FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

March 20, 2014

Peter Bagatelos
Bagatelos Law Firm
o/b/o Jim Gonzalez

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Warning Letter

Re: FPPC No. 13/521, San Jose Silicon Valley Chamber of Commerce PAC and Robin Stephen, Treasurer

Dear Mr. Bagatelos:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act ("Act"),[1] found in Government Code section 81000, et seq. This letter is in response to a sworn complaint alleging that the San Jose Silicon Valley Chamber of Commerce PAC ("Chamber PAC") violated the Act's provisions concerning disclosure in connection with six mailers made at the behest of your client's former employer and 2013 candidate for Santa Clara Board of Supervisors, Ms. Teresa Alvarado.

After investigating the matter, the Commission has found that as a professional campaign consultant and agent of Ms. Alvarado's campaign, your client provided unsolicited information regarding overall campaign strategy to the Chamber PAC Board.

The Act provides that independent expenditures are expenditures made by a person in connection with a communication that advocates for the election or defeat of a candidate or ballot measure, but which are not made to or at the behest of the affected

[1] The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

candidate or committee. (Section 82031.). Section 85500, subdivision (b), provides that an expenditure is made at the behest of a candidate, and thus not independent, if the expenditure is made in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate. The Act presumes an expenditure is made at the behest of a candidate if the expenditure is based on information provided to the expending person by the candidate or committee concerning the candidate's campaign needs or plans. An expenditure made at the behest of a candidate is considered a campaign contribution under the Act, and is subject to all applicable reporting requirements.

Under Section 84203, subdivisions (a) and (b), when a committee makes or receives a "late contribution," the committee must disclose that contribution within 24 hours of making or receiving the contribution. Section 82036 defines a "late contribution," in relevant part, as a contribution which totals in the aggregate one thousand dollars ($1,000) or more that is made to or received by a candidate, controlled committee, or committee formed or existing primarily to support or oppose a candidate or measure within 90 days before the date of the election at which the candidate or measure is to be voted on.

Pursuant to Section 83116.5, any person who violates any provision of the Act, who purposely or negligently causes any other person to violate any provision of the Act, or who aids or abets any other person in the violation of any provision of the Act, shall be liable under the provisions of Chapter 3 of the Act. This section applies to persons who are compensated for services involving the planning, organizing or directing of any activity regulated or required by the Act.

Though purported to be independent, the mailers referenced in the complaint were sent out following a June 19, 2013 Chamber PAC Board Meeting in which your client presented specific details of Ms. Alvarado's overall campaign strategy to the Chamber PAC Board. Specifically, Mr. Gonzalez shared that data analyzed by Ms. Alvarado's campaign indicated that reaching out to various constituencies in San Jose as well as targeting ethnic groups, particularly Vietnamese voters, would be crucial for Ms. Alvarado's campaign. He also noted that Ms. Alvarado's campaign would target Vietnamese and high propensity voters through mailing campaigns, walking districts and making phone calls. You advised us that Mr. Gonzalez believed that his remarks were protected by the First Amendment of the U.S. Constitution and that it was not his intent to share specific campaign strategy with those present. Nevertheless it is our position that, as a result of your client's comments, the six mailers sent following the meeting are considered campaign contributions, which ultimately resulted in a violation of Section 84203 of the Act, as late independent expenditure reports rather than late contribution reports were filed by the Chamber PAC.

By presenting specific campaign strategy to the Board, your client negligently caused a violation of Section 84203 and is liable under the Act. However, in mitigation of the violation is the fact that your client has no prior history of violating the Act. In further mitigation are the efforts taken by Chamber PAC leadership to minimize the

public harm resulting from the violation. These efforts include: (1) Chamber PAC leadership's attempt to avoid coordination, (2) Chamber PAC's disclosure of the financial details concerning the six mailers prior to the election in timely filed independent expenditure reports, and (3) the fact that Chamber PAC leadership may have decided to send out the mailers prior to the June 19th Chamber PAC Board Meeting in reliance upon confidential polling, general knowledge, and other sources unrelated to communications with your client or Ms. Alvarado. Accordingly, the Commission has decided to close this case with a warning letter.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is a Commission case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide your client with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If your client wishes to avail himself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Commission will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

Please feel free to contact me at (916) 322-5660 with any questions you may have regarding this letter.

Sincerely,

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Adam Silver
Commission Counsel
Enforcement Division