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

February 23, 2011

Mr. Sean P. Welch
Nielsen, Merksamer, Parrinello, Gross & Leoni, LLP.
o/b/o Hercules Bayfront LLC

REDACTED

RE: Warning Letter
FPPC No. 10/928; Hercules Bayfront LLC

Dear Mr. Welch:

The Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act")[1]. As you may be aware, the Commission received a complaint alleging violations of the mass mailing provisions of the Act. Specifically, the complaint alleges that your client sent a mass mailing which contained improper sender identification in violation of Section 84305, and that your client failed to file as a committee. The Commission has decided to close this case with this warning letter.

On or about October 8, 2010, your client sent a mass mailer, which included the caption: "The City Council seems to be ignoring the waterfront development. Tell them it's your #1 priority." There is also a statement on the other side of the postcard sized mailer that constitutes express advocacy: "This November, vote out the incumbents who are unwilling to take a stand in favor of the Waterfront Now." Approximately 9,000 pieces of mail were sent out. The mailer included the line "Learn more at www.waterfrontnow.org, P.O. Box 5444, Hercules, CA 94547." The web site explains that Hercules Bayfront is responsible for the website; and provides details about the waterfront development proposals.

Hercules Bayfront LLC timely filed an independent expenditure committee campaign statement and a supplemental independent expenditure report on October 21, 2010 with the Hercules City Clerk's office.

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[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.

Section 84305, subdivision (a), requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

Your client violated the Act because it sent a mass mailing which failed to include the full name of the committee in the sender identification.

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 an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself 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 FPPC 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 FPPC's website ten (10) days from the date of this letter.

If you have any questions regarding this matter, please feel free to contact me at 916-322-5660.

Sincerely,

REDACTED

Zachary W. Norton
Commission Counsel
Enforcement Division