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November 12, 2009

## BY HAND DELIVERY

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Matter Under Review 6215 (Michael Alcorn)

Dear Mr. Jordan,

On behalf of our client, Michael Alcorn, I am writing in response to Randy Spitzmesser's complaint filed with the Commission on September 28, 2009. By the Commission's letter dated October 20, 2009, the time for this response was extended to the close of business on November 19, 2009. As counsel for Mr. Alcorn, I respectfully request that the Commission find no reason to believe a violation has occurred with respect to Mr. Alcorn, and take no further action in this matter against him. See 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.6(a).

### Factual Background

Mr. Alcorn is the Vice President and Director of Operations at Tate Snyder Kimsey Architects, Ltd. ("TSK"), a Las Vegas-based architectural design firm that is incorporated in the State of Nevada. (See Declaration of Michael Alcorn ("Alcorn Decl.") ¶ 1, Nov. 6, 2009.) Mr. Alcorn has been employed by TSK since 1999, and has served as Vice President and Director of Operations since 2001. (*Id.*)

In February 2009, Mr. Alcorn was invited to attend a fundraising luncheon in support of United States Senator Harry Reid. The event was held on February 17, 2009 at Wolfgang Puck Café at the Las Vegas Springs Preserve in Las Vegas, Nevada. (*Id.* ¶ 3.) J. Windom Kimsey, who is Mr. Alcorn's supervisor, approached him and asked whether he would be interested in participating in the event. (*Id.* ¶ 4.) As a supporter of Senator Reid, Mr. Alcorn agreed to attend and make a contribution to the campaign. (*Id.* ¶¶ 5-6.)

Mr. Alcorn voluntarily contributed \$1,000 to the Reid campaign prior to the event. (*Id.* ¶ 7.) He contributed by personal check, which was drawn from personal funds that had been

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deposited in Mr. Alcorn's personal bank account. (*Id.*) Mr. Alcorn did not receive a written invitation for the fundraising event, and does not recall completing a campaign contribution form during or after the fundraiser. (*Id.* ¶¶ 4, 8.)

Mr. Alcorn was not reimbursed by TSK or any individual for his contribution to the Reid event. (*Id.* ¶ 7.) Moreover, he did not seek, was not offered, and did not discuss the possibility of obtaining a reimbursement for his contribution. (*Id.*) Although he participated in the event by attending and contributing, Mr. Alcorn did not organize the Reid event or solicit contributions for the fundraiser. (*Id.* ¶ 3.)

#### Analysis

The facts plainly show that Mr. Alcorn did not violate any federal campaign finance laws or regulations, which is likely why Mr. Spitzmesser did not identify him as a potential Respondent in this matter.

First, Mr. Alcorn voluntarily contributed to the Reid campaign using his personal funds, and was not reimbursed for his contribution. Based only on supposition, and identifying no concrete facts to support his allegations, Mr. Spitzmesser suggests in his complaint that Mr. Alcorn "possibly arranged with Windom Kimsey and Bill Snyder to receive reimbursement money" for his contribution. (Compl. ¶ 2, Sept. 28, 2009.) Mr. Alcorn was *not* reimbursed for his contribution to the Reid event by TSK, he did not request reimbursement from TSK, and TSK did not offer to reimburse his contribution. (Alcorn Decl. ¶ 7.)

Second, TSK did not facilitate the making of a contribution by Mr. Alcorn to the Reid campaign. Mr. Alcorn is a member of TSK's restricted class, and may be solicited for contributions to be sent directly to federal candidates. See 11 C.F.R. § 114.2(f)(4)(ii). A corporation's restricted class includes individuals serving as executive personnel, who are paid by salary, and who have managerial and supervisory responsibilities. See *id.* § 114.1(c), (j). Mr. Alcorn has earned a salary for working at TSK for the last decade, and has served as the company's Vice-President and Director of Operations since 2001. (Alcorn Decl. ¶ 1.) He regularly drafts contracts for design projects, and monitors the progress of these projects for invoicing and financial and staff projections. (*Id.* ¶ 2.) Based upon his position and responsibilities for the company, Mr. Alcorn qualifies as a member of TSK's restricted class. Accordingly, Mr. Kimsey, a TSK principal, was permitted to solicit Mr. Alcorn for a contribution to be sent directly to the Reid campaign, which Mr. Alcorn did in advance of the event.

Third, Mr. Alcorn's contribution was voluntary. Although Mr. Spitzmesser's complaint indicates that a TSK partner may have made a "threatening statement" to TSK employees to coerce them to contribute to the Reid fundraising event, Mr. Alcorn received no such threat. (Compl. ¶ 2, Alcorn Decl. ¶ 6.) Moreover, Mr. Alcorn was not advised that he may not "have any work for the upcoming year" if he chose not to contribute to the fundraiser, nor was he

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pressured or coerced to make a contribution to the Reid campaign by any TSK partner or employee. (Alcorn Decl. ¶ 5.)

In sum, there is no legal or factual substance to Mr. Spitzmesser's allegations against Mr. Alcorn. Accordingly, we respectfully request that the Commission find no reason to believe a violation has been committed by Mr. Alcorn, and close the matter with no further action against him.

If you have questions or require additional information, please do not hesitate to contact me at (202) 756-8333.

Respectfully submitted,

  
Stephen M. Ryan

(1) Enclosure