

FEB 28 2001

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Juan Vargas) MUR 4742
Vargas for Congress '96 and)
Deanna Liebergot, as treasurer)
Larry Remer, Owner, The Primacy Group)

2001 FEB 28 A 9:45

SENSITIVE

GENERAL COUNSEL'S REPORT #4

I. **ACTIONS RECOMMENDED:** This report discusses new information obtained by this Office during the conciliation period and recommends that the Commission accept the attached signed counterproposed conciliation agreement with Vargas for Congress '96 and Deanna Liebergot, as treasurer, and close the file.

II. **DISCUSSION**

A. **New Information Concerning the Corporate Status of the Primacy Group**

In its September 12, 2000 General Counsel's Report in MUR 4742,¹ this Office recommended that the Commission make probable cause to believe findings against Juan Vargas, an unsuccessful candidate in the Democratic primary for the House of Representatives in 1996, his authorized committee, Vargas for Congress '96 and Deanna Liebergot, as treasurer (the "Committee"), and Larry Remer, Owner, The Primacy Group ("Primacy"), the Committee's primary vendor. The recommendations were premised on violations of 2 U.S.C. § 441a involving the extension of credit by Larry Remer/Primacy to, and debt incurred to Larry Remer/Primacy by, Mr. Vargas and the Committee, and a violation of 2 U.S.C. § 434(b) involving continuous misreporting of the debt by the Committee.

¹ This was General Counsel's Report #3.

21-04-403-1938

On September 26, 2000, the Commission rejected this Office's recommendations to find probable cause against Mr. Vargas, the Committee and Larry Remer/Primacy with respect to the section 441a violations, and approved the recommendation against the Committee for the section 434(b) reporting violation. In a Statement of Reasons signed by five Commissioners, the Commissioners set forth the bases for their rejection of this Office's section 441a probable cause recommendation, and then added as an alternative "mitigating factor," that "Primacy Group, as an unincorporated vendor, probably could have forgiven the amount owed under 11 C.F.R. 116.4(a)." MUR 4742, Statement of Reasons of Vice-Chairman Danny L. McDonald, Commissioner David M. Mason, Commissioner Karl J. Sandstrom, Commissioner Bradley A. Smith, and Commissioner Scott E. Thomas dated November 13, 2000 at 2.² The Commissioners specifically relied on two footnotes in the First General Counsel's Report for the determination that Primacy was unincorporated. *Id.* at fn. 1.

The two referenced footnotes addressed the allegation in the complaint that the activity in question resulted in a corporate contribution. In footnote 10, the Report stated that "although Complainant implies that Primacy is a corporation, a check of public records by this Office revealed that Primacy is not incorporated." MUR 4742, First General Counsel's Report dated April 12, 1999. In footnote 11, the Report stated that "[a]lthough Complainant alleges that forgiveness of the debt owed to Primacy by the Federal Committee would constitute a corporate contribution to the Federal Committee, the Primacy Group is not incorporated in California." *Id.*

² Chairman Wold signed a separate Statement of Reasons dated November 15, 2000.

21.04.403.1939

Subsequently, the Commission pursued apparent violations involving excessive contributions by a person (Larry Remer/Primacy), rather than corporate contributions.³

The two footnotes referenced above were included in the Factual and Legal Analyses issued to Primacy and the Committee. Similarly, the General Counsel's Brief stated that the complaint dealt with the relationship between the Vargas Committee and "its primary vendor, the unincorporated political consultant firm The Primacy Group, solely owned by Larry Remer." Through the probable cause stage, despite these statements, neither respondents nor their counsel commented on, or attempted to correct the characterization of, Primacy as "unincorporated."

Following the Commission's probable cause finding, this Office engaged in protracted conciliation negotiations with counsel for the Committee. After all of the major terms were settled, this Office said that it would be willing to recommend the resultant agreement, and counsel had mailed the signed conciliation agreement, counsel first mentioned that one more change should be made: the word "unincorporated" should be removed from the Paragraph IV description of Primacy. According to counsel, Larry Remer had informed him that Primacy, was, in fact, incorporated. Staff asked counsel to check again and to be as sure as possible. While waiting for counsel to contact this Office, staff accessed the website of the California Secretary of State and did a business name check for Primacy. The search turned up a "Primacy Consulting Group" which had the same address as The Primacy Group and which was shown as "dissolved." Attachment 1. When counsel called back, he stated that he had talked to

³ The attorney who drafted the First General Counsel's Report has left the Commission, and we are not certain of how he reached his conclusions concerning Primacy's non-corporate status. However, it appears that the publicly available information at the time would have revealed that a corporate entity called Primacy Consulting Group at the same address as the Primacy Group had been "dissolved." Alternatively, a check of corporations registered in California would not have uncovered The Primacy Group since it is part of another corporation with a different name. See discussion *infra*. These facts would have provided a proper basis for concluding, at the RTB stage, that the Primacy Group was unincorporated, subject to correction by the Respondents.

21-04-403-1940

21.04.403.1941

Mr. Remer, who had confirmed the corporate status. Staff informed counsel of the web search, and asked counsel to check with his client again. Counsel called back and explained that the Primacy Consulting Group was a failed attempt at a venture between Mr. Remer and others, which quickly dissolved. He said, however, that The Primacy Group involved in MUR 4742 is part of a corporation owned by Larry Remer called Tidbits, Inc. According to counsel, Primacy is the political consulting arm of Tidbits, Inc., and there is a "doing business as" relationship. A check of the California Secretary of State website, and a Dun & Bradstreet search, revealed that Tidbits, Inc. has been an active corporation since 1980, but no mention was made of the Primacy Group. Attachment 2. Staff then contacted counsel to ask for documentation of the use of the name "The Primacy Group." Counsel forwarded a copy of a "Fictitious Business Name Statement" which demonstrates that The Primacy Group is, in fact, part of Tidbits, Inc., and that the functions of the Primacy Group should be considered to be those of the corporation.⁴ Attachment 3. Counsel explained that he was not aware of the corporate status issue until his client informed him of the mistake on the same day he had informed this Office, and that Mr. Remer had not focused on that statement until that very day as well.

As a result of this new information, it appears that the probable cause recommendations regarding the extension of credit and the failure to timely collect debt should have been styled as improper section 441b violations, not as excessive section 441a violations. However, this Office would have presented essentially the same analysis with respect to either violation. Moreover, based on the Statement of Reasons signed by five Commissioners, it appears that the Commission would have, for essentially the same reasons (except for any reliance on the

⁴ As Attachment 2 shows, Larry Remer owns 100 percent of the stock of Tidbits, Inc.

alternative "mitigating factor"), rejected this Office's recommendations. Therefore, this Office does not recommend pursuing the contributions, at this late date, as section 441b violations.⁵

The Commission has not yet voted to close any part of the file in MUR 4742. Accordingly, the Statements of Reason have not been issued to any party or made public in any way. Therefore, the individual Commissioners have the opportunity to review and revise their Statements of Reason in accordance with this new information.

B. The Counterproposed Conciliation Agreement

Attached is a counterproposed conciliation agreement addressing the debt reporting violation by the Committee, which has been signed by its counsel, Frederic J. Woocher, Esq. Attachment 4.

⁵ Primacy's corporate status does not affect the debt reporting violation by the Committee.

21-04-403-1912

21.04.403.1943

Accordingly, this Office recommends that the Commission accept the attached counterproposed agreement with Vargas for Congress '96 and Deanna Liebergot, as treasurer, and that it close the file.

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Vargas for Congress '96 and Deanna Liebergot, as treasurer.
2. Close the file.
3. Approve the appropriate letters.

Lois G. Lerner
Acting General Counsel

2/23/01
Date

Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

Attachments:

1. Primacy Group Business Name Search Result
2. Tidbits, Inc. Business Name/D&B Search Result
3. Primacy Group Fictitious Business Name Statement
4. Conciliation Agreement

Staff Assigned: Tony Buckley

21-04-403-1944-196T-204-40-12



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Secretary of State Bill Jones

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Corporation		
THE PRIMACY CONSULTING GROUP		
Number: C1572226	Date Filed: 1/30/1991	Status: dissolved
Jurisdiction: California		
Mailing Address		
3609 4TH AVE.		
SAN DIEGO, CA 92103		
Agent for Service of Process		
TOM SHEPARD		
3609 4TH AVE.		
SAN DIEGO, CA 92103		

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- For information about certification of corporate records or for additional corporate information, please refer to [Corporate Records](#).
- Blank fields indicate the information is not contained in the computer file.
- If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code [Section 2114](#) information relating to service upon corporations that have surrendered.

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Approved: _____
 Date: 1/30/91

21.04.403.1945



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Corporation		
TIDBITS, INC.		
Number: C1013414	Date Filed: 12/26/1980	Status: active
Jurisdiction: California		
Mailing Address		
3609 FOURTH AVE		
SAN DIEGO, CA 92103		
Agent for Service of Process		
LARRY REMER		
3609 4TH AVE		
SAN DIEGO, CA 92103		

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D&B PUBLIC RECORD SEARCH

ATTENTION: LHOLLEY
NAME ON FILING: TIDBITS INC

DATE PRINTED: FEB 06, 2001
STATE: CALIFORNIA

*** SEARCH CRITERIA SUMMARY ***

NAME: TIDBITS
STATE(S): ALL
FILING TYPES: ALL

REFINED SEARCH: NO

*** CORPORATE AND BUSINESS REGISTRATIONS ***

REPORTED BY THE SECRETARY OF STATE OR OTHER OFFICIAL SOURCE AS OF 01/26/2001

This data is for informational purposes only, certification can only be
obtained through the Sacramento Office of the California Secretary of State.

NAME: TIDBITS, INC.
ADDRESS: 3609 FOURTH AVE, SAN DIEGO, CA 92103
D&B DUNS: 02-865-8227

FILING DATE: 12/26/1980	CORPORATION TYPE: PROFIT
DATE INCORPORATED: 12/26/1980	BUSINESS TYPE: CORPORATION
STATE OF INCORP: CALIFORNIA	REGISTRATION ID #: 01013414
STATUS: ACTIVE	ADDRESS TYPE: MAILING

WHERE FILED: SECRETARY OF STATE/CORPORATIONS DIVISION, SACRAMENTO, CA

REGISTERED AGENT: LARRY REMER, 3609 4TH AVE, SAN DIEGO, CA 92103

PRINCIPALS: LARRY REMER, PRESIDENT, 3609 4TH AVE, SAN DIEGO, CA 92103
STMT OF OFFICERS FILE NO: 0405355

AMENDMENTS: 06/25/1985 REINSTATED - FRANCHISE TAX BOARD REVIVOR
03/01/1985 SUSPENDED CORPORATION - FRANCHISE TAX BOARD SUSPENSION

FRANCHISE TAX DETAILS--STATUS: GOOD STANDING

D&B FILING REFERENCE NO: 11624239222

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ATTN: LHOLLEY

IN DATE

DUNS: 02-865-8227	DATE PRINTED		
TIDBITS INC	FEB 06 2001	RATING	--
+SAN DIEGO NEWSLINE			
BUSINESS INDUSTRIAL OUTLOOK	NEWSPAPER	STARTED	1977
	PUBLISHING	EMPLOYS	5
3609 4TH AVE	SIC NO.	HISTORY	INCOMPLETE
SAN DIEGO CA 92103	27 11		
TEL: 619 295-0085			

CHIEF EXECUTIVE: LARRY REMER, PRES

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* * * SUMMARY ANALYSIS * * *

The Summary Analysis section reflects information in D&B's file as of
February 5, 2001.

RATING SUMMARY

The absence of a Rating (--) indicates that the information available to
D&B does not permit us to assign a Rating to this business. In this
case, no Rating was assigned because D&B does not have sufficient
historical information about this company to assign a Rating.

Below is an overview of the company's D&B Rating(s) since 03/28/91:

RATING	DATE APPLIED
----	-----
--	03/28/91

* * * PAYMENT SUMMARY * * *

The Payment Summary section reflects payment information in D&B's file as of
the date of this report.

D&B has not received a sufficient sample of payment experiences to establish a
PAYDEX score.

Below is an overview of the company's dollar-weighted payments, segmented by
its suppliers' primary industries:

	TOTAL	LARGEST	%	DAYS SLOW			
TOTAL	DOLLAR	HIGH	W/IN				
RCV'D	AMOUNTS	CREDIT	TERMS	<31	31-60	61-90	91+
-----	-----	-----	-----	-----	-----	-----	-----

D&B receives over 315 million payment experiences each year. We enter these new and updated experiences into D&B Reports as this information is received.

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

Antic - Anticipated (Payments received prior to date of invoice)
Disc - Discounted (Payments received within trade discount period)
Ppt - Prompt (Payments received within terms granted)

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
06/00	Ppt	100	100	-0-		1 Mo
* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.						

FINANCE

09/11/00 On September 9, 2000 repeated attempts to contact this business
where unsuccessful.

HISTORY

09/11/00
LARRY REMER, PRES
DIRECTOR(S): THE OFFICER(S)

CORPORATE AND BUSINESS REGISTRATIONS REPORTED BY THE SECRETARY
OF STATE OR OTHER OFFICIAL SOURCE AS OF 01/26/2001:

This data is for informational purposes only, certification can only be obtained through the Sacramento Office of the California Secretary of State.

BUSINESS TYPE: Corporation - Profit DATE INCORPORATED: 12/26/1980
STATE OF INCORP: California

Business started 1977 by Larry Remer. 100% of capital stock is owned by Remer.

LARRY REMER born 1950. Graduated 1971 State University New York, Stony Brook, NY. 1972-77 employed by undetermined firms in the graphic arts design field. 1977-present active here.

RELATED CONCERN: Line Graphics, San Diego, CA. Started 1983.

Active in graphic arts and related design services. Intercompany relations undetermined.

=====

OPERATION

09/11/00

Newspaper publishing (100%).

Sells for cash 70% balance on net 30 day terms. Has 50 account(s).

Sells to the general public and commercial advertisers. Territory : San Diego.

Nonseasonal.

EMPLOYEES: 5 which includes officer(s).

FACILITIES: Rents 1,500 sq. ft. on first floor of two story concrete block building.

LOCATION: Suburban business section on well traveled street.
02-06(5XK /183) 99999 098183183

FULL DISPLAY COMPLETE

21-04-403-1950

PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA
County of San Diego

} S.S.

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the printer of the SAN DIEGO NEWSLINE, a newspaper of general circulation, printed and published weekly in the City of San Diego, County of San Diego and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of May 7, 1990, Case Number 622338; that the notice of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

9/11, 9/18, 9/25, 10/2

all in the year 19 97.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, this 2 day of Oct, 19 97.



Signature

SAN DIEGO
NEWSLINE

3405 FOURTH AVENUE SAN DIEGO CA 92103 619-592-0025

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FICTITIOUS BUSINESS NAME STATEMENT ST 023280

The name of the business: THE PRIMACY GROUP located at 3809 Fourth Avenue, San Diego, CA 92103, is hereby registered to the following: Tibble, Inc. CA. This business is conducted by: a Corporation. The transaction of business began on: NA. Signature of Registrant: Larry Romer, President of Tibble, Inc. This statement was filed with Gregory J. Smith, County Clerk of San Diego County on Sep 08, 1997.
9/11 9/18 9/25 10/2

ATTACHMENT 3
Page 1 of 1



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *SCJ*
DATE: February 28, 2001
SUBJECT: MUR 4742-General Counsel's Report #4

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

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72 Hour TALLY VOTE ☒
24 Hour TALLY VOTE ☐
24 Hour NO OBJECTION ☐
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96 Hour TALLY VOTE ☐

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Litigation ☐
PFESP ☐
RATING SHEETS ☐
AUDIT MATTERS ☐
LITIGATION ☐
ADVISORY OPINIONS ☐
REGULATIONS ☐
OTHER ☐

21-04-403-452