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REC'D  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2006 NOV 29 A 9 09

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November 20, 2006

Ms Ana Pena-Wallace  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

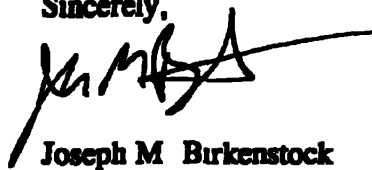
Re MUR 5379

Dear Ms Pena-Wallace

Enclosed please find the original of a signed and notarized affidavit from Michael B Fernandez with reference to the above-captioned matter

Please feel free to call or email if you have any further questions

Sincerely,



Joseph M Birkenstock

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BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

MUR 5379

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**AFFIDAVIT**

I, Miguel B Fernandez, being first duly sworn, depose and say as follows in connection with the Federal Election Commission's investigation in Matter Under Review 5379

- 1 My name is Miguel B Fernandez. In 2003, I was Chief Executive Officer and Chairman of CarePlus Health Plans, Inc ("CarePlus"). At that time, I was also President and Chief Executive Officer for CarePlus Medical Centers, Inc.
- 2 Because he had experience running medical centers, I hired Heriberto "Bert" Valdes to oversee the day-to-day operations of CarePlus Medical Centers, Inc. It is my recollection that Mr. Valdes had authority regarding the hiring, firing, promotion and/or demotion of all medical center employees. Mr. Valdes had some authority on salary issues for all medical center employees.
- 3 I did not recall the existence of the CarePlus employee handbook entitled "Team Member Handbook" until my July 27, 2005 deposition at the Federal Election Commission. I do not recall if I ever received a copy of the handbook, but I believe I did not cause this handbook to be created or distributed, nor do I recall ever receiving any training relating to this handbook. Specifically, I have no recollection of receiving any training relating to the section in the handbook on "Political Activities." I do not know if this handbook was issued to employees (at any level) while I was an executive at CarePlus. I do not know who drafted the section of the handbook on "Political Activities" nor whether CarePlus, or its predecessor entities, sought legal advice during the drafting of this handbook. My current understanding is that CarePlus employees are limited in what they may do to promote or support political candidates while at work or during working hours. I do not know if Mr. Valdes had any involvement in the drafting or editing of this handbook.
- 4 I have no knowledge about an employee handbook for CarePlus Medical Centers, Inc.
- 5 I am not an expert on the subject of campaign finance law, nor in fundraising for candidates for political office. My involvement in political fundraising has been limited to occasionally assisting a few individuals who I know either personally or professionally with raising money for fundraising events I was personally hosting. In the past, I have relied on the candidate or committee I was supporting for information and guidance on compliance with campaign finance laws.

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- 6 After my contact with Jim DeFede of the Miami Herald on or about March 28, 2003 and subsequent conversation with Mr. Valdes, CarePlus hired the Caplin & Drysdale law firm to offer legal advice and assistance regarding questions created by the e-mail Mr. Valdes sent to CarePlus administrators on or about March 24, 2003.
- 7 Attorneys from Caplin & Drysdale held a training session for a small subset of CarePlus and CAC Medical Centers executives on federal campaign finance rules. This session was conducted sometime after the DeFede article appeared in the Miami Herald. I am unsure as to the date of this training session, although it did occur before the May 8, 2003 fundraiser I hosted for Mayor Penelas. It was my hope and expectation that as a result of this training, if any of the attendees chose to engage in political fundraising in the future they would be familiar with federal campaign finance law so that they could comply with it. I played a limited role at this training session and was not present while the attorneys spoke. I introduced the attorneys to those executives who attended and then left for another meeting. I do not know whether the issue of using company staff, facilities, or resources was discussed during this training session.
- 8 Subsequent to the issues raised in the Miami Herald article, the Penelas fundraiser that originally was to be held at my home in April 2003 was cancelled, and all contribution checks collected from CarePlus employees as a result of Mr. Valdes' e-mail were returned.
- 9 I was still interested in personally supporting Mayor Penelas' campaign, so I decided to schedule a new fundraising event for Mayor Penelas to be held in May 2003 at my house. Because of the public controversy surrounding the cancelled April event, I took what I believed at the time to be all the steps necessary to ensure that the newly-planned fundraiser was done in full compliance with the law. I do not recall asking any CarePlus officers to help me raise funds for this event. I informed everyone who I personally invited to this new event - including CarePlus employees - that if they chose to attend and contribute they should bring their contribution checks to the event, so that they could give them directly to campaign staff.
- 10 Elizabeth Ricard, who was my personal assistant throughout this period (and still is, as she left CarePlus with me) performed services in connection with all of my business and personal activities. This has included not only handling my work schedule and correspondence, but also scheduling appointments for my gardener, arranging visits with my parents, picking up my drycleaning, handling my personal correspondence, and addressing travel and related scheduling issues for my children. I have always thought of Liz as my personal assistant, provided to me by the company to free me up to work on business matters. I did not think there were any legal issues in asking her to work on personal matters for me.

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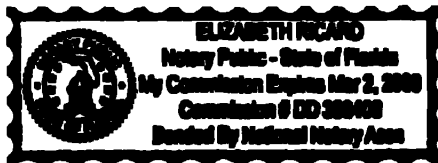
- 11 Consequently, it was my belief at that time that it was appropriate for Elizabeth Ricard to help me with my personal activity on the May 2003 Penelas fundraiser. I did not see my reliance on her as similar to the sort of activity by Care Plus personnel that had raised issues in connection with the cancelled April fundraising event. Nor did I have any idea that legal questions might be raised about her limited use of standard office supplies, such as pens, printer supplies and fax toner, as well as capital assets with no incremental costs like computers and telephones.
- 12 I am not aware of anyone at CarePlus raising concerns about the legality of Elizabeth Ricard's assistance with this fundraiser until after it occurred, or her use of computers and telephones in doing so. I only became aware of these issues after the fundraiser, subsequent to receiving notification of a complaint filed with the Federal Election Commission.
- 13 I do not recall whether I asked for or received legal advice regarding the use of CarePlus employees or corporate resources specifically in connection with my May 2003 fundraiser for Mayor Penelas prior to conducting that fundraiser. I do not know whether any other CarePlus executive or employee asked for legal advice regarding the use of CarePlus employees or corporate resources in connection with my fundraiser.
- 14 I reimbursed CarePlus for the catering costs for my fundraiser sometime after the event, as soon as I learned that Liz Ricard had paid my personal catering bill for the fundraiser out of the company account, rather than my personal account. I do not believe that I reimbursed CarePlus for any costs incurred in the use of corporate equipment and supplies, or for any services Elizabeth Ricard provided, in connection with this fundraiser.
- 15 I do not believe the Penelas Committee reimbursed CarePlus for the fair market value of services provided by its employees or for any corporate resources used in connection with my fundraising efforts for Mayor Penelas' U S Senate campaign during the time I owned the company. I have no personal knowledge whether CarePlus has received any such reimbursements since then, except that I have been informed that the only payment CarePlus ever received from the Penelas Committee was in connection with the catering costs for my May 8th fundraiser.

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Further the affiant sayeth not

  
\_\_\_\_\_  
Miguel Fernandez

Subscribed and sworn to before me, on this 14<sup>th</sup> day  
of Nov, 2006



Elizabeth Ricard  
\_\_\_\_\_  
Notary Public

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