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November 29, 2004

**By Hand**

Tracey L. Ligon, Esq.  
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Federal Election Commission  
999 E Street, N.W.  
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**Re: MUR 5390—Leland Brendsel, Respondent**

Dear Ms. Ligon:

This letter is submitted on behalf of our client, Leland Brendsel, in response to the Commission's finding of reason to believe against Mr. Brendsel in the above-referenced MUR, and in response to the Factual and Legal Analysis ("FLA") forming the basis for the Commission's finding. A Statement of Designation of Counsel is enclosed.

In summary, for three reasons, the Commission should find no probable cause to believe that Mr. Brendsel has violated the Federal Election Campaign Act of 1971 as amended (the "Act") or the Commission's regulations, and should close the file and dismiss the case, as against Mr. Brendsel. *First*, Mr. Brendsel did not himself use any corporate resources to facilitate the making of contributions. Indeed, Mr. Brendsel did not himself collect or forward any contributions from any other officer or employee.

*Second*, Mr. Brendsel did not "consent" to the use of any corporate resources to facilitate the making of contributions. There is no indication that Mr. Brendsel was

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actually cognizant of any other potential use of corporate resources. Although he may have been aware that his assistant was helping to collect and transmit contributions, there is no evidence that he ever directed or ordered her to do so as part of her work responsibilities. Further, it is Mr. Brendsel's recollection that he actually compensated his assistant, separately, for undertaking a variety of personal tasks for him.

*Finally*, to our knowledge, no individual officer of a corporation has ever been held liable by the Commission for "consent" to a corporate contribution in circumstances like those presented in this case, in which the corporate officer did not collect any contributions, did not transmit any contributions and did not himself make use of any corporate resources to facilitate the making of contributions.

**I. Mr. Brendsel Did Not Himself Use Corporate Resources to Facilitate the Making of Contributions**

The FLA indicates that Mr. Brendsel made contributions to federal candidates, during the period 1999 through 2002, in response to solicitations or recommendations made by Mitchell Delk, then Senior Vice President for Government Relations, and/or Clarke Camper, then Vice President for Government Relations. (FLA at 2). According to the FLA, some of these solicitations were communicated directly by Mr. Delk and/or Mr. Camper. (*Id.*) Others were relayed to Mr. Brendsel by Mr. Brendsel's assistant, Ms. Ella Lee. (*Id.* at 3).

It is perfectly lawful, of course, for corporate executives to solicit other corporate executives—*i.e.*, members of the corporation's restricted class—and for those executives to make contributions in response to those solicitations. (11 C.F.R. §§114.2(f)(4)(ii) &

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114.3(a)(corporations may make communication “on any subject” to restricted class); *see* FLA at 2.) Indeed, a corporation may use its own corporate resources to make such solicitations to its restricted class. Section 441b of the Act “permits a corporation to make communications to its executive or administrative personnel that recommend they...make contributions to a particular candidate or committee.” (Advisory Opinion 1986-4 n.5; *accord*, Advisory Opinions 1996-1; 1982-2).

A corporation may not use its resources to facilitate the making of a contribution. (11 C.F.R. §114.2(f); Advisory Opinion 1986-4, *supra*). In this case, however, nothing in the FLA suggests that Mr. Brendsel himself ever collected contributions from other executives or employees at the workplace, forwarded or transmitted any contributions or utilized corporate facilities for any fundraising activity. In short, there is no evidence that Mr. Brendsel, himself, made any use of corporate resources to facilitate the making of any contributions to federal candidates.

**II. Mr. Brendsel Did Not “Consent” to the Use of Corporate Resources to Facilitate the Making of Contributions**

Mr. Brendsel also did not “consent”, within the meaning of section 441b(a) of the Act, to any use by Freddie Mac of its corporate resources to facilitate contributions. First, Mr. Brendsel did *not* approve any expenditures for couriers, or any other expense related to the collection or transmitting of contributions, and the FLA does not suggest otherwise. Indeed, it does not make sense to assume that, in the normal course of running a corporation with hundreds of millions of dollars of annual operating expenses, Mr. Brendsel would in any way be made aware of the fact that, on a few occasions, the corporation may have incurred minor expenses for courier services.

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Second, with respect to the role of employees, facilitation includes “[o]fficials or employees of the corporation...*ordering or directing* subordinates or support staff (who therefore are not acting as volunteers) to plan, organize or carry out the fundraising project as a part of their work responsibilities.....” (11 C.F.R. §114.2(f)(2)(i)(A) (emphasis added)). In this case, the FLA does *not* suggest in any way that Mr. Brendsel ever directed or ordered Ms. Lee, as part of her work responsibilities, to do anything at all in connection with the fundraising activity of Mr. Delk and Mr. Camper.

The FLA does state that, “The record contains no indication that Ms. Lee was acting as a volunteer in carrying out these activities.” (FLA at 3). To be sure, Ms. Lee likely did not regard herself as a volunteer for any particular campaign. But that does not mean she necessarily carried out such activity as part of her work responsibilities. Indeed, it is Mr. Brendsel’s recollection that Ms. Lee undertook a variety of *personal* tasks for Mr. Brendsel and that he took pains to avoid using the corporation’s resources for any of these tasks. Although none of the relevant corporate records are currently available to Mr. Brendsel, it is also his recollection that he compensated Ms. Lee separately and personally for these personal services, by directing that a portion of his authorized bonus, amounting to thousands of dollars each year, be paid to Ms. Lee, beginning approximately in 1999. Because this additional, separate compensation covered a variety of services, and contributions were made by Freddie Mac executives to numerous different federal campaigns, it would have made no sense to attempt to allocate any particular portion of this compensation as an in-kind contribution to any specific federal candidate.

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Accordingly, Mr. Brendsel did not in fact “consent” to any use of corporate resources to facilitate the making of contributions.

**III. Mr. Brendsel Should Not Be Found Liable for Violating the Act by Reason of “Consent” to Use of Corporate Resources Under the Facts of this Case**

As best we can determine, the Commission has never made a finding against an individual executive for violation of section 441b(a), based on “consent” to use of corporate resources, in circumstances like those presented in this case, in which the executive himself—

- did *not* collect any contributions from any other executive or employee;
- did *not* transmit or forward any contributions; and
- did *not*, himself, make any use of corporate resources to facilitate the making of contributions.

Indeed, the Commission has frequently declined to find the individual corporate officer liable, or has determined to take no further action against the officer, even in circumstances in which such conduct by the corporate officer *had* taken place. For example, in MUR 2271, the senior partner of a law firm sent a letter, on firm stationery, inviting a number of persons to a fundraising event for a congressional candidate. He used his own secretary to prepare and send the letter. Although the General Counsel found that “[t]his falls outside individual volunteer activity,” and had consented to use of corporate resources (First General Counsel’s Report at 3-4 (April 13, 1987)), the

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Commission unanimously found no reason to believe that the partner had violated section 441b(a). (Certification, MUR 2271, April 22, 1987).

Similarly, in MUR 3540, the Prudential Securities case, the corporation conducted fundraisers on its premises. The company's chairman and CEO directly solicited, from other executives and employees, contributions to a federal candidate, with directions to return the contributions to one of the CEO's subordinates. Numerous other officers conducted similar solicitations, using subordinates to prepare and send out written solicitations; indeed, the CEO's subordinate sent 1,400 solicitations for a fundraising event to the company's vendors, advertisers, lawyers and banks, among others. (MUR 3540, General Counsel's Report at 26-30 ((Feb. 27, 1994). Nevertheless, the Commission determined to take *no* action against the CEO in that case. (MUR 3540, Certification, Nov. 29, 1994).

Again, in MUR 3672, International Business Machines Corp., the OGC's investigation found that IBM's CEO and Chairman solicited top executives at a regularly-scheduled monthly meeting of executives; asked executives to solicit others; and asked IBM employees to follow up the solicitations, obtain the checks, report back to the Chairman/CEO and forward the checks to the recipient political campaign. The Commission nevertheless declined to find probable cause to believe that the Chairman/CEO had violated section 441b(a), and closed the file. (MUR 3672, Certification, July 16, 1996). *See also* MUR 3672, Chrysler Corporation, General Counsel's Report (Sept. 17, 1996) (corporation held liable for facilitation but no action

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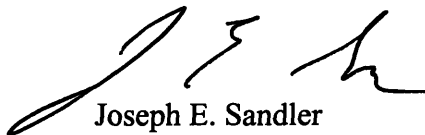
against executive vice president who solicited contributions and used subordinates to collect and forward checks).

It would be unprecedented, therefore, for the Commission to find Mr. Brendsel liable for "consent" to use of corporate resources in the circumstances of the present case.

**CONCLUSION**

For the reasons set forth above, the Commission should find no probable cause to believe that Mr. Brendsel has violated the Act or the Commission's regulations and, as to Mr. Brendsel, should dismiss the case and close the file.

Respectfully submitted,



Joseph E. Sandler  
Neil P. Reiff

Attorneys for Respondent Leland Brendsel

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## STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent.

MUR 5390

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The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Leland Brendsel

Print Name

Nov 16, 2004  
Date

Leland C. Brendsel  
Signature

N/A

Title

RESPONDENT'S NAME: Leland Brendsel

ADDRESS: \_\_\_\_\_

McLean, VA 22102

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