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SENSITIVE FIRST GENERAL COUNSEL'S REPORT **CELA**

MUR: 6532

DATE COMPLAINT FILED: February 19, 2012

DATE OF NOTIFICATION: February 24, 2012

DATE OF LAST RESPONSE: March 15, 2012

DATE ACTIVATED: May 18, 2012

STATUTE OF LIMITATIONS: January 31, 2017

COMPLAINANT:

Kelly Casady

RESPONDENTS:

Jason Buck for Congress and James Gilbert in his
official capacity as treasurer

Jason Buck

Karen Abelhouzen

Richard Todd Abelhouzen

Bruce Frandsen

Mary Frandsen

Mel Frandsen

Nyla Frandsen¹

Lee Johnson

Michelle Johnson

Ty Mattingly

Julie Mattingly

Amy Morrison

Bruce Morrison

Tina Sawyer

Becky Warner

Vincent Warner

Brigitte Wing

Hal Wing

RELEVANT STATUTES:

2 U.S.C. § 434(b)

2 U.S.C. § 441a(a)

11 C.F.R. § 116.10

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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¹ The Complaint names "Nyla Johnson" as the source of one of the allegedly excessive contributions. However, the Committee's disclosure reports, as well as her own response to the complaint, show that the contributor's name is Nyla Frandsen. Compl. at 1, Attach. 7.

I. INTRODUCTION

This matter concerns allegations that Jason Buck for Congress and James Gilbert in his official capacity as treasurer ("Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act") by: (1) failing to report \$42,900 in vendor debt; (2) accepting \$80,500 in excessive contributions in the form of loans (ranging in amount from \$500 to \$7,500) from seventeen individuals ("Contributors");² and (3) failing to disclose three contributions in the amount of \$250.

The Committee denies the first two allegations and states that, while the third allegation is correct, it has amended the relevant disclosure report to correct the reporting omission. The Committee first asserts that all of the vendor debt was disputed and that there were no valid outstanding invoices at the time the 2011 Year End Report was filed. As to the second allegation, the Committee states that a Reports Analysis Division ("RAD") analyst confirmed that the 2011 Year End Report listing the loans cited by the Complaint disclosed no excessive contributions. The four Contributors who responded to the Complaint submitted identical responses stating that the Committee advised them that they could each make a contribution in the form of a loan up to \$2,500 per election, totaling \$7,500 over the entire election cycle. Finally, the Committee acknowledges that it failed to timely report three \$250 contributions received in the exploratory stage, but states that the contributions "have since been amended on the report." Committee Resp. at 1 (Mar. 14, 2012) ("Comm. Resp.").

Based on the information provided in the Complaint and Responses, we recommend as to the first allegation that the Commission assign the Committee to the Office of Alternative Dispute Resolution ("ADR") for resolution of its failure to report disputed debt. Second, we

² Complainant's allegation that the excessive contributions total \$85,000 appears to be a typographical error, as the contributions identified in the Complaint actually total \$80,500.

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1 recommend that the Commission find no reason to believe that the Committee violated 2 U.S.C.
2 § 441a(f) by accepting, or the Contributors violated 2 U.S.C. § 441a(a) by making, excessive
3 contributions. We also recommend that the Commission exercise its prosecutorial discretion and
4 dismiss the allegation that the Committee violated 2 U.S.C. § 434(b)(1) and (3) by failing to
5 disclose contributions, but send a letter of caution to the Committee. Finally, because there is no
6 information that Jason Buck violated any of these statutes in his personal capacity, we
7 recommend that the Commission find no reason to believe that he violated 2 U.S.C.
8 §§ 434(b)(1), (3), and (8); and 441a(a).

9 II. FACTUAL AND LEGAL ANALYSIS

10 A. Factual Background

11 The Committee is the principal campaign committee of Jason Buck, a first-time candidate
12 who sought the Republican nomination for the U.S. House of Representatives from Utah's
13 Second Congressional District in 2012. Buck and the Committee filed a Statement of Candidacy
14 and Statement of Organization, respectively, on August 28, 2011. Buck failed to win the
15 Republican nomination at the party's nominating convention on April 21, 2012.

16 1. Failure to Disclose Debts

17 Complainant alleges that the Committee failed to disclose three debts totaling \$42,900 in
18 its reports: (1) \$19,500 owed to Letter23, LLC ("Letter23"); (2) \$11,400 owed to Lime
19 Marketing ("Lime"); and (3) \$12,000 owed to JPC Development ("JPC"). The Complaint
20 includes several documents supporting this allegation, including a Letter23 invoice dated
21 December 19, 2011, showing a balance due of \$19,500; an October 6, 2011, e-mail purporting to
22 show Buck acknowledging two billing statements from Lime in the amounts of \$793.65 and
23 \$10,599.60; and a JPC invoice dated December 27, 2011, showing a balance due of \$12,018.
24 Compl., Attach. 2, 3, 6.

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1 In response, the Committee asserts the claims listed by the Complainant were all in
2 dispute with the vendors, because the amounts billed were for services that were either not
3 approved or were not provided. Comm. Resp. at 1. In support of this assertion, the Committee
4 includes letters from its counsel to Letter23 and JPC, both dated January 20, 2012, disputing the
5 amounts billed but offering to settle the issue. *Id.*, Attach. 4.

6 The Response also includes unsworn statements from Buck addressing the claims related
7 to each vendor. *See id.*, Attach. 2. Buck states that he verbally engaged Kelly Casady of
8 Letter23 as a consultant on August 8, 2011, but that there "is no signed contract" and Letter23
9 never performed the services detailed in its proposal. *Id.* Buck also states that he received the
10 first and only invoice from Letter23 on December 19, 2011. *Id.* Regarding Lime, Buck simply
11 states that the dispute was settled as of February 29, 2012. *Id.* The Committee's disclosure
12 reports show that it disbursed \$500 to Letter23 on October 25, 2011, and \$1,000 to Lime on
13 February 29, 2012. *See* 2011 Year End Report; 2012 Pre-Convention Report. Finally, regarding
14 JPC, Buck asserts that he has never had "any contract, arrangement, or understanding with
15 Judson Carter," who appears to be the principal of JPC; rather, Carter raised money for the
16 Committee through Letter23. Comm. Resp., Attach 2. However, in an effort to resolve the
17 matter, Buck has offered Carter a settlement equal to ten percent of the money that Carter raised,
18 which is apparently consistent with the terms that Casady and Carter agreed upon. *Id.*

19 2. Excessive Contributions

20 As reflected in the chart below, the Committee disclosed loans from seventeen
21 individuals totaling \$80,500 on Schedules A (Itemized Receipts) and C (Loans) of its 2011 Year
22 End Report. Complainant alleges that these loans were excessive contributions. Compl. at 1.

23 The Committee's 2012 Pre-Convention Report, filed April 9, 2012, disclosed
24 disbursements made to repay these loans prior to the nominating convention on April 21, 2012.

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- 1 At that time, loan balances remained outstanding for only four of the seventeen Contributors –
- 2 Bruce Frandsen, Nyla Frandsen, Ty Mattingly, and Bruce Morrison (indicated with an asterisk) –
- 3 and those amounts were from loans made in connection with the nominating convention.

| Contributor | Election | Amount of Loan | Date Loan Made | Amount Repaid | Date of Repayment |
|-------------------------|------------|----------------|----------------|---------------|-------------------|
| Karen Abelhouzen | Primary | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| Richard Todd Abelhouzen | Primary | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 2/02/12 |
| Bruce Frandsen* | Convention | \$500 | 12/30/11 | \$0 | N/A |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| Mary Frandsen | Convention | \$2,500 | 12/29/11 | Paid in full | 1/23/12 |
| | Primary | \$2,500 | 12/29/11 | Paid in full | 1/23/12 |
| Mel Frandsen | Convention | \$500 | 12/29/11 | Paid in full | 1/23/12 |
| | Primary | \$2,500 | 12/29/11 | Paid in full | 1/23/12 |
| Nyla Frandsen* | Convention | \$2,500 | 12/30/11 | \$1,000 | 1/09/12 |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/09/12 |
| Lee Johnson | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| Michelle Johnson | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| Ty Mattingly* | Convention | \$2,500 | 12/30/11 | \$1,500 | 1/11/12 |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| Julie Mattingly | Convention | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/30/11 | Paid in full | 1/11/12 |
| Amy Morrison | Convention | \$2,500 | 12/31/11 | Paid in full | 1/07/12 |
| Bruce Morrison* | Convention | \$2,500 | 12/31/11 | \$2,250 | 1/07/12 |
| Tina Sawyer | Convention | \$2,500 | 12/31/11 | Paid in full | 1/10/12 |
| Becky Warner | Convention | \$500 | 12/31/11 | Paid in full | 1/26/12 |
| Vincent Warner | Convention | \$1,500 | 12/31/11 | Paid in full | 1/26/12 |
| Brigitte Wing | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| Hal Wing | Convention | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | Primary | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |
| | General | \$2,500 | 12/31/11 | Paid in full | 1/11/12 |

- 4 The only four Contributors to respond to the Complaint – Bruce, Mary, Mel, and Nyla
- 5 Frandsen – all submitted identical Responses. See Mary Frandsen Resp. (Mar. 15, 2012); Bruce

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1 Fransden Resp. (Mar. 14, 2012); Nyla Fransden Resp. (Mar. 14, 2012); Melvin Fransden Resp.
2 (no date). According to their Responses, the Committee advised these individuals that they
3 could each contribute \$2,500 for each of three elections (convention, primary, and general),
4 totaling \$7,500 per person. *Id.* The Committee also assured them that they could make the
5 contributions as loans that would be repaid as it raised money from other contributors. *Id.* Each
6 of them made loans of varying amounts and, according to the Contributors' Responses and the
7 Committee's disclosure reports, the majority of these loans have been repaid. *Id.*

8 In its Response, the Committee asserts that a RAD analyst confirmed in a March 1, 2012,
9 phone conversation that its reported contributions, including the loans, were all "within the
10 limit," and "there was no issue with any of the contributions." Comm. Resp. at 1. According to
11 RAD's Phone Log, on March 1, 2012, the Committee's designated analyst had a conversation
12 with Casady about a Request for Additional Information ("RFAI") dated February 23, 2012, that
13 RAD sent to the Committee requesting additional information about the initial cash balance
14 disclosed on the Committee's 2011 Year End Report. Phone Call from Kelly Casady,
15 Consultant, Buck for Cong., to Daniel Buckley, Reports Analyst, FEC (Mar. 1, 2012, 12:12
16 EST). During the conversation, the analyst stated that, "had there been a significant amount of
17 excessive contributions on the report, they would have also been included in the [RFAI]." *Id.*

18 3. Failure to Disclose Contributions

19 Finally, Complainant alleges that the Committee failed to disclose three \$250
20 contributions from J. Clark Morzelewski, Chris Lundell, and Phil Harker. Compl. at 2.
21 According to the Complaint, these contributions were made via the campaign's online "Fundly"
22 account between September and December 2011. *Id.* Complainant attaches a screen capture of
23 the Committee's Fundly page, showing all three contributions, as well as a statement from

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1 Morzelewski that he made a \$250 contribution to the Committee in September 2011. Compl.,
2 Attach. 8, 9.

3 In response, the Committee asserts that these contributions were received during the
4 exploratory stage, and that the omissions have since been "amended on the report." Comm.
5 Resp. at 1. In support of this assertion, the Committee attaches the February 23, 2012, RFAI
6 questioning the initial cash on hand balance disclosed on the 2011 Year End Report and
7 requesting that the Committee disclose any contributions received during the exploratory stage.
8 Comm. Resp., Attach. 1. Despite its assertion, the Committee has not yet amended the report,
9 and RAD confirms that its records show a "No Response" notation for this RFAI. E-mail from
10 Nataliya Ioffe, RAD Branch Mgr., FEC, to Margaret Howell, Att'y, FEC (June 20, 2012, 9:06
11 EST). However, the Year End Report does disclose a \$250 contribution from Lundell on
12 December 5, 2011.

13 **B. Legal Analysis**

14 **1. Failure to Disclose Debts**

15 The Act requires political committees to report the amount and nature of outstanding
16 debts and obligations owed by or to such political committee. 2 U.S.C. § 434(b)(8); 11 C.F.R.
17 § 104.3(d). Commission regulations further provide that if a debt is disputed, the political
18 committee must report it if the creditor has provided something of value to the political
19 committee. 11 C.F.R. § 116.10(a). Specifically, the political committee must disclose any
20 amounts paid to the creditor, any amount the political committee admits it owes, and the amount
21 the creditor claims is owed. *Id.* The political committee may make a notation that "the
22 disclosure of the disputed debt does not constitute an admission of liability or a waiver of any
23 claims the political committee may have against the creditor." *Id.*

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1 The Committee's Response states that the debts alleged in the Complaint were in dispute
2 when the Year End Report was filed on January 31, 2012. Letter23 and JPC submitted invoices
3 to the Committee on December 19 and 27, 2011, respectively, and the Committee's counsel
4 responded with letters disputing the amounts billed on January 20, 2011. Additionally, the
5 October 6, 2011, e-mail in which Buck acknowledges two billing statements from Lime, coupled
6 with the lack of any disbursements from the Committee to Lime until February 29, 2012,
7 supports an inference that the Lime account was also in dispute when the Report was filed.

8 It also appears that these vendors provided something of value to the Committee. A
9 December 15, 2011, e-mail chain between the Committee, Letter23, Lime, and JPC, discussing
10 the content of and technical issues regarding the Committee's website, indicates that the vendors
11 were performing services related to this website. See Compl., Attach. 4. Additionally, while the
12 Committee disputes that Letter23 performed any of its promised services, it also states that
13 Letter 23 hired JPC to conduct fundraising for the Committee. Comm. Resp., Attach. 2. Finally,
14 the Committee acknowledges that JPC raised some amount of money, as it has offered ten
15 percent of the amount raised as a settlement. *Id.*

16 Thus, although the debts are disputed, it appears that the creditors all provided something
17 of value to the Committee, and therefore the claims should have been disclosed on the 2011 Year
18 End Report in accordance with 11 C.F.R. § 116.10.

19
20 Further, as discussed below, we are not recommending that the Commission
21 make any reason to believe findings with respect to the two other allegations in this matter.
22 Under these circumstances, we believe that it is appropriate for the Commission to refer the

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1 Committee to ADR to resolve this allegation. Accordingly, we recommend that the Commission
2 assign the Committee to ADR for resolution of its failure to report disputed debt.

3 2. Excessive Contributions

4 The Act defines "contribution" to include loans made by any person for the purpose of
5 influencing any election for federal office. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a). A
6 loan is a contribution at the time it is made and is a contribution to the extent that it remains
7 unpaid. 11 C.F.R. § 100.52(b)(2). A loan that exceeds the contribution limits of the Act is
8 unlawful whether or not it is repaid. 11 C.F.R. § 100.52(b)(1). Also, the aggregate amount
9 loaned to a committee by a contributor, when added to any other contributions from that
10 individual to that committee, shall not exceed the contribution limits set forth by the Act. *Id.*

11 For the 2011-2012 election cycle, the Act limits the amount of contributions that any
12 person can make to any authorized political committee to an aggregate of \$2,500 per election.
13 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b). The Act defines "election" to include a general
14 election, a primary election, and a convention or caucus of a political party which has authority
15 to nominate a candidate. 2 U.S.C. § 431(1)(A), (B); *see also* 11 C.F.R. § 100.2. The
16 Commission has previously stated that the question of whether a particular event – including a
17 nominating convention – constitutes an election is determined by an analysis of relevant state
18 law. *See* Advisory Op. 2004-20 (Farrell for Congress) at 3. In analyzing state law, so long as a
19 convention has the potential to nominate a candidate, the Commission will deem it to have the
20 "authority to nominate" within the meaning of the Act and Commission regulations. *See id.*

21 While Utah law does not specifically address nominating conventions, it does allow
22 them, in that political parties are not required to participate in the primary election and may
23 instead submit the names of its candidates to the lieutenant governor. *See* Utah Code Ann.

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1 § 20A-9-403(2)(d).⁴ Under the Utah Republican Party Constitution, the Party has the authority
2 to nominate candidates through a nominating convention. See Utah Republican Party
3 Constitution art. XII, § 2A ("The Party shall nominate candidates for partisan offices by a
4 nominating convention and primary elections.")⁵ Accordingly, the Party's nominating
5 convention qualifies as an election under 2 U.S.C. § 431(1).

6 Utah's election cycle thus consists of three possible elections: a nominating convention,
7 a primary election, and a general election. Accordingly, individuals are permitted to contribute
8 up to \$2,500 to a candidate per election, or \$7,500 to a candidate over the election cycle. See
9 Advisory Op. 2004-20 at 5 ("The Commission recognizes that where, as here, state law gives
10 state party conventions the authority to nominate, not just endorse, a candidate, the need for
11 separate contribution limits arises for candidates seeking nomination to Federal office during the
12 convention phase, and potentially, also during a primary election.").

13 If the Contributors' loans exceeded the contribution limits, they would have constituted
14 excessive contributions, regardless of whether or not they were repaid. However, the 2011 Year
15 End Report reveals that each Contributor made no more than \$2,500 in loans per election.
16 Therefore, none of the Contributors' loans constitute excessive contributions.⁶ Accordingly, we

⁴ The statute states, "[e]xcept for presidential candidates, if a registered political party does not wish to participate in the primary election, it shall submit the names of its county candidates to the county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May 30 of each even-numbered year." *Id.*

⁵ According to the Utah Republican Party website, a "State Nominating Convention" is a gathering of state delegates, elected at state-wide Caucuses, to elect the party's nominees for partisan statewide offices, including the U.S. House of Representatives. *Convention: Frequently Asked Questions*, <http://utgop.org/inner.asp?z=5E5F5759> (last visited July 23, 2012).

⁶ Pursuant to 11 C.F.R. § 102.9(e)(3), "If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated . . . or reattributed . . . as appropriate." Any such contributions not refunded, redesignated or reattributed become excessive contributions once the candidate is no longer a candidate in that election cycle. See *e.g.*, MUR 6235 (Cannon for Congress), MUR 6230 (Wynn for Congress). Here, the Committee repaid all of the loans relating to the primary and general election prior to the nominating convention on April 21, 2012. See *supra* p. 5. Therefore, because they were proper when made, and repaid prior to the termination of Buck's potential candidacy in the primary and general elections, the loans do not appear to constitute excessive contributions under either 2 U.S.C. § 441a(a) or 11 C.F.R. § 102.9(e)(3).

1 recommend that the Commission find no reason to believe that the Committee violated 2 U.S.C.
2 § 441a(f) by accepting, or the Contributors violated 2 U.S.C. § 441a(a) by making, excessive
3 contributions.

4 3. Failure to Disclose Contributions

5 The Act requires political committees to report the amount of cash on hand at the
6 beginning of the reporting period, as well as to identify each person who makes aggregate
7 contributions in excess of \$200 in an election cycle. 2 U.S.C. § 434(b)(1), (3). Commission
8 regulations further clarify that committees that have cash on hand at the time of their registration
9 shall disclose the sources of such funds on their first report. 11 C.F.R. § 104.12.

10 Based on the Complaint and the Committee's Response, it appears that the Committee
11 received three \$250 contributions – one \$250 contribution from each of Morzelewski, Lundell,
12 and Harker – through its online account during the exploratory stage. While the 2011 Year End
13 Report discloses a \$250 contribution from Lundell on December 5, 2011, it does not disclose any
14 contributions from either Morzelewski or Harker. It thus appears that the Committee has
15 violated 2 U.S.C. § 434(b) by failing to report two \$250 contributions from Morzelewski and
16 Harker and, contrary to its representations, has not amended the report to correct the omissions.
17 However, due to the small amount in violation, we recommend that the Commission exercise its
18 prosecutorial discretion and dismiss the allegation that the Committee violated 2 U.S.C.
19 § 434(b)(1) and (3), but send a letter of caution to the Committee. *See Heckler v. Chaney*, 470
20 U.S. 821 (1985).

21 4. Jason Buck

22 There is no information that Jason Buck violated the Act in his personal capacity.
23 Accordingly, we recommend that the Commission find no reason to believe that he violated 2
24 U.S.C. §§ 434(b)(1), (3), and (8); and 441a(a).

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III. RECOMMENDATIONS

1. Assign Jason Buck for Congress and James Gilbert in his official capacity as treasurer to the Office of Alternative Dispute Resolution for resolution of its failure to report disputed debt.
2. Find no reason to believe that Jason Buck for Congress and James Gilbert in his official capacity as treasurer violated 2 U.S.C. § 441a(f) by accepting excessive contributions.
3. Find no reason to believe that Karen Abelhouzen, Richard Todd Abelhouzen, Bruce Frandsen, Mary Frandsen, Mel Frandsen, Nyla Frandsen, Lee Johnson, Michelle Johnson, Ty Mattingly, Julie Mattingly, Amy Morrison, Bruce Morrison, Tina Sawyer, Becky Warner, Vincent Warner, Brigitte Wing, and Hal Wing violated 2 U.S.C. § 441a(a) by making excessive contributions, and close the file as to them.
4. Dismiss, as a matter of prosecutorial discretion, any violation of 2 U.S.C. § 434(b)(1) and (3) by Jason Buck for Congress and James Gilbert in his official capacity as treasurer and issue a letter of caution.
5. Find no reason to believe that Jason Buck violated 2 U.S.C. §§ 434(b)(1), (3), and (8); and 441a(f), and close the file as to him.
6. Approve the attached Factual and Legal Analyses.
7. Approve the appropriate letters.

Anthony Herman
General Counsel

Daniel A. Petalas
Associate General Counsel

BY:

Kathleen Guith
Kathleen Guith
Deputy Associate General Counsel

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Margaret Ritzert Howell
Margaret Ritzert Howell
Attorney

8-16-12
Date

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