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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of

**CELA**

Timothy F. Mobley

Timothy M. Hohl

MTampa Financing Company, LLC

Express Freight of Florida, LLC

MUR 6054

GENERAL COUNSEL'S REPORT #3

**I. ACTIONS RECOMMENDED**

(1) Find reason to believe that Timothy F. Mobley knowingly and willfully violated 2 U.S.C. § 441f; (2) find reason to believe that Timothy M. Hohl knowingly and willfully violated 2 U.S.C. § 441f; (3) find reason to believe that MTampa Financing Company, LLC, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f; and (4) find reason to believe that Express Freight of Florida, LLC, knowingly and willfully violated 2 U.S.C. § 441f.

**II. INTRODUCTION**

This matter concerns reimbursed campaign contributions received by Vern Buchanan for Congress ("VBFC" or "Committee"), Representative Vernon Buchanan's principal campaign committee during the 2006 and 2008 election cycles, and the Republican Party of Florida Federal Account ("RPF"). As we noted in our Second General Counsel's Report in this matter ("GCR #2"), there is information that Timothy F. Mobley ("Mobley"), a business partner of Representative Buchanan ("Buchanan"), and Timothy M. Hohl ("Hohl"), Mobley's business associate, reimbursed contributions made by Terry Keith Howell ("Howell") to VBFC and the RPF in the 2008 election cycle. See GCR #2 at 17-18. The apparent reimbursements were carried out through transfers of funds from MTampa Financing Company, LLC, a company controlled by Mobley, and

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1 Express Freight of Florida, LLC, a trucking company that was jointly owned by Mobley,  
2 Hohl, and Howell.<sup>1</sup>

3 Based upon this information, described more fully below, we recommend that the  
4 Commission find reason to believe that Timothy F. Mobley knowingly and willfully  
5 violated 2 U.S.C. § 441f; Timothy M. Hohl knowingly and willfully violated 2 U.S.C.  
6 § 441f; MTampa Financing Company, LLC, knowingly and willfully violated 2 U.S.C.  
7 §§ 441b(a) and 441f; and Express Freight of Florida, LLC, knowingly and willfully  
8 violated 2 U.S.C. § 441f.

9 **III. FACTUAL BACKGROUND**

10  
11 Mobley is reportedly a Tampa developer whose relatives and employees have  
12 been the single largest group of contributors to Buchanan. See Susan Taylor Martin,  
13 *Bankrupt Democrat Says He Was Pressured to Contribute to GOP Rep. Vern Buchanan*,  
14 *St. Petersburg Times* (June 20, 2009), available at [www.TampaBay.com](http://www.TampaBay.com). According to  
15 VBFC's disclosure reports, Mobley, his family members, and employees of his company,  
16 Mobley Homes, have contributed at least \$112,400 to Buchanan since the 2006 election  
17 cycle. Hohl is a certified public accountant. See <http://www.tpa-cpa.com/index.html>.

18 Mobley, Hohl, and Howell were partners in a trucking company called Express  
19 Freight of Florida, LLC ("EFF"), which was formed in January 2008. See Response at 2,  
20 Attachment C. It was owned 50% by Howell, 40% by Mobley (through another LLC)  
21 and 10% by Hohl (through a family limited partnership). *Id.* at 2 and Attachment C.  
22 Howell had experience in the trucking business, and Mobley provided the financing for

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<sup>1</sup> We mailed notification letters to Mobley, Hohl, Express Freight of Florida, LLC and MTampa Financing Company, LLC, on January 19, 2010. Mobley, Express Freight of Florida, LLC and MTampa Financing Company, LLC, filed a joint response on February 24, 2010 ("Response"). Hohl has not responded to our notification letter.

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1 EFF's operations through MTampa Financing Company, LLC ("MTampa"), a Mobley  
2 company that purchased EFF's accounts receivable at a discount in exchange for  
3 immediately funding EFF's operations, a process known as factoring. See Response  
4 at 2-3.

5 **A. March 31, 2008 Contribution to VBFC**

6 According to VBFC's disclosure reports, Howell made contributions to VBFC  
7 totaling \$8,800 on March 31, 2008: \$2,100 each for the 2006 primary and general  
8 elections,<sup>2</sup> and \$2,300 each for the 2008 primary and general elections. According to  
9 Howell's deposition testimony in an unrelated legal proceeding and statements he made  
10 to us during interviews, Mobley reimbursed Howell's contributions to VBFC using funds  
11 from one of Mobley's companies.<sup>3</sup>

12 Howell explained the origin and circumstances of these contributions to VBFC,  
13 including the relationship between Mobley and Buchanan. He testified that Mobley was  
14 partners with Buchanan in land deals. Howell Depo at 15. Mobley told Howell that  
15 Buchanan was going to invest \$4 million in a Mobley Homes development called K-Bar  
16 Ranch. Howell Depo at 58.<sup>4</sup> Howell told us in an interview that before he made the  
17 contributions to VBFC in March 2008, he also learned that Buchanan wanted to invest

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<sup>2</sup> VBFC disclosed debts outstanding from the 2006 primary and general elections. See VBFC April 2008 Amended Quarterly Report at Schedule D.

<sup>3</sup> Howell's deposition was taken in connection with *Amerifactors Financial Group, Inc. v. Keith Howell, et al.*, Case No. 06-8948, Hillsborough County Circuit Court, Florida (Howell Deposition dated February 11, 2009) ("Howell Depo"). Amerifactors held a second mortgage on Howell's home. Howell Depo at 7. According to the *Ramsey*, Amerifactors' claim against Howell was for breach of contract. Response at 11 and Attachment D.

<sup>4</sup> K-Bar was incorporated by several persons including Hohl and Mobley's son, Marc Mobley.

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1 \$500,000 in the factoring business.<sup>5</sup> In his interview, Howell stated that Mobley told him  
2 that reimbursing contributions was how Mobley raised funds for Buchanan, and that for  
3 years, Mobley has reimbursed individuals who have contributed to the Buchanan  
4 Committee.<sup>6</sup> According to Howell, Mobley told him that Buchanan asked Mobley to  
5 raise \$50,000 in contributions to VBFC.<sup>7</sup> Further, Mobley asked Howell to write a  
6 personal check to VBFC and stated that he would be reimbursed. In response to a  
7 question in his deposition, Howell agreed that Mobley asked him to contribute to VBFC  
8 using company funds because of Mobley's belief that Buchanan could do them favors.  
9 Howell Depo at 49-50. Howell testified that Mobley told him that "Vern Buchanan is  
10 somebody good to have on your side, because he was going to be in charge of overseeing  
11 DOT transportation stuff, so the amount of favors he could do for us was enormous."<sup>8</sup>  
12 Howell Depo at 49.

13 Howell testified that Mobley and Hohl then gave him the funds to use for his  
14 contributions to VBFC through a chain of transfers, starting from Mobley Homes through  
15 MTampa and EFF and then into Howell's personal bank account. Howell Depo at 18-19.

<sup>5</sup> As noted above, MTampa, Mobley's company that financed EFF, was a factoring business.

<sup>6</sup> Howell also told us that Mobley's son, Marc Mobley, once told him that when Buchanan needed to raise contributions, "everybody pays and my dad pays back everyone."

<sup>7</sup> Howell's recollection of Mobley's fundraising target appears to be corroborated by VBFC's disclosures to the Commission. According to the VBFC disclosure reports, Mobley, his family members, his business partners, and his employees contributed \$36,900 to VBFC during 2008. The first set of contributions, totaling \$28,200, were from six persons, including Howell, Hohl, two Mobley family members and one of Mobley's partners in Mobley Homes, and were dated March 31, 2008. The second set of contributions, totaling \$20,500, including additional contributions from Mobley's partner and one of his family members, as well as three Mobley Homes employees, and were dated June 30, 2008. By that time, the contributions from Mobley's associates totaled \$48,700. Mobley himself then contributed \$8,200 on July 14, 2008.

<sup>8</sup> Rep. Buchanan sits on the House Transportation and Infrastructure Committee and its subcommittees on Aviation, Highways and Transit, and Railroads, and Pipelines, and Hazardous Materials. See Congressional Yellow Book (Winter 2010 ed.); Congressional Staff Directory (2009 ed.).

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1 Howell provided a copy of a record of EFF's Bank of America account indicating that on  
2 March 28, 2008, EFF issued an \$8,800 check to Howell that referenced "Political  
3 Contribution." See Attachment 1. Another document submitted by Howell is a page  
4 from his personal checking account statement for the period March 28, 2008 through  
5 April 28, 2008. See Attachment 2. The statement indicates, among the "Deposits and  
6 Other Additions" for that period, that there was an \$8,800 "counter credit" added to  
7 Howell's account on March 28, 2008.

8 When asked how much he contributed to VBFC, however, Howell responded,  
9 "That's up for debate . . . I couldn't give you an answer because I'm still finding out."  
10 Howell Depo at 14. Howell testified that he signed the contribution checks, including a  
11 \$4,200 check and a \$4,600 check. Howell Depo at 15. Howell provided to us copies of  
12 the check carbons of his contribution checks to VBFC. See Attachment 3. Howell also  
13 testified that he had never made a contribution to a candidate before his contributions to  
14 VBFC. Howell Depo at 19. He also explained that "If I never contributed anything to  
15 anybody as far as a campaign, why would all the sudden I want to give somebody, you  
16 know \$19,000,<sup>9</sup> especially being involved in a bankruptcy, especially trying to resolve all  
17 of this." Howell Depo at 32. Howell testified that if he had that much money to spend,  
18 "I would have been able to make my bankruptcy payments and stay up with that."  
19 Howell Depo at 32. Howell affirmed in his testimony that his contributions to VBFC  
20 were not made with his own money. Howell Depo at 33.

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<sup>9</sup> By referring to \$19,000, Howell appears to be approximating the total of the contributions to VBFC and the RPF, that is, the sum of the \$8,800 contribution to VBFC described here and the \$10,000 contribution to the RPF described in Section III.B below.

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1 Furthermore, Howell stated in an interview that he did not have the authority to  
2 unilaterally write checks from the EFF account but rather needed a second signature from  
3 one of his partners. Howell's inability to write EFF checks to himself appears to be  
4 corroborated by Hohl. Although Hohl did not respond to the notification letter that we  
5 sent to him, the available information includes a statement that Hohl made regarding  
6 Howell's contribution to VBFC that corroborates Howell's inability to disburse EFF  
7 funds to himself. Hohl was interviewed by an officer with the Pasco (Florida) County  
8 Sheriff's Office investigating a burglary at Howell's home.<sup>10</sup> Howell told the police (and  
9 later told us) that he suspected that the burglary could be related to his contributions to  
10 VBFC because a safe that was taken from his house contained documents relating to his  
11 contributions to VBFC. Accordingly, an officer investigating the burglary interviewed  
12 Hohl about Howell's contributions to VBFC. According to a police report in that  
13 investigation, Hohl told the officer that Howell was paid a \$600 per week salary. Hohl  
14 also stated that Howell told him that he wanted to make a contribution to VBFC, and,  
15 therefore, Hohl released funds to Howell to make the contribution to VBFC. Hohl told  
16 the officer that he believed that his providing these funds to Howell for the VBFC  
17 contribution was not a reimbursement.<sup>11</sup>

<sup>10</sup> Howell told us that he kept documents that corroborated his sworn testimony in a floor safe in his home. Sometime between 6:30 p.m. on July 31, 2009 and 1:15 p.m. on August 1, 2009, Howell alleges that someone broke into his home and stole the 300-pound floor safe. See Offense Incident Report dated August 4, 2009, which was provided to us by the Pasco County Sheriff's Office. See also Susan Taylor Martin, *Burglary adds twist to '08 campaign*, St. Petersburg Times (August 18, 2009). Prior to the burglary, Howell made a copy of the documents that were in the safe, which he provided to us. See, e.g., Attachments 1-7.

<sup>11</sup> Hohl was speaking of Howell's contribution to VBFC but stated erroneously that he released \$10,000 to Howell. He appears to have confused the amount of Howell's contributions to VBFC, which totaled only \$3,800, with Howell's subsequent \$10,000 contribution to the RPF.

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1           On February 24, 2010, Timothy Mobley, Express Freight of Florida, LLC, and  
2 MTampa Financing Company, LLC, submitted a response to notification letters we sent  
3 them on January 19, 2010. The Response identified Mobley as an active fundraiser for  
4 Buchanan and stated that in March 2008, Mobley asked Howell to consider making a  
5 contribution to VBFC. Response at 4. The Response states that Mobley believed that  
6 Howell had the financial means to make the contributions to VBFC. Response at 4-5.  
7 This assertion appears inconsistent with Hohl's statement to the police that he released  
8 EFF funds to Howell specifically in order for Howell to make the contribution. Also,  
9 according to the bank statement for Howell's account on which the VBFC contribution  
10 checks were drawn, Howell's account had a balance of \$458.45 at the start of the  
11 statement period on March 28, 2008. See Attachment 2. The first transaction on the  
12 statement is an \$8,800 counter credit on March 28, 2008, corresponding to the amount of  
13 the VBFC contribution in Howell's name, and Howell's contribution was disclosed by  
14 VBFC as received on March 31, 2008. See *id.* Thus, it appears that Howell did not have  
15 sufficient funds in his account to make the \$8,800 in contributions to VBFC on  
16 March 31, 2008, until Hohl released \$8,800 in EFF funds to him in order to make the  
17 contribution.

18           The Response also acknowledges that EFF provided Howell with the funds to  
19 make the contributions to VBFC (and, later that year, his contribution to the RPF).  
20 Response at 4. However, the Response states that EFF chose to characterize these  
21 disbursements on its 2008 federal tax return as partner distribution income, rather than a  
22 business expense, because they were for Howell's "personal" expenses. *Id.* The  
23 Response asserts that its characterization of Howell's expenses is based on information in

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1 "expense reports, oral communications, or other documents that accompanied the  
2 distribution requests or the distributions themselves." *Id.* This suggests that the  
3 characterization of the transfer of EFF funds to Howell that were used to make the  
4 contribution to VBFC was made after the fact by EFF based on an evaluation of the  
5 information that it had about that transfer. On the other hand, the Response also suggests  
6 that Howell chose to use his share of his partner distribution for the contributions.  
7 Response at 8. "Mr. Howell's political contributions, like many of his other personal  
8 expenses, were paid from income derived from his share of EFF distributions." *Id.* This  
9 latter description of the transfer in the Response suggests that the transfer itself was a  
10 partner distribution that Mr. Howell chose to use to make a contribution.

11 **B. September 26, 2008 Contribution to RPF**

12 The RPF disclosed that it received a \$10,000 contribution from Howell on  
13 September 26, 2008. Howell testified in his deposition that this contribution, like the  
14 earlier contributions to VBFC, was not made using his own funds. Howell Depo at 32-  
15 33. In an interview, Howell told us that Mobley asked Howell to write a check for  
16 \$10,000 to the RPF and that Howell would be reimbursed for this contribution. Howell  
17 also stated that he told Mobley that he was concerned about the appearance of his  
18 contribution because Howell was a Democrat but was contributing to the Republicans at  
19 a time when he didn't have any money. Howell told us that he wrote the \$10,000 check  
20 nonetheless and that it was then sent by Federal Express to Buchanan. Howell submitted  
21 documents indicating that he dated check #146 August 29, 2008, and made it payable to  
22 the Republican Party of Florida in the amount of \$10,000. See Attachment 4.

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1           Howell stated during his interview that a few days after he gave his \$10,000  
2   contribution for the RPF to Mobley, there was a meeting in Mobley's office at which  
3   Mobley, Hohl, and Howell discussed their discovery that there were insufficient funds in  
4   Howell's account to cover the check. According to Howell, there was a telephone  
5   conversation regarding the \$10,000 check between Mobley and a person that Howell  
6   believed was Buchanan or a VBFC representative. Mobley told Howell that the caller  
7   was upset that Howell's check did not clear and the caller wanted it taken care of right  
8   away. Mobley assured the caller that he would correct the problem.

9           Howell stated during his interview that Mobley and Hohl discussed how to add  
10   funds to Howell's account to enable the RPF contribution check to clear. Hohl indicated  
11   that EFF did not have enough funds. Consequently, Mobley and Hohl decided to transfer  
12   funds from MTampa, another Mobley company, to EFF, and then transfer that money to  
13   Howell's account. Similarly, in his deposition, Howell testified that Mobley and Hohl  
14   deposited \$10,000 into his Bank of America account as a reimbursement for Howell's  
15   \$10,600 contribution to the RPF, and that the funds were first transferred from Mobley  
16   Homes to MTampa, then to EFF, and finally to Howell's personal account. Howell Depo  
17   at 18-19.

18           Howell's statements during his interview and his deposition testimony appear to  
19   be corroborated by a copy of his bank account statement for the period August 28, 2008,  
20   to September 26, 2008, which he provided to us. See Attachment 5. The statement  
21   indicates that at the beginning of this period, Howell's account had a balance of  
22   \$1,629.86. Thus, there were insufficient funds to cover his \$10,000 contribution check to

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1 the RPF, which was dated August 29, 2008. According to Howell's bank statement, EFF  
2 wired \$10,000 into his account on September 3, 2008.

3 Howell also testified that there was a document demonstrating that the  
4 reimbursement funds were moved from MTampa to reimburse his contribution, Howell  
5 Depo at 30-31, and he provided that document to us. This document, a "Check Request"  
6 form, dated August 29, 2008, indicates that a \$10,000 payment should be made from the  
7 account of MTampa to the Republican Party of Florida. See Attachment 6. At the  
8 bottom of the form, it indicates that the payment was requested by "VB." Howell was  
9 not familiar with the form and was not certain who created it, but stated that the form  
10 appeared to be something that was used in the conduct of Mobley's other businesses,  
11 which shared an office with EFF. He could not explain why the form stated that the  
12 payment was to be made to the RPF rather than to himself. There is no record in the  
13 FEC database of a contribution from MTampa to the RPF at that time or any other,  
14 although the RPF disclosed receiving a \$10,000 contribution from Mobley on  
15 September 17, 2008.<sup>12</sup>

16 According to Howell, shortly after the \$10,000 wire transfer, his \$10,000  
17 contribution check to the RPF bounced for the second time.<sup>13</sup> According to Howell, his  
18 checking account, into which the \$10,000 wire transfer was deposited, had a balance of

<sup>12</sup> As discussed above, Howell stated that the decision to transfer funds from MTampa to Howell's account was made at some point after his contribution was sent to the RPF when it was discovered that his account had insufficient funds to cover the \$10,000 check. However, the date on Howell's contribution check, August 29, 2008, is the same as the date on the check request form. Thus, the check request form, which appears to represent the request for the funds to reimburse Howell, if dated accurately, would appear to contradict Howell's statement that the decision to make the transfer to reimburse the contribution was made after the contribution was submitted to the RPF.

<sup>13</sup> Howell said that Mobley called another meeting after the check bounced. According to Howell, Mobley and Hohl were angry, and Mobley told Howell that "We have to make this good to Vern. He called once and now I have to call him back."

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1 approximately \$9,900 at the time that his \$10,000 contribution check was deposited due  
2 to other disbursements. Howell's statement that there was \$10,000 wire transfer into his  
3 account and a \$10,000 check issued from his account that bounced more than once is  
4 corroborated by his bank statements from August 28, 2008, to September 26, 2008, and  
5 from September 27, 2008 to October 29, 2008. See Attachment 5. Specifically, the  
6 September statement indicates that Howell received a \$10,000 wire transfer from EFF on  
7 September 3, 2008. It also indicates that on September 19, 2008, check #146 for \$10,000  
8 was returned due to insufficient funds. At the close of the September statement, on  
9 September 26, 2008, the balance in Howell's account was \$9,982.41. The October  
10 statement indicates that \$10,000 checks were also returned for insufficient funds on  
11 October 1 and October 27, 2008. Howell also submitted a copy of a carbon of the check  
12 and a copy of the returned check. See Attachments 4 and 7.

13 According to Howell's statements during an interview, Hohl later told him that  
14 Mobley had made the \$10,000 contribution to the RPF "good" by putting the contribution  
15 on his personal credit card. Neither Mobley nor Hohl requested that Howell return the  
16 \$10,000 that they transferred into his checking account. We have no information  
17 indicating whether the RPF was aware of Mobley's use of a personal credit card to pay  
18 for Howell's contribution, if that is what occurred.<sup>14</sup>

19 The Response acknowledges that Mobley raised funds for the RPF but stated that  
20 Mobley "does not, however, have a specific recollection of soliciting Mr. Howell for such

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<sup>14</sup> The RPF also reported receiving a \$10,000 contribution from Mobley on September 17, 2008. The date of this disclosed contribution is nine days earlier than the date (September 26, 2008) the RPF disclosed for Howell's \$10,000 contribution. Accordingly, if Howell's testimony is accurate, it is not clear whether Mobley's September 17, 2008 contribution reflects his payment for Howell's contribution or if it is a separate and additional contribution made by Mobley to the RPF.

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1 a contribution."<sup>15</sup> The Response also includes an unsigned and undated EFF tax return,  
2 apparently prepared by Hohl, that indicates that EFF described a \$10,000 payment to  
3 Howell on September 4, 2008, as "Reimburse - Contr." and treated the payment as  
4 income to Howell. See Response at 4 and Attachment A.<sup>16</sup> According to the Response,  
5 this EFF tax return was filed on September 15, 2009. See Response at 3, footnote 3. As  
6 described below, the EFF tax return was filed months after the relationship between  
7 Mobley, Hohl, and Howell ended.

8 Although the Response indicates that Mobley does not recall soliciting Howell to  
9 contribute to the RPF, it also notes that Howell's contribution to the RPF was "apparently  
10 returned for insufficient funds." This fact does not appear to be reflected in the RPF's  
11 disclosure reports. The Response does not indicate how the Respondents knew that  
12 Howell's contribution was returned and is otherwise silent on the circumstances of  
13 Howell's contribution to the RPF. Consistent with the explanation of EFF's  
14 disbursement of funds for Howell's \$8,800 contribution to VBFC, the Response  
15 acknowledges that EFF provided funds to Howell for the contribution to the RPF but  
16 asserts that EFF characterized this disbursement as Howell's share of his partnership  
17 distribution income, and that Howell made the choice as to how to spend his partnership  
18 distribution income. Response at 4, 8.

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<sup>15</sup> The Response contains no sworn statement from Mobley.

<sup>16</sup> We note that the Response was not submitted on behalf of Hohl and there is no statement attributed to Hohl included with the Response. The Response alludes to the coding of EFF's reimbursements of Howell's contributions as income to Howell by "EFF's accountant," who appears to be Hohl. See Response at 4 and Attachment D.

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**C. Agreement to End Mobley, Hohl, and Howell's Partnership**

According to Howell's testimony, his working relationship with Mobley and Hohl effectively ended on November 19, 2008, when Hohl faxed Howell to say they were "done." Howell Depo at 22. Shortly thereafter, Mobley and Hohl presented Howell with the first draft of a proposed agreement to conclude their affairs. Howell Depo at 38. "It was settling a business transaction that we had together and we resolved it and then also had some political money that was used the wrong way." Howell Depo at 10. Howell initially refused to sign the settlement agreement because of "Exhibit B" of the agreement, a statement dated January 29, 2009, which stated:

I made a campaign contribution in the amount of \$8,800 to Vernon Buchanan for congress[sic]. I withdrew these funds from Express Freight of Florida, a company that I own 50% of and deposited them into my personal account. I then wrote the campaign check. It was my intention to do this lawfully and willingly.

Howell Depo at 45 and Exhibit B to Deposition Exhibit 2. Howell initially refused to sign the agreement because Exhibit B was false. Howell Depo at 45.

At approximately the same time that Mobley and Hohl were attempting to get Howell to sign the agreement, Howell began receiving threats, his trucks were vandalized, a brick was thrown through his home window, and he suffered other acts of intimidation. Howell Depo at 31-32. Howell testified that these acts were part of an effort to pressure him to say that he made the contributions to VBFC and the RPF

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1 properly and willingly.<sup>17</sup> *Id.* Mobley also wanted Howell to give him the check request  
2 form because of what it signified, i.e., that MTampa funds were used to pay for the  
3 \$10,000 contribution to the RPF. Howell Depo at 29-30; *see* Attachment 6.

4 According to Howell's testimony, on Friday, December 4, 2008, he refused to  
5 sign the agreement, which included the false statement about his contributions to  
6 Buchanan, and his trucks were vandalized again on Monday, December 8, 2008. Howell  
7 Depo at 26-28.

8 We were going through a lot with this Express Freight and the Vern Buchanan  
9 thing. A lot of threats going about, trucks being vandalized. There was just a lot  
10 of chaos going on. You couldn't put any on the road because you didn't know  
11 what would happen. We had drivers that would - - there was one driver that went  
12 down [Interstate] 75 and somebody reported the truck stolen. The driver got  
13 arrested in Lake City. It was just a lot of threats going on to not talk about  
14 anything.

15  
16 Howell Depo at 25-26. Howell testified to his belief that the intimidation tactics were  
17 related to his contributions to VBFC. Howell Depo at 48.

18 During his deposition on February 11, 2009, Howell testified that he ultimately  
19 signed an agreement. Howell Depo at 13; Attachment 8. Howell told us during his  
20 interview that he eventually signed the agreement on February 6, 2009, even though he  
21 knew the attached statement was false, because otherwise he would not have received the  
22 money he needed to pay the BFF employees. In both his deposition and his interview

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<sup>17</sup> Q: But I guess what I'm asking is, what did the people that were threatening you want you to do in response to the threats?

A: Go along with Mobley, just be a team player.

Q: In other words, make sure that the campaign contributions didn't come to light as being an improper campaign contribution?

A: Right. That I agreed that I did it willingly. That was the start.

Howell Depo at 32.

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1 with us, Howell explained that Mobley and Hohl had previously stopped paying the EFF  
2 employees. Howell Depo at 27-28. The settlement agreement was signed and dated  
3 February 6, 2009, several days before the deposition. Howell Depo at 36. The settlement  
4 agreement included \$10,000 that Howell described as "shut up money" paid to him and  
5 was to include additional \$3,000 installments per month as a consulting fee.<sup>18</sup> Howell  
6 Depo at 59-60.

7 The Response provided an explanation for the request that Howell sign a  
8 statement regarding his contributions to VBFC. The Response asserts that Howell  
9 defrauded MTampa by submitting false invoices for payment.<sup>19</sup> Response at 5-6.  
10 Because of a belief that formal legal proceedings "were going to have little effect on Mr.  
11 Howell" due to a history of civil actions against Howell and entities that he controlled,<sup>20</sup> a  
12 decision was made to negotiate an agreement with Howell for a final resolution of the  
13 claims Mobley, Hohl, and MTampa had against Howell. *Id.* at 6-7.

14 According to the Response, the parties agreed on a settlement on December 16,  
15 2008. *Id.* at 7. Allegedly, Howell became uncooperative shortly thereafter, and in order  
16 to exact funds from other members of EFF, Howell claimed that he discussed his political  
17 giving with an individual named Duane Overholt and the press, "falsely claimed that his

<sup>18</sup> Mobley and Hohl paid Howell the \$10,000 and the first \$3,000 monthly installment, but Howell said he "didn't want to wait." Howell Depo at 59-60. They then paid him \$4,600 instead of the remaining monthly payments. Howell Depo at 60. Howell used the \$10,000 to pay the employees and drivers and to pay rent at his new office. Howell Depo at 61.

<sup>19</sup> Attached to the Response are two deposition transcripts, both dated November 19, 2008, regarding Howell's alleged fraud. See Response Attachment B. The date of the depositions is the same date that Howell claims he was told that his partnership with Mobley and Hohl was "done." The transcripts are captioned as "investigation" and do not appear to have been taken in connection with a specific lawsuit. The witnesses, Sommer Dyzum and Teresa Jones, testified that they were EFF employees.

<sup>20</sup> The Response includes a list of lawsuits against Howell and his companies. See Response Attachment D.

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1 contribution to Vern Buchanan for Congress was coerced and not made with his own  
2 money," and "threatened to continue to make these claims unless he received additional  
3 financial assistance from the other members of EFF."<sup>21</sup> *Id.*

4 According to the Response, a second settlement agreement was executed on  
5 February 6, 2009, that enforced some of the first agreement's provisions that Howell  
6 allegedly failed to honor and Respondents attempted to ensure that Howell honored the  
7 new agreement by having Howell sign a statement about the circumstances surrounding  
8 his contribution to VBFC. Response at 7. This statement, which is quoted in full above,  
9 states that Howell made his \$8,800 contribution to VBFC using funds he withdrew from  
10 EFF and deposited into his own account, and that he intended to contribute lawfully and  
11 willingly. *Id.* and Response Attachment E.

12 Citing news accounts, the Response also asserts that Howell perjured himself in a  
13 deposition by falsely stating that he did not sign the statement attached to the settlement  
14 agreement and that his contributions to VBFC were not made willingly. The Response  
15 includes what appears to be a copy of the statement bearing Howell's signature and  
16 which is dated February 6, 2009. The perjury allegation appears to be a reference to the  
17 Howell's February 11, 2009, deposition testimony at page 45 in which he was asked if he  
18 ever signed "Exhibit B," the statement at issue. Howell responded, "I won't sign it. And  
19 that also doesn't say anything about the \$10,000 . . ." Howell Depo at 45.

20 **IV. LEGAL ANALYSIS**

21  
22 The Act provides that no person shall make a contribution in the name of another  
23 person or knowingly permit his or her name to be used to effect such a contribution.

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<sup>21</sup> According to the Response, Overholt "spearheaded" the scrutiny of and challenges to Buchanan's business and political fundraising practices. Response at 7.

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1 2 U.S.C. § 441f. This prohibition applies to any person who provides the money to  
2 others to effect contributions in their names and to incorporated or unincorporated entities  
3 who give money to another to effect a contribution made in the other person's name.  
4 11 C.F.R. § 110.4(b)(2); 2 U.S.C. § 431(11) (term "person" includes partnership and  
5 corporation). This prohibition also applies to any person knowingly helping or assisting  
6 any person in making a contribution in the name of another, including "those who initiate  
7 or instigate or have some significant participation in a plan or scheme to make a  
8 contribution in the name of another..." 11 C.F.R. § 110.4(b)(1)(iii); Explanation and  
9 Justification for 11 C.F.R. § 110.4(b)(1)(iii) at 54 Fed. Reg. 34,105 (1989).<sup>22</sup>

10 The Act also addresses violations that are knowing and willful. See 2 U.S.C.  
11 § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is  
12 violating the law. The phrase "knowing and willful" indicates that "acts were committed  
13 with full knowledge of all the relevant facts and a recognition that the action is prohibited  
14 by law...." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); see also *AFL-CIO v. FEC*,  
15 628 F.2d 97, 98, 101-02 (D.C. Cir.), cert. denied, 449 U.S. 982 (1980) (noting that a  
16 "willful" violation includes "such reckless disregard of the consequences as to be

<sup>22</sup> On June 8, 2009, the federal district court in the Central District of California dismissed two counts of a criminal indictment wherein the federal government alleged that Pierce O'Donnell violated 2 U.S.C. § 441f by reimbursing conduit contributions to the 2004 presidential campaign of Sen. John Edwards. The district court ruled in part that section 441f did not apply to indirect contributions made through a conduit or intermediary. The U.S. Department of Justice filed a notice of appeal to the Ninth Circuit. *U.S. v. O'Donnell*, C.D. Cal. No. 08-872, appeal docketed, No. 80-567 (9th Cir. June 16, 2009). On September 23, 2009, the Commission filed an amicus curiae brief urging the Ninth Circuit to reverse the *O'Donnell* decision. The conduct in the *O'Donnell* matter occurred in the 9th Circuit. The alleged activity in MUR 6054 took place in the 1st Circuit. Excluding the *O'Donnell* dismissal, numerous federal district courts in the Second, Third, Fourth, Seventh, Ninth, Tenth, and Eleventh Circuits have found violations of section 441f for reimbursing conduit contributions. Recently, the U.S. District Court for the Northern District of Illinois considered and disagreed with the reasoning of the District Court in *O'Donnell*. See *U.S. v. Boender*, No. 09 CR 186-1, at 4-12 (N.D. Ill. Feb. 24, 2010). Furthermore, since *O'Donnell*, the Commission has found probable cause to believe that respondents violated Section 441f in an enforcement matter involving a reimbursement scheme. See MUR 5818 (Fieger).

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1 equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding  
2 on the facts before it that this standard was not met) (*cited in National Right to Work*  
3 *Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)).

4 An inference of knowing and willful conduct may be drawn "from the defendant's  
5 elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d  
6 207, 214-15 (5th Cir. 1990). The evidence need not show that the defendant "had  
7 specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state  
8 of mind," if there are "facts and circumstances from which the jury reasonably could  
9 infer that [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213  
10 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S.  
11 838 (1989)).

12 **A. Timothy Mobley**

13 Howell testified in his deposition and stated during interviews with us that  
14 Mobley solicited him to contribute to VBFC and the RPF and reimbursed Howell for his  
15 contributions using company funds that Mobley controlled.

16 The Response asserts that Mobley believed Howell had sufficient funds to pay for  
17 his contribution to VBFC. However, Howell's checking account statements suggest that  
18 he did not have sufficient funds to make the contributions until he received transfers from  
19 EFF in the exact amount of the contributions.

20 The Response also asserts that, in September of 2009, EFF elected on its tax  
21 return to characterize the transfer of its funds to Howell for the contributions as personal  
22 partnership distribution income to Howell, Response at 4, and that it was then Howell's  
23 choice to use his distribution income to make the contributions. Response at 8.

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1 However, we have obtained information from two accountants, Howell's new accountant,  
2 Larry Press, and Salvatore Rosa, an accountant who formerly served as Buchanan's Chief  
3 Financial Officer, that calls this characterization into question. Press told us that such a  
4 transfer to a partner is not personal income to the partner. Additionally, Rosa testified  
5 that such a transfer is not partnership distribution income. See Rosa Depo at 40-43.

6 Additionally, the Response maintains that Howell fabricated his assertions about  
7 the contributions in order to extort money from the Respondents. See Response at 7.  
8 According to the Response, Howell claimed that he had already discussed his  
9 contributions with Duane Overholt, an individual who was spearheading lawsuits against  
10 Mr. Buchanan, and with the press, at the time he demanded money from some of the  
11 Respondents. *Id.* The Response asserts that Howell "threatened to continue to make  
12 these claims unless he received additional financial assistance from the other members of  
13 EFF." *Id.* Thus, according to the Response, Howell had already discussed his  
14 contributions, presumably stating that they were coerced and/or reimbursed, before he  
15 allegedly threatened the respondents and sought money from them. If this account is  
16 accurate, it would appear to be an unusual extortion scheme because the threatened  
17 damage would have been largely done before Howell demanded money. We note that  
18 the Response included no affidavits attesting to any of these assertions.

19 Howell's sworn testimony and statements, on the other hand, appear to be  
20 corroborated by bank records that he provided to us as well as the EFF tax return  
21 submitted with the Mobley, EFF, and MTampa Response. Howell's bank records  
22 indicate that his account did not have sufficient funds to make his contributions to VBFC  
23 and the RPF until the exact amount of those contributions were disbursed to him from

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1 EFF. Howell also stated that he did not have the authority to disburse EFF funds, and  
2 Hohl informed a police officer that he disbursed funds to Howell so that Howell could  
3 use them to make a contribution. Additionally, the EFF tax return describes EFF's  
4 reimbursements to Howell for the VBFC and RPF contributions as, respectively,  
5 "Political Contribution" and "Reimburse - Contr." Further, Howell and the Response  
6 appear to agree that Howell's contribution check to the RPF was returned for insufficient  
7 funds. According to Howell, he was told by Hohl that Howell's contribution to the RPF  
8 was in fact paid by Mobley using Mobley's personal credit card. Finally, in both his  
9 deposition and in interviews, Howell maintained his claim that the contributions were  
10 reimbursed even after he concluded a settlement with Respondents that provided for  
11 payment of money to Howell,<sup>23</sup> that is, after the point at which he had nothing further to  
12 gain, which appears to undercut the claim that he is making these assertions in order to  
13 exact further funds from Respondents.

14 Accordingly, there is reason to believe that Mobley violated the Act because  
15 Howell's contributions appear to have in fact been contributions made in Howell's name  
16 by Mobley or by companies that Mobley controlled. See 2 U.S.C. § 441f; 11 C.F.R.  
17 § 110.4(b)(1)(iii). Available information suggests Mobley's actions were knowing and  
18 willful because Mobley sought to disguise his or his companies' contributions to VBFC  
19 and the RPF by having Howell contribute to those committees in his own name and  
20 reimbursing Howell for his VBFC contribution through transfers of company funds to  
21 Howell and paying for Howell's contribution to the RPF using Mobley's personal credit

<sup>23</sup> We note that Howell apparently requested and obtained a provision in the February 6, 2009 agreement with Respondents in which he would be paid \$4,600 immediately instead of a higher amount of money over time, which also does not appear to be consistent with the actions of a person seeking to extort additional money from Respondents. See Howell Depo at 59-61 and Exhibits 2 and 9.

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1 card. According to Howell, Mobley and his son both told him that Mobley raises  
2 political contributions by reimbursing contributors. Additionally, Mobley appears to  
3 have attempted to hide his own involvement in the reimbursement of Howell's  
4 contribution to VBFC by pressuring Howell to sign a written statement that Howell, as a  
5 50% partner in EFF, chose to withdraw funds from EFF and contribute to VBFC  
6 "lawfully and willingly."<sup>24</sup>

7 The available information, therefore, supports an investigation into whether  
8 Mobley knowingly and willfully made contributions to VBFC and the RPF in Howell's  
9 name. Accordingly, we recommend that the Commission find reason to believe that  
10 Timothy F. Mobley knowingly and willfully violated 2 U.S.C. § 441f.

11 **B. Timothy M. Hohl**

12 According to Howell, Hohl helped Mobley reimburse his contributions. See  
13 Howell Depo at 18-19. Hohl, a C.P.A., a 10% partner in EFF, and a partner with Mobley  
14 in another business venture, participated in the discussions in which it was decided that  
15 Howell would be reimbursed for his contributions. Because Howell did not have the  
16 authority to disburse EFF funds to himself, Hohl himself disbursed the EFF funds for  
17 Howell's contribution to the RPF. Howell stated in an interview that he talked many  
18 times with Hohl about the \$10,000 contribution to the RFP, and that Hohl signed to  
19

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<sup>24</sup> We note that according to EFF's 2008 tax return, submitted as Attachment A of the Response, M-Tampa, LLC, was an 80% partner of EFF. It is unclear how to reconcile the 80% partnership share for M-Tampa indicated in the EFF tax return with the assertion in the Response, at page 2 and Attachment C, that M-Tampa had only a 40% share of EFF.

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1 Howell that he was taking care of it.<sup>25</sup> According to Howell, his understanding was that  
2 Hohl intended to file documents with the IRS indicating that the contribution  
3 reimbursement checks were reimbursements and not income.<sup>26</sup> Lastly, Hohl appears to  
4 have prepared the EFF tax return in which EFF may have inaccurately described the  
5 funds used to reimburse Howell as Howell's personal income. Hohl was also party to the  
6 agreement in which Howell claims he was forced to agree to a false statement concerning  
7 his contributions to VBFC. A person who knowingly helps or assists any person in  
8 making a contribution in the name of another, has violated the Act as well. See 2 U.S.C.  
9 § 441f; 11 C.F.R. § 110.4(b)(1)(iii). Accordingly, we recommend that the Commission  
10 find reason to believe that Timothy M. Hohl knowingly and willfully violated 2 U.S.C.  
11 § 441f.

12 C. Express Freight of Florida, LLC, and MTampa Financing Company,  
13 LLC  
14

15 An LLC that elects to be treated by the I.R.S. as a corporation is considered a  
16 corporation under the Act, and an LLC that elects to be treated by the I.R.S. as a  
17 partnership is considered a partnership under the Act. See 11 C.F.R. § 110.1(g).

18 1. Express Freight of Florida, LLC

19 The Response states and provides an income tax form indicating that EFF is  
20 treated as a partnership for federal income tax purposes. See Response at 2, fn.1 and at

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<sup>25</sup> According to Howell, Hohl agreed to assist him with his taxes. Exhibit 2 to Howell's deposition is a copy of the agreement between Mobley, Hohl, EFF, and Howell. Paragraph 1 of the agreement requires that Howell use respondent Hohl to resolve tax issues with the IRS. In the deposition, Howell testified that at the time of the deposition, Hohl possessed Howell's financial documents. See Howell Depo at 16, 17.

<sup>26</sup> Howell later discovered that Hohl filed documents with the IRS stating that the reimbursements were income. Howell then hired his own accountant, who disputed Hohl's characterization of the reimbursements as income. Howell also stated in an interview that Hohl has offered to submit a revised return.

1 Attachment A. A partnership can make contributions to a candidate for federal office and  
2 to a state party committee subject to the limitations specified in 2 U.S.C.  
3 §§ 441a(a)(1)(A) and (D). See 11 C.F.R. § 110.1(e). However, just like individuals, a  
4 partnership is prohibited from making contributions in the name of another and assisting  
5 in the making of contributions in the name of another. See 2 U.S.C. § 441f, 11 C.F.R.  
6 § 110.4(b); 2 U.S.C. § 431(11) (term "person" includes a partnership).

7 Howell testified and stated in his interviews with us that the partners that  
8 comprised EFF, that is, Mobley, Hohl, and Howell, agreed to use EFF funds to make a  
9 contribution to VBFC and the RPF in Howell's name. The Response asserts that the EFF  
10 funds given to Howell to make the contributions were his personal partnership  
11 distribution income and that he chose to make the contributions using those funds. For  
12 the same reasons indicated in the analysis of Timothy Mobley's potential violation of the  
13 Act, there is information that EFF may have made, or assisted in the making of,  
14 contributions in Howell's name, and the available information supports an investigation  
15 into whether EFF knowingly and willfully made contributions to VBFC and the RPF in  
16 Howell's name.<sup>27</sup>

17 Accordingly, we recommend that the Commission find reason to believe that  
18 Express Freight of Florida, LLC, knowingly and willfully violated 2 U.S.C. § 441f.

19  
20

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<sup>27</sup> In the event that EFF is the actual source of the funds used for one or more of Howell's contributions, it does not appear that EFF would have made an excessive contribution to VBFC, since the amount of the contribution to VBFC was within the 2006 and 2008 per-election contribution limits (\$2,100 and \$2,300, respectively). In addition, the \$10,000 contribution to the RPF is within the annual limit for contributions to state party committees. See 2 U.S.C. §§ 441a(a)(1)(A) and (D).

13044331647

2. MTampa Financing Company, LLC

The Response does not state whether MTampa is treated as a partnership or a corporation for federal income tax purposes. If MTampa is considered a corporation under the Act, it is prohibited from making any contributions to candidates for federal office. See 2 U.S.C. § 441b(a). Thus, if MTampa funds were used to make Howell's contributions, MTampa violated 2 U.S.C. § 441b(a) as well as 2 U.S.C. § 441f. If MTampa is considered a partnership, it, like EFF, could make contributions to VBFC and the RPF within the Act's limits. See 11 C.F.R. § 110.1(e); 2 U.S.C. §§ 441a(a)(1)(A) and (D).<sup>28</sup>

Howell testified that EFF's partners, Mobley, Hohl, and Howell, agreed to make contributions to VBFC and the RPF in Howell's name. According to Howell, the EFF funds given to him for these contributions came from MTampa, a company wholly owned by Mobley.<sup>29</sup> Based on the available information that Howell's contributions may have been reimbursed using MTampa funds, and because MTampa may file taxes as a corporation, we recommend that the Commission find reason to believe that MTampa Financing Company, LLC knowingly and willfully violated 2 U.S.C. §§ 441f and 441b(a).

<sup>28</sup> As discussed above for EFF, if MTampa was the source of the funds, and it is considered to be a partnership, it would not have violated the applicable contribution limits.

<sup>29</sup> At one point during his deposition, Howell indicated that the funds used by MTampa to reimburse his contributions were in fact transferred to MTampa from Mobley Homes. Howell Depo at 19. Aside from this single assertion, we have no further information indicating that Mobley Homes was the source of the funds allegedly used to reimburse Howell. Accordingly, we make no recommendations at this time regarding Mobley Homes.

13044331648



**D. Terry Keith Howell**

Howell was Mobley's business partner and appears to have willingly agreed to be a conduit for the contributions to VBFC and RPF. However, Howell appears to have been subordinate to Mobley by virtue of Howell's financial difficulties and Mobley's *de facto* control of EPF through his control of its finances. Further, Howell asserts that Mobley used intimidation tactics meant to prevent Howell from disclosing the reimbursement scheme and to have Howell sign a statement suggesting that he was not reimbursed for the contributions.

Whether the Commission, at this time, should find reason to believe that Howell violated the Act is within the Commission's discretion. In several recent cases, the Commission has not found reason to believe that mere conduits for contributions in the name of another violated the Act. See MUR 6054 First General Counsel's Report at 8-9 (the Hyundai of North Jacksonville conduits) and 14-16 (the Venice Nissan Dodge conduits); MUR 5927 (Joseph A. Solomon) (employees who felt pressured or coerced to make contributions solicited by the company president); MUR 5871 (Thomas W. Noe) (subordinates who may have felt pressured to participate in the reimbursement arrangement). However, in some cases, including this MUR, the Commission has found reason to believe that higher level officers in organizations who reimbursed contributions violated the Act. See MUR 6054 First General Counsel's Report at 8-9 (reason to believe recommendation as to Sam Kazran) and 14 (reason to believe recommendation as to Donald Caldwell).

Although Howell was a partner in EPF and, therefore, potentially akin to a high-level officer, there are several mitigating considerations that may suggest that Howell's

1304433-1649

1 role is more like a conduit as to which the Commission has not found reason to believe.  
2 Mobley appears to have solicited the contributions based on his pre-existing relationship  
3 with Buchanan and directed the reimbursement of Howell's contributions. Whereas  
4 Mobley had experience in political fundraising, Howell appears to have never made a  
5 political contribution. In addition, Mobley effectively controlled of EFF, and Howell  
6 attempted to resist Mobley's pressure to sign a false statement about his contribution to  
7 VBFC.

8 Based on these considerations, we make no recommendation at this time as to  
9 Howell. If we obtain information during the course of the proposed investigation  
10 indicating that Howell was more culpable for the contributions made in his name, we will  
11 make the appropriate recommendation at that time.

12 **E. Conclusion**

13 The available information indicating that Howell was impermissibly reimbursed  
14 for his contributions to VBFC and the RPF, as well as the assertions in the Response  
15 suggesting that Howell made the contributions using his personal income, are properly  
16 the subjects of an investigation, which includes an assessment of Howell's and the  
17 Respondents' credibility. At present, Howell is the only party that has issued a sworn  
18 statement regarding the alleged reimbursements.

19 **V. INVESTIGATION**

20 The proposed investigation will focus on gathering any additional evidence  
21 regarding the alleged reimbursements,  
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6 **VI. RECOMMENDATIONS**

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1. Find reason to believe that Timothy F. Mobley knowingly and willfully violated 2 U.S.C. 441f;
2. Find reason to believe that Timothy M. Hohl knowingly and willfully violated 2 U.S.C. 441f;
3. Find reason to believe that Express Freight of Florida, LLC, knowingly and willfully violated 2 U.S.C. § 441f;
4. Find reason to believe that MTampa Financing Company, LLC, knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f;
5. Approve the attached Factual and Legal Analyses; and
6. Approve the appropriate letters.

Thomasenia F. Duncan  
General Counsel

Date: 3/9/10

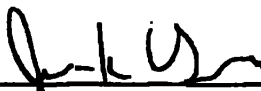
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