checks because the committees had not taken any such steps to "accept" the contributions. In this particular situation, where Ms. Durkee either embezzled funds prior to depositing them in the Committee's account or where she transferred the funds post-deposit so as to deprive the Committee of their use, the Committee likewise did not take the requisite steps to "accept" the funds.

The Draft tries to suggest otherwise, by imputing Ms. Durkee's acts to the Committee:⁴

Here, the Committee, *through its treasurer*, received the contributions that were made to the Committee, and that are the subject of this advisory opinion. *The Committee deposited the contributions and did not return, refund, or seek redesignation or retribution of the contributions during the relevant time periods.*

But the parallel criminal proceedings in this case directly contradict this assertion. The Information accompanying the criminal plea found that Ms. Durkee acted *without the authorization* of the Committee. Under the Commission's view of agency, which reflects the common law approach, "[a] master is subject to liability for the torts of his servant committed *while acting in the scope of their employment*."⁵ An "agent's embezzlement cannot, by definition, be within the scope of the agent's employment."⁶ Because Ms. Durkee was acting outside the scope of her employment at all times with respect to the funds at issue, there is no basis to impute her acts to the Committee. As a result, even though Ms. Durkee appropriated the funds for her own use, the Committee did not "accept" them.

Furthermore, the suggestion that the Commission's precedents compel the Draft's conclusion is wrong. The Draft contends that the line of opinions cited by the Committee was limited to "situations where contributors retained possession of their funds because their contribution checks were never deposited into any account" and that the "common thread in these Advisory Opinions is that the contributions were never negotiated by being deposited in a bank account."⁷ But in Advisory Opinion 2000-11 (Georgia Pacific) and Advisory Opinion in 1999-33 (MediaOne PAC), the employees' contributions, via payroll deduction, *had been deposited* in a company bank account. Yet the Commission still permitted the respective PACs to accept replacement checks from their connected organizations. The line in the sand that the Draft

⁴ See Draft Advisory Opinion 2012-07, at 7 (emphasis added).

⁵ 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).

⁶ Statement of Reasons of Chairman Michael E. Toner and Commissioner David M. Mason in Mater Under Review 5721 (July 27, 2006), at 2.

⁷ Draft Advisory Opinion 2012-07, at 8.

April 11, 2012

Page 4

attempts to draw is one that the Commission has already crossed.⁸

The common thread that unites these advisory opinions, and the Committee's request, is the presence of a third party preventing the recipient committee from utilizing contributions lawfully made by donors. In each advisory opinion, the Commission recognized that the donor intended to make a contribution but, due to circumstances beyond the control of the donor or the committee, the donor's intent was not effectuated. The Commission correctly recognized that "barring the deposit of funds into [a committee] account would not effectuate the intent of contributors who have lawfully relinquished control and possession of the funds."⁹ Faced with the choice of either denying donors their statutory and constitutional right to provide direct financial support to the committee, on the one hand, or permitting a replacement contribution to be made on the other, the Commission has consistently opted for the latter approach. It should do so here as well.

Granting the Committee's request does not present any dangers of actual or apparent corruption, as the Draft suggests. The corruption problem emerges in "a system of private financing of elections" because a candidate "must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign."¹⁰ The donors who attempted to make contributions to the Committee, but were thwarted by Durkee, have not provided the Committee with *any* resources to assist the campaign. Their attempt to provide resources is the equivalent of a contribution pledge, which, until the contribution is accepted, is not regulated by the Act and poses no threat of actual or apparent corruption.

The Commission should reject the Draft, which represents a departure from the legal principles undergirding its precedents, and should grant the Committee's request. At the very least, the Commission should permit the Committee to seek replacement checks from donors whose funds were never deposited in the Committee's accounts but may have been deposited by Ms. Durkee into one of her accounts or an account of another entity. Because these funds were never deposited in the Committee's accounts, there is no basis to preclude the Committee from resoliciting the donors who provided them. Imposing such a bar would be a stark departure from

⁸ The Draft's reliance on Advisory Opinion 1989-10 (DeConcini) is similarly misplaced. This opinion dealt with the very different issue of whether a committee may raise funds to retire debt for an election already held, where there had been an embezzlement of funds in that election. In the DeConcini opinion, the Commission reasoned that "[a]ny funds that the former treasurer allegedly embezzled or misappropriated are not debts or obligations owed by the '88 committee." Advisory Opinion 1989-10 (emphasis in original). But the question of whether certain funds qualify as "debts" under the Commission's debt repayment rules has no bearing on the issue presented here, namely whether the Committee "accepted" these particular contributions for purposes of the Act.

⁹ Advisory Opinion 2000-11 (Georgia Pacific).

¹⁰ See *Buckley v. Valeo*, 424 U.S. 1, 27 (1976).

April 11, 2012
Page 5

Commission precedent.

Very truly yours,

Marc E. Elias/BS

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

cc: Anthony Herman, General Counsel

Exhibit A

1 BENJAMIN B. WAGNER
2 United States Attorney
3 JOHN K. VINCENT
4 PHILIP A. FERRARI
5 Assistant U.S. Attorneys
501 I Street, Suite 10-100
Sacramento, California 95814
Telephone: (916) 554-2700

ORIGINAL
FILED

MAR 27 2012

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

212 - CR - 123 KJM -

UNITED STATES OF AMERICA,)	CASE NO.
Plaintiff,)	
v.)	VIOLATIONS: 18 U.S.C. § 1341 -
KINDE DURKEE,)	Mail Fraud (5 counts)
Defendant.)	

I N F O R M A T I O N

COUNTS ONE THROUGH FIVE: [18 U.S.C. § 1341 - Mail Fraud]

The United States Attorney charges:

KINDE DURKEE,

defendant herein, as follows:

I. Introduction

1. The State of California Fair Political Practices Commission (FPPC) was formed by the Political Reform Act of 1974. At all relevant times, the FPPC regulated campaign financing and spending in state political races, developed forms which certain candidates and officeholders in the State of California were required to file,

1 prepared manuals and instructions, and investigated alleged
2 violations of the Political Reform Act.

3 2. The Federal Election Commission (FEC) was formed by
4 Congress in 1975. At all relevant times, the FEC was an independent
5 regulatory agency. Its duties included to disclose publicly finance
6 information for federal officeholders and candidates, and to enforce
7 the provisions of the law such as the limits and prohibitions on
8 contributions.

9 3. KINDE DURKEE registered Durkee & Associates as a DBA with
10 the California Secretary of State on April 19, 2000.

11 4. KINDE DURKEE registered Durkee & Associates as a domestic
12 limited liability corporation (LLC) with the California Secretary of
13 State on September 22, 2003. KINDE DURKEE was listed in that filing
14 as a "Member/Manager/Partner" of Durkee & Associates.

15 5. At all relevant times, Durkee & Associates and KINDE DURKEE
16 specialized in providing accounting and campaign reporting services
17 to political committees for state or federal offices, including
18 political candidate campaign committees and non-profit organizations.
19 These services included:

20 - maintaining financial records of, and for, the committees
21 or organizations;

22 - keeping track of the contributions to, and expenditures
23 by, the committees or organizations; and

24 - filing necessary FPPC forms with the California Secretary
25 of State in Sacramento, or the necessary forms with the (FEC), which
26 reported, among other things, contributions, contributors,
27 expenditures, and the overall financial condition of the candidate
28 campaign committees or the organizations for whom a filing was

1 required.

2 6. At all relevant times, KINDE DURKEE frequently served as
3 the committee treasurer for the committees for which services were
4 provided. As such, she signed the campaign disclosure forms for
5 state officials and organizations which were submitted to the
6 California Secretary of State in Sacramento as required by state law.
7 KINDE DURKEE prepared and submitted, and caused the preparation and
8 submission of, campaign disclosure forms for federal officials to the
9 FEC.

10 7. At all relevant times, KINDE DURKEE often acted as the
11 custodian of records for the financial records of those clients who
12 held federal office. As such, she maintained records for all
13 contribution to the campaign committee, as well as the committee's
14 disbursements.

15 8. At all relevant times, KINDE DURKEE and Durkee & Associates
16 maintained bank accounts for their clients. These accounts included
17 ones into which campaign contributions were deposited and from which
18 client expenditures were made. KINDE DURKEE, either alone or with
19 another employee of Durkee & Associates, was a signatory on the bank
20 accounts. Over the years, KINDE DURKEE has had signature authority
21 on approximately 700 bank accounts, including those for political
22 campaigns.

23 9. At all relevant times, KINDE DURKEE was paid for the
24 services rendered. KINDE DURKEE was required to specify how much she
25 was paid in filings made to the California Secretary of State or the
26 FEC.

27 10. At all relevant times, Durkee & Associates had employees
28 that assisted in providing the accounting and campaign reporting

services.

11. At all relevant times, KINDE DURKEE operated Durkee & Associates and exercised control over the activities of its employees.

II. The Scheme to Defraud

12. From in or about January 2000 to in or about September 2011, in the State and Eastern District of California and elsewhere, KINDE DURKEE did devise and intend to devise and participate in a material scheme and artifice to defraud clients of Durkee & Associates, and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises.

III. Manner and Means

To further the scheme and artifice to defraud, defendant KINDE DURKEE did the following over the years:

13. KINDE DURKEE routinely misappropriated client funds by moving without authorization substantial sums of money out of client accounts, including political campaign accounts, into Durkee & Associates' or into other clients' accounts.

14. KINDE DURHEE submitted and caused to be submitted false information to the California Secretary of State and the FEC in that she did not report these money transfers in and out of accounts on the reports that she submitted or caused to be submitted to the California Secretary of State in Sacramento or the FEC on behalf of her clients. As a result, many of her clients believed that their campaign accounts had more money in there than they actually held.

15. KINDE DURKEE used the money transferred from client accounts:

- to pay her personal expenses, including mortgage payments

1 and American Express charges;

- 2 - to pay business expenses, including payroll; and
3 - to repay unauthorized withdrawals from other client
4 accounts.

5 A. Jerome Horton

6 16. At all relevant times, KINDE DURKEE was the treasurer of
7 the campaign committee for California State Board of Equalization
8 Member Jerome Horten.

9 17. Between December 2006 and April 2008, KINDE DURKEE paid
10 without authorization over \$200,000 from the Horton campaign's bank
11 account to Durkee & Associates. Almost none of these payments were
12 accurately reported on the Horton campaign disclosure forms that
13 KINDE DURKEE filed and caused to be filed with the California
14 Secretary of State.

15 18. Between approximately September 2007 and March 2010, KINDE
16 DURKEE repaid approximately \$90,000 to the Horton campaign bank
17 account. None of these repayments were accurately reported on the
18 Horton campaign disclosure forms that KINDE DURKEE filed and caused
19 to be filed with the California Secretary of State.

20 19. In approximately June 2010, when KINDE DURKEE was aware
21 that she was under investigation by the FPPC in connection with the
22 Horton campaign filings, she repaid at least some of the money that
23 she had misappropriated from the Horton account by misappropriating
24 money from three different federal campaign accounts: approximately
25 \$25,000 from Feinstein for Senate; \$30,000 from the Committee to Re-
26 elect Loretta Sanchez; and \$15,000 from the Committee to Re-elect
27 Linda Sanchez.

28 20. None of the foregoing transfers from federal campaigns was

1 reported by KINDE DURKEE in the federal disclosure forms that she
2 filed and caused to be filed with the FEC on behalf of those clients.
3 In addition, KINDE DURKEE did not accurately report the repayment of
4 money in Jerome Horton's disclosure form that she filed and caused to
5 be filed with the California Secretary of State.

6 B. Feinstein for Senate

7 21. At all relevant times, Dianne Feinstein was a United States
8 Senator for the State of California.

9 22. At all relevant times, KINDE DURKEE was the custodian of
10 records for the financial records of Senator Dianne Feinstein's
11 campaign committee. As such, she maintained records for all
12 contributions to the campaign committee, as well as the committee's
13 disbursements.

14 23. At all relevant times, KINDE DURKEE and Durkee & Associates
15 maintained bank accounts for Senator Dianne Feinstein's campaign
16 committee. These accounts included ones into which campaign
17 contributions were deposited and from which client expenditures were
18 made.

19 24. At all relevant times, KINDE DURKEE filed and caused the
20 filing of the necessary disclosure forms for Senator Dianne
21 Feinstein's campaign committee with the FEC.

22 1. The Misappropriation of \$18,000

23 25. On approximately March 2, 2010, KINDE DURKEE caused,
24 without authorization, the deposit of three checks, each for \$6,000
25 on the account of Dianne Feinstein for Senate, to be deposited into a
26 Durkee & Associates' bank account.

27 26. The \$18,000 deposit covered other personal and business
28 expenses of KINDE DURKEE. The deposit covered a mortgage payment of

1 \$2,596.39 for KINDE DURKEE's residence in Long Beach, CA; a payment
2 of \$3,168.11 to Sprint; and a \$10,000 payment for "payroll," which
3 covered payments to, among other things, Durkee & Associates'
4 employees and a 401k plan.

5 2. The Misappropriation of \$40,000

6 27. On approximately May 6, 2010, KINDE DURKEE caused, without
7 authorization, the deposit of two checks, each for \$20,000 on the
8 account of Dianne Feinstein for Senate, to be deposited into a Durkee
9 & Associates' bank account.

10 28. The deposit eventually covered a mortgage payment of \$3,400
11 for KINDE DURKEE's condominium in Long Beach, CA; a payment of \$6,633
12 to Anthem Blue Cross; a payment of \$1,038 to Kaiser Permanente; a
13 payment of \$1,613 to a self-storage company; payments to two
14 employees of Durkee & Associates; and a \$12,000 payment for
15 "payroll," which covered, among other things, payments for bank fees
16 and payments to several employees of Durkee & Associates.

17 3. The Misappropriation of \$23,000

18 29. On approximately July 7, 2010, KINDE DURKEE caused, without
19 authorization, the deposit of two checks, one for \$8,000 and the
20 other for \$15,000, each on the account of Dianne Feinstein for
21 Senate, to be deposited into a Durkee & Associates' bank account.

22 30. The deposit eventually helped to pay a \$30,000 bill to
23 American Express on approximately July 7, 2010. The bill included
24 charges to a variety of entities, including the Los Angeles Dodgers;
25 Union 76; Amazon.com.; Turners Outdoorsman; Harbor Freight Tools;
26 Disneyland; and Trader Joe's.

27 4. The Misappropriation of \$75,000

28 31. On approximately July 19, 2010, KINDE DURKEE caused,

1 without authorization, the deposit of three checks, each for \$25,000
2 on the account of Dianne Feinstein for Senate, to be deposited into a
3 Durkee & Associates' bank account.

4 32. The deposit covered a mortgage payment of \$5,500 for Durkee
5 & Associates' office building in Burbank, CA; a payment of \$2,555.53
6 to a credit card company; and multiple payments to Durkee &
7 Associates' employees, as well as a payroll company.

8 33. None of the foregoing transfers from the Dianne Feinstein
9 for Senate account to a Durkee & Associates' bank account were
10 reported on federal disclosure forms for that campaign committee
11 which KINDE DURKEE filed and caused to be filed with the FEC.

12 C. Committee to Re-elect Loretta Sanchez

13 34. At all relevant times, Loretta Sanchez was a member of the
14 United States Congress representing the 47th Congressional District of
15 California.

16 35. At all relevant times, KINDE DURKEE acted as the treasurer
17 of the campaign committee entitled Committee to Re-elect Loretta
18 Sanchez.

19 36. On approximately March 5, 2010, KINDE DURKEE caused,
20 without authorization, the deposit of a check for \$10,000 on the
21 account of the Committee to Re-elect Loretta Sanchez to be deposited
22 into a Durkee & Associates' bank account.

23 37. The deposit covered a payment of \$7,476 to Anthem Blue
24 Cross.

25 38. The \$10,000 transfer from the Committee to Re-elect Loretta
26 Sanchez to a Durkee & Associates' bank account was not reported on
27 federal disclosure forms for that campaign committee which KINDE
28 DURKEE filed and caused to be filed with the FEC.

1 D. Feinstein for Senate/Committee to Re-elect Loretta Sanchez

2 39. On approximately April 20, 2010, KINDE DURKEE caused,
3 without authorization, the deposit of two checks, each for \$15,000,
4 one on the account of Dianne Feinstein for Senate and the other on
5 the account of the Committee to Re-elect Loretta Sanchez, to be
6 deposited into a Durkee & Associates' bank account.

7 40. The two deposits covered a number of checks, including ones
8 to Chase Card Services, one to cover the fees for KINDE DURKEE's
9 mother at a senior residential facility, and ones payable to several
10 employees of Durkee & Associates. The deposits also covered
11 approximately \$750 in bank fees for non-sufficient funds checks.

12 41. Neither the \$15,000 transfer from the Feinstein for Senate
13 campaign committee nor the \$15,000 transfer from the Committee to Re-
14 elect Loretta Sanchez to a Durkee & Associates' bank account was
15 reported on federal disclosure forms for those campaign committees
16 which KINDE DURKEE filed and caused to be filed with the FEC.

17 E. National Popular Vote

18 1. Misappropriation of \$100,000

19 42. At all relevant times, National Popular Vote (NPV) and
20 National Popular Vote Institute (NPVI) were non-profit organizations
21 whose specific purpose was to study, analyze, and educate the public
22 regarding its proposal to implement a nationwide popular election of
23 the President of the United States.

24 43. At all relevant times, KINDE DURKEE was listed in official
25 filings as the Chief Financial Officer of NPV and NPVI.

26 44. At all relevant times, KINDE DURKEE maintained records
27 concerning contributions to, and expenditures by, those entities.
28 She also exercised control over funds of NPV and NPVI.

1 45.. On approximately April 27, 2010, KINDE DURKEE caused,
2 without authorization, a check for \$100,000 on the account of
3 National Popular Vote to be deposited into a Durkee & Associates'
4 bank account.

5 46. The deposit covered a number of checks, including ones to
6 American Express, several employees of Durkee & Associates, Kaiser
7 Foundation Health Plan, Chase, and nearly \$600 in bank fees for non-
8 sufficient funds checks.

9 2. Misappropriation of \$80,000

10 47. On approximately March 17, 2011, KINDE DURKEE caused,
11 without authorization, two checks on the account of National Popular
12 Vote, one for \$65,000 and the other for \$15,000, to be deposited into
13 a Durkee & Associates' bank account.

14 48. The deposit covered the following items:

Item	Amount	Payee
Check	\$3,000	Michael D. Antonovich
Check	\$1,000	Susan Davis for Congress
Check	\$1,000	Foster for Treasurer 2014
Check	\$1,000	Stop LA Oil Tax No on Prop O
Check	\$25,000	California Legislative Black Caucus
Check	\$1,500	Equality Network
Check	\$5,000	California Educational Solutions
Check	\$3,000	Center for Civic Participation
Check	\$3,000	National Popular Vote
Cheak	\$10,000	Durkee & Associates

25 49. Neither KINDE DURKEE nor Durkee & Associates informed NPV
26 or NPVI of these unauthorized withdrawals.

27 ///

28

1 F. Dianne Feinstein, Loretta Sanchez, and Linda Sanchez

2 50. At all relevant times, Linda Sanchez was a member of the
3 United States Congress representing the 39th Congressional District of
4 California.

5 51. At all relevant times, KINDE DURKEE acted as the treasurer
6 of the campaign committee entitled Committee to Re-elect Linda
7 Sanchez.

8 52. On approximately June 10, 2010, KINDE DURKEE caused,
9 without authorization, the deposit of three checks, each for \$10,000,
10 one on the account of Dianne Feinstein for Senate, another on the
11 account of the Committee to Re-elect Loretta Sanchez, and a third on
12 the account of the Committee to Re-elect Linda Sanchez, to be
13 deposited into a Durkee & Associates' bank account.

14 53. The deposit helped to cover a \$25,000 payment to American
15 Express, a loan payment of \$2,855.72 on KINDE DURKEE's residence in
16 Long Beach, a payment to Kaiser Foundation Health, and nearly \$600 in
17 bank fees for non-sufficient funds checks.

18 54. Neither KINDE DURKEE nor Durkee & Associates reported the
19 \$10,000 transfer from the Feinstein for Senate campaign committee,
20 the \$10,000 transfer from the Committee to Re-elect Loretta Sanchez,
21 or the \$10,000 transfer from the Committee to Re-elect Linda Sanchez
22 to a Durkee & Associates' bank account on any of the federal
23 disclosure forms for those campaign committees which KINDE DURKEE
24 filed and caused to be filed with the FEC.

25 G. Lou Correa for State Senate 2010

26 55. From 1998 to 2004, Lou Correa was a member of the
27 California State Assembly representing Central Orange County.

28 56. From 2004 to 2006, Lou Correa was a member of the Orange

1 County Board of Supervisors.

2 57. From 2006 to the present, Lou Correa was a member of the
3 California State Senate representing the 34th District.

4 58. At all relevant times, KINDE DURKEE acted as the treasurer
5 of the campaign committees for Lou Correa.

6 59. On approximately September 29, 2010, KINDE DURKEE caused,
7 without authorization, a cashier's check in the amount of
8 \$207,751.39, which was drawn on a certificate of deposit account in
9 the name of Lou Correa for State Senate, to be deposited into a
10 Durkee & Associates' bank account.

11 60. These funds were subsequently combined with other funds,
12 including a \$25,000 deposit from the account of Dianne Feinstein for
13 Senate, to cover the following items:

Item	Amount	Payee
Check	\$2,000	Richardson for Congress
Check	\$2,000	Richardson for Congress
Check	\$5,000	Warner for Congress
Check	\$30,000	Committee to Re-elect Linda Sanchez
Check	\$15,000	National Popular Vote Institute
Check	\$72,000	Susan Davis for Congress
Check	\$7,000	National Popular Vote
Check	\$150,000	Friends of Steve Pouquet

22 61. KINDE DURKEE filed and caused the filing of numerous false
23 campaign disclosure forms (entitled California Form 460s - Recipient
24 Committee Campaign Statement) for Lou Correa for State Senate 2010
25 with the California Secretary of State. The Ending Cash Balance
26 reported in the forms was vastly higher than what was actually in the
27 campaign account.
28

1 62. KINDE DURKEE filed and caused the filing of a disclosure
2 form with the California Secretary of State for the Lou Correa for
3 State Senate campaign committee which did not report as required the
4 \$207,751.39 transfer from that campaign committee to a Durkee &
5 Associates' bank account. KINDE DURKEE also filed and caused the
6 filing of a disclosure form with the FEC for the Dianne Feinstein for
7 Senate campaign committee which did not report as required the
8 \$25,000 transfer from that campaign committee to a Durkee &
9 Associates' bank account.

10 H. Solorio for Assembly 2010

11 1. The Misappropriation of \$300,000

12 63. From 2006 to the present, Jose Solorio was a member of the
13 California State Assembly representing the 69th District.

14 64. At all relevant times, KINDE DURKEE was the treasurer of
15 the campaign committee for Solorio for Assembly 2010.

16 65. On approximately October 1, 2010, KINDE DURKEE caused,
17 without authorization, a cashier's check in the amount of \$300,000,
18 which was drawn from a money market account in the name of Solorio
19 for Assembly 2010, to be deposited into a Durkee & Associates' bank
20 account.

21 66. These funds were subsequently combined with other funds to
22 cover the following items:

Item	Amount	Payee
Check	\$125,000	Committee to Re-elect Loretta Sanchez
Check	\$32,000	Merchant Account (Durkee & Associates)
Check	\$21,000	Durkee & Associates
Check	\$25,000	Durkee & Associates
Check	\$15,000	Merchant Account (Durkee & Associates)

1 67. A portion of the \$32,000 check to the Merchant Account
2 ultimately covered several checks to Durkee & Associate's employees.

3 68. A portion of the \$25,000 check to Durkee & Associates
4 ultimately covered payments to American Express, one in the amount of
5 \$16,854.76 and another in the amount of \$679.03. The payments to
6 American Express covered charges from a variety of entities,
7 including: Union 76; Amazon.com (gift cards); Baskin Robbins; Ulta;
8 Turners Outdoorsman; Deckert Surgical; Ariel's Grotto at Disneyland;
9 TIVO, Inc.; Bixby Animal Clinic; and the Aquarium of the Pacific in
10 Long Beach.

11 2. The Misappropriation of \$377,181.24

12 69. On approximately October 8, 2010, KINDE DURKEE caused,
13 without authorization, a cashier's check in the amount of
14 \$377,181.24, which was drawn from a money market account in the name
15 of Solorio for Assembly 2010, to be deposited into a Durkee &
16 Associates' bank account.

17 70. These funds were subsequently combined with other funds to
18 cover the following items:

Item	Amount	Payee
Check	\$45,000	Durkee & Associates
Check	\$45,000	Committee to Re-elect Loretta Sanchez
Check	\$60,000	Beth Krom for Congress
Check	\$40,000	Susan Davis for Congress
Check	\$25,000	Merchant Account (Durkes & Assouiates)
Check	\$25,000	Merchant Account (Durkee & Associates)
Check	\$5,000	Durkee & Associates
Check	\$6,000	Durkee & Associates
Check	\$5,000	CAL ACE - LA Efforts

1	Check	\$20,000	Durkee & Associates
2	Check	\$10,000	Durkee & Associates

4 71. The \$45,000 check which was deposited into a Durkee &
 5 Associates' bank account was ultimately used to cover fees for KINDE
 6 DURKEE's mother at a senior residential facility, and to pay at least
 7 three of Durkee & Associate's employees.

8 72. The two \$25,000 checks to the Merchant Account were
 9 ultimately used to cover payments for a number of things, including
 10 payments to the Democratic Foundation of Orange County - Voter Guide
 11 (\$13,000) and National Popular Vote (\$5,000).

12 73. The \$6,000 check which was deposited into a Durkee &
 13 Associates' bank account helped to cover a portion of the mortgage
 14 payment of \$5,500 for Durkee & Associates' office building in
 15 Burbank.

16 74. The \$20,000 check which was deposited into a Durkee &
 17 Associates' bank account covered a negative balance in that account
 18 and was also used to cover a payment to American Express in the
 19 amount of \$1,284.59.

20 75. KINDE DURKEE filed and caused the filing of numerous false
 21 campaign disclosure forms (entitled California Form 460s - Recipient
 22 Committee Campaign Statement) for the Solorio for Assembly 2010
 23 campaign committee with the California Secretary of State. The
 24 Ending Cash Balance reported in the forms was vastly higher than what
 25 was actually in the campaign's bank account.

26 76. KINDE DURKEE filed and caused the filing of a disclosure
 27 form with the California Secretary of State for the Solorio for
 28 Assembly 2010 campaign committee which did not report as required the

1 \$300,000 transfer or the \$377,181.24 transfer from that campaign
2 committee to a Durkee & Associates' bank account.

3 **IV. Summary**

4 77. There were at least 50 victims of this scheme. As a result
5 of the fraudulent scheme described herein, KINDE DURKEE caused a loss
6 exceeding \$7 million dollars to her clients.

7 **V. Mailings**

8 78.. On or about the dates set forth below, in the State and
9 Eastern District of California and elsewhere, for the purpose of
10 executing and attempting to execute the aforementioned scheme and
11 artifice to defraud, defendant KINDE DURKEE did knowingly place and
12 cause to be placed in any post office or authorized depository for
13 mail matter for delivery by the United States Postal Service, deposit
14 and cause to be deposited any matter to be sent or delivered by any
15 private or commercial interstate carrier, and cause to be delivered
16 by United States mail or such carrier according to the directions
17 thereon, the mail matter specified below:

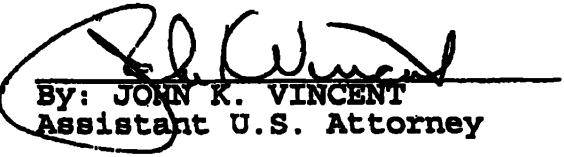
Count	Date	Mail Matter	Delivered To
1	7/19/10	FEC Form 3 Report of Receipts and Disbursements for Dianne Feinstein for Senate	Senate Office of Public Records 232 Hart Senate Office Building Washington, DC 20510
2	10/6/10	Form 460 for Lou Correa for State Senate for the period 7-1-10 to 9-30-10	California Secretary of State Sacramento, CA
3	1/31/11	Form 460 for Lou Correa for State Senate for the period 10-17-10 to 12-31-10	California Secretary of State Sacramento, CA
4	10/21/10	Form 460 for Solorio for Assembly 2010 for the period 10-1-10 to	California Secretary of State Sacramento, CA

		10-16-10	
5	2/2/11	Form 460 for Solorio for Assembly 2010 for the period 10-17-10 to 12-31-10	California Secretary of State Sacramento, CA

All in violation of Title 18, United States Code, Sections 2 and 1341.

BENJAMIN B. WAGNER
United States Attorney

Date: March 27, 2012


By: JOHN K. VINCENT
Assistant U.S. Attorney