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April 11, 2005

Jesse Christensen  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington DC 20463

Re: MUR 5305

Dear Mr. Christensen:

I am writing on behalf of Dario Herrera, Herrera for Congress (the "Committee"), and Michael W. Kern, in his official capacity as treasurer (collectively, "Respondents") in response to the Commission's notice that it has found reason to believe that Respondents violated the Federal Election Campaign Act (the "Act") in the above-referenced matter.

First, Respondents vigorously dispute the Commission's conclusion that the Respondents knowingly and willfully violated the Act in this matter. As the Office of General Counsel well knows, the standard for a knowing and willful violation is met only if the Respondents undertook the action constituting the violation "with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). Yet the Office of General Counsel presents no evidence whatsoever in its Factual and Legal Analysis that Mr. Herrera or anyone affiliated with the Committee had "full knowledge" that the contributions at issue here were reimbursed.

As Respondents pointed out in their response to the original complaint, at the time the Committee accepted the contributions neither Dario Herrera nor any representative of the Committee knew or even suspected, or had any reason to know or suspect, that any of the contributions were reimbursed. *See also* Aff. of Dario Herrera, attached. The Office of General Counsel's sole argument -- that Mr. Herrera must have known

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2005 APR 11 P 4: 17

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April 11, 2005

Page 2

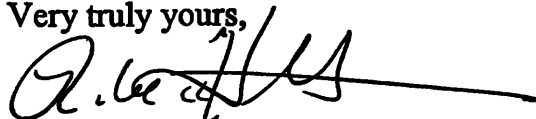
that the individual contributors could not have afforded the contributions they made – is so speculative that it lacks any meaningful evidentiary value.

Second, in the absence of evidence of actual knowledge of illegality by the Committee or a representative of the Committee, the Commission has no grounds upon which to argue that any of the Respondents committed any violation at all. As the Office of General Counsel surely knows, Commission precedent indicates that mere speculation is not enough to show knowledge sufficient to constitute a Section 441f violation. For example, the Commission found no Section 441f violation as to certain contributions in MURs 4530 and 4531 where there was no indication of reimbursement on the face of the checks, and no other information was "known to the recipient" indicating impermissibility. Statement of Reasons, MURs 4530 and 4531 at 4. *See also* Advisory Op. 1995-19 (no violation of Section 441f was alleged where allegations of reimbursement were the subject of a newspaper article published after the contributions were received; the recipient committee was simply obligated to use its best efforts to determine the legality of the contributions).

If the contributions at issue in this matter were in fact reimbursed, the Committee and Mr. Herrera are the victims here, not the perpetrators of the violation.

I look forward to hearing from you on this matter.

Very truly yours,



Rebecca H. Gordon  
Counsel to Respondents

Encl.

**AFFIDAVIT OF DARIO HERRERA**

1. My name is Dario Herrera.
2. I am a former Commissioner of Clark County, Nevada, and I was a candidate for the U.S. House of Representatives in the 2002 election for Nevada's 3<sup>rd</sup> Congressional District.
3. As a Clark County Commissioner, I came into contact with James M. Rhodes, sometimes directly and sometimes through his agents. I did not know Mr. Rhodes well, but was generally aware that he was a real estate developer and that he owned companies called Rhodes Design and Development Corporation, Rhodes Ranch, and Rhodes Framing.
4. I recall appearing at the offices of Rhodes Design and Development Corporation to meet potential voters and to pick up contribution checks a few times during the 2002 election. I made similar appearances at a number of local businesses in southern Nevada during the election campaign. I do not recall the precise dates or circumstances of any visits to Rhodes Design and Development Corporation.
5. During my campaign, I did not personally review any occupation or employer information provided by individual contributors, including but not limited to information provided by employees or spouses of employees of Rhodes Design and Development Corporation, Bravo, Inc. d/b/a Rhodes Framing, or Rhodes Ranch General Partnership.
6. At no time during the 2002 election campaign did I know or have reason to know that the employees or spouses of employees of Rhodes Design and Development Corporation, Bravo, Inc. d/b/a Rhodes Framing, or Rhodes Ranch General Partnership who contributed to my campaign were not the true sources of the funds they contributed.

Dario Herrera 4/00/05  
Dario Herrera

Subscribed and sworn to before me  
this 8<sup>th</sup> day of April, 2005.

Claudette B. Henry  
Notary Public  
Claudette B. Henry  
Notary Public, Washington, D.C.

My Commission Expires June 30, 2008  
[DA050970 014 DOC]

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