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September 15, 2010 SECRETARY MUR #

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Christopher Hughes, Esq.  
Acting General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**SENSITIVE**

OFFICE OF GENERAL  
COUNSEL

Re: Jerry McNerney, McNerney for Congress, Pandell Law Firm, Inc. and Jerome C. Pandell

Dear Mr. Hughey:

Pursuant to 2 USC § 437g(a)(1) and 11 CFR § 111.4, please accept this letter as a Complaint against Jerry McNerney ("McNerney"), McNerney for Congress ("the Committee"), Pandell Law Firm Incorporated ("Firm") and Jerome C. Pandell ("Pandell") for operating in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("FEC" or "Commission") regulations, and more specifically, for violation of the prohibited corporate contribution provisions set forth in 11 CFR 114.2 (a) and (d).

I. Facts

McNerney for Congress is the principal campaign committee of Jerry McNerney, a Member of Congress and a candidate for the United States House of Representatives, campaigning to represent California's 11th Congressional District. The Committee's most recent Form 1 Statement of Organization was filed with the FEC on November 30, 2007. McNerney filed his most recent Form 2 Statement of Candidacy on November 25, 2008.

On September 13, 2010, Jerome C. Pandell wrote a letter on behalf of the Committee to a television station in Sacramento, California. According to that letter, Pandell and the Firm serve as "volunteer legal counsel to the McNerney for Congress campaign." The letter goes on to request that a broadcasting station stop airing a television advertisement that targets McNerney. See Exhibit 1. The California Secretary of State's website lists Pandell Law Firm, Inc. as a corporation incorporated in the state of California. See Exhibit 2.

II. Relevant Law

Federal Election Commission regulations strictly prohibit corporations "from making a contribution...in connection with any election to any political office, including local State and Federal offices." 11 CFR 114.2(a).

The FEC regulations similarly prohibit candidates and political committees from "knowingly accepting or receiving" illegal corporate contributions. 11 C.F.R. 114.2(d).

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The Act defines "contribution" in two ways. First, "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i). Second, "contribution" includes the "payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. 431(8)(A)(ii), 11 CFR 100.54.

The FEC regulations do provide that legal or accounting services rendered to or on behalf of an authorized committee of a candidate are not contributions if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely to ensure compliance with the Act. 11 CFR 100.86.

Regarding services other than those rendered solely to ensure compliance with the Act, FEC regulations state that the value of the services will not be considered a contribution to the recipient campaign or committee as long as the services are not offered by an individual who is being compensated. See 11 CFR 100.74. The Campaign Guide for Congressional Candidates ("Guide") elaborates on this point, stating "if volunteers are, in fact, paid for their services, *the activity is no longer considered volunteer activity*, and the payments, if made by someone other than the campaign itself, result in in-kind contributions, which must be reported by the campaign." Campaign Guide for Congressional Candidates and Committees (April 2008), at 37 (emphasis added).

No disbursements to the Firm appear on the Committee's FEC Form 3 Statements of Receipts and Disbursements.

### III. Legal Analysis

The Firm is a professional corporation that is incorporated under the laws of the state of California. Contributions from corporations are expressly prohibited by the Act and FEC regulations.

On September 13, 2010, Pandell wrote a letter on behalf of the Committee, stating Pandell and the Firm "are volunteer legal counsel to the McNerney for Congress campaign." The letter goes on to ask the broadcast station to stop airing a political advertisement that targets McNerney and which Pandell claims is false.

While the intimidating tone of the Pandell letter conveys at least a tacit threat to a broadcast station, he concludes by citing four inapplicable and ancient cases going back to 1978, 1973, 1961 and 1950, not a single one of which relates to the Act or compliance with the Act. Quite simply, this is because the Act does not cover the veracity of content in political advertisements, nor does the Act have any bearing on broadcast stations and which ads they do and do not choose to air. The letter, and Mr. Pandell's time spent drafting the letter, is not related in any way to the Act or to compliance with the Act.

Presumably, Pandell is being compensated by the Firm for the services he provides as an attorney employed there. Since Pandell and the Firm were not providing legal services related to the Act or to compliance with the Act and since the services of Pandell and the Firm were volunteered to McNerney and the Committee, it follows that these legal services are in-kind contributions from the Firm to McNerney and the Committee under the Act and FEC regulations.

As a corporation, the Firm is absolutely prohibited from contributing to the Committee. Pandell and the Pandell Firm made and McNerney and the Committee accepted a prohibited corporate contribution. This contribution is in direct violation of the Act and FEC regulations.

IV. Conclusion


Upon information and belief, and based upon the facts relayed herein, Jerry McNerney, McNerney for Congress, The Pandell Law Firm, Inc., and Jerome C. Pandell have violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission Regulations. Accordingly, we respectfully request that the Commission conduct an immediate investigation into the violations outlined above and impose the maximum penalty under law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully submitted,

  
DONALD L. NELSON

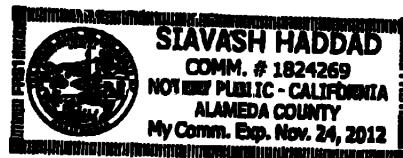
Signed and sworn to before me this 15th day of September, 2010.

  
Notary Public

My Commission Expires: Nov 24, 2012

RSVP: Donald L. Nelson

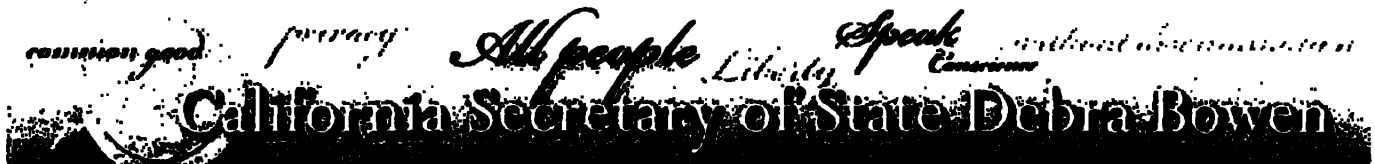
Danville, CA 94506-6160



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# Exhibit 2



## Business Programs

## Business Entities (BE)

## Online Services

- Business Search
- Disclosure Search
- E-File Statements
- Mail Processing Times

## Main Page

## Service Options

## Name Availability

## Forms, Samples &amp; Fees

## Annual/Biennial Statements

## Filing Tips

Information Requests  
(certificates, copies &  
status reports)

## Service of Process

## FAQs

## Contact Information

## Resources

- Business Resources
- Tax Information
- Starting A Business
- International Business  
Notations Program

Customer Alert  
(misleading business  
solicitations)

## Business Search - Results

Data is updated weekly and is current as of Friday, September 10, 2010. It is not a complete or certified record of the entity.

- Select an entity name below to view additional information. Results are listed alphabetically in ascending order by entity name.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

Results of search for " PANDELL " returned 1 entity record.

C2072399	06/17/1998	ACTIVE	<u>PANDELL LAW FIRM, INC.</u>	JANE CURRAN PANDELL
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