FAIR POLITICAL PRACTICES COMMISSION
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October 26, 2011

Mr. Steve Churchwell
DLA Piper LLP
o/b/o Jake Pauline

REDACTED

Re: FPPC Case No. 09/808; Jake Pauline

Dear Mr. Churchwell:

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 multiple complaints concerning two mass mailings sent on or about October 29, 2009, which featured three Fairfield City Council candidates,. Specifically, the complaints alleged violations of the sender identification provisions of the Act. The Commission has decided to close this case without further action.

Documents obtained form the Post Office in Pittsburg, California disclosed that Belleci Designs, a Pittsburg based printing and mailing business, had used its bulk permit account for the prepaid postage affixed to these mailers.

After failing to obtain voluntary compliance, the Commission served subpoenas on Belleci Designs and its owner, Marissa Belleci, for business records in connection with these mailings. Those requests and subpoenas were ignored entirely.

Subsequently, the Commission filed a motion to compel production of documents in Sacramento Superior Court. The motion was granted, and an invoice was produced. According to the invoice, Jake Pauline, an electrician and business owner, spent $21,169.52 with Belleci Designs to produce and send the mailings.

[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.

An entity may qualify as an independent expenditure committee and incur reporting obligations if it makes independent expenditures of $1,000 or more in a calendar year. (§ 82013, subdivision (b).) An "expenditure" is a payment made for political purposes. (§ 82025; Regulation 18225, subdivision (a).) However, regulation 18225, which defines "expenditure," specifies that the term "expenditure" includes any payment made by a non-political organization for a communication that *expressly advocates* the nomination, election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified ballot measure. (Regulation 18225, subdivision (b).)

A communication "expressly advocates" the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if: (1) it contains express words of advocacy such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for," or (2) it otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election. (Regulation 18225, subdivision (b)(2).)

In this instance, Mr. Pauline did not qualify as a committee because the expenditure he made was on mailers that lacked express advocacy. Since the mailings did not "expressly advocate" the election or defeat of the candidates named within, and as such, the communications would not qualify as an "expenditure" subject to regulation under the Act. Mr. Pauline did not have filing obligations under the Act, and the Act's sender identification requirements were not applicable to the mailers he sent out, as they did not contain express advocacy.

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