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COMMISSION
OFFICE OF GENERAL
COUNSEL

2004 APR -1 A 9:57

Elaine Devine, Esq.
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463Re: MUR 5410
James Oberweis and the Oberweis for Senate Committee
Answer to Complaint

Dear Ms. Devine:

In accordance with 2 U.S.C. § 437(g)(a), this response is filed on behalf of James Oberweis ("Oberweis") and Oberweis for Senate Committee ("Committee") (collectively "Respondents") as the answer to the complaint filed by the Democratic Party of Sangamon County, Illinois dated February 12, 2004 ("Complaint").

For reasons set out below, the Commission should make a finding of no reason to believe against Respondents and close this matter.

Factual Summary**Complaint:**

The Complaint sets out two factual claims upon which alleged violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act") are claimed to have been made by Respondents.

The first claim pertains to a set of television advertising spots ("Advertisements"). These Advertisements were paid for by the Oberweis Dairy, an Illinois chartered corporation ("Dairy"). The second factual claim pertains to a sweepstakes event sponsored by the Committee in which the winner, as stated in the Complaint, is to receive a chance to win a quart of ice cream from the Dairy each month for life ("Sweepstakes"). The Complaint alleges that the "use of Oberweis Dairy services and facilities for events and the sweepstakes were illegal contributions to Oberweis."¹

¹ Complaint at page 4

BRUSSELS
CHICAGO
DENVERDETROIT
JACKSONVILLE
LOS ANGELES
MADISONMILWAUKEE
ORLANDO
SACRAMENTO
SAN DIEGOSAN DIEGO/DEL MAR
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEETAMPA
TOKYO
WASHINGTON, D.C.
WEST PALM BEACH

002 1176057 1

27044161723

James Oberweis:

James Oberweis is currently, and at all times relevant to the Complaint was, Chairman of the board of directors of the Dairy. In addition, Mr. Oberweis was a candidate for the Republican Party nomination for the United States Senate from the State of Illinois. Mr. Oberweis filed his Statement of Candidacy on July 7, 2003 and designated Oberweis for U.S. Senate Committee as his principal campaign committee for that 2004 election. ("Committee"). Mr. Oberweis lost that bid for the Senate nomination in the March 9, 2004, Illinois election.

Factual and Legal Analysis:

1. The Complaint fails to allege any violations of the FECA or any facts upon which a violation could be based against Mr. Oberweis in his personal capacity.

Neither of the claims in the Complaint set forth any facts nor makes any allegations upon which the Commission could make a finding that Mr. Oberweis, in his personal capacity violated the Act. In the factual claims underlying the Advertisements and the Sweepstakes allegations, Mr. Oberweis was acting in the capacity as the Chairman of Dairy's board of directors and as a candidate, respectively. For that reason, the Commission should make a finding of "no reason to believe" and dismiss the Complaint as it pertains to Mr. Oberweis in his personal capacity.

The Complaint alleges that the appearance by Mr. Oberweis in the Advertisements, caused him to be "materially involved in the decisions regarding their (advertisements) content".² The allegation that Mr. Oberweis is considered to be materially involved in the content of the Advertisements, is a reference to him in his capacity as a candidate and may, though not conclusively, be a basis to allege coordinating the Advertisements with the Dairy. Acting as an agent even to the extent that the agent's actions meet the FECA coordination standard, is not in and of itself a violation of the Act. It merely denotes possible liability to the agents' principles; the Committee and the Dairy. The act of "coordinating" in and of itself does not constitute a separate violation by Mr. Oberweis in his personal capacity.

Second, the appearance by Mr. Oberweis at the Dairy stores to promote the "Sweepstakes", was undertaken in his capacity as a federal candidate. Participating in that Sweepstakes program does not provide a basis to allege any personal violation of the FECA by Mr. Oberweis.

Therefore, the Complaint fails to set forth any facts or potential allegation upon which personal liability for any violation of the Act could be attributed to Mr. Oberweis. For that reason the Commission should make a finding of no reason to believe and dismiss the matter against Mr. Oberweis in his personal capacity.

² Complaint at page 3

As a supplementary point, the Complaint repeatedly references a “knowing and willfully” violation of the FECA by the use of the Dairy’s corporate treasury funds to influence the election of Mr. Oberweis. As will be noted below, there is no basis upon which to make such a reckless allegation.

The Complaint claims Mr. Oberweis and his campaign secured an opinion from Illinois legal counsel opining the proposed production and airing of the Advertisements complied with the FECA. In his capacity as Chairman of the board and as a federal candidate, Mr. Oberweis maintained obligations to both the Dairy as well as to the Committee. Seeking legal counsel on this issue underscores the care with which Mr. Oberweis approached his dual obligations as Chairman of the board of the Dairy and as a candidate for United States Senate. Contrary to the overreaching statements in the Complaint, exhibition of such care does not evidence malfeasance of a “knowing and willful” nature but rather one that demonstrates he was aware of a potential concern and took a judicious course of action in order to be assured a violation would not occur. It is irresponsibility for the Compliant to include a reference, let alone the constant reference a knowing and willful violation. There is absolutely no basis whatsoever for such obvious politically motivated rhetoric.

2. The mere participation by Mr. Oberweis in the Advertisements is insufficient for the Advertisements to be considered to be coordinated with the Committee.

As noted above, there is no basis for an allegation that Mr. Oberweis in his personal capacity could possibly have been in violation of the FECA by virtue of his mere appearance in the Advertisements. At most, the Commission could view Mr. Oberweis as an agent for the Committee and on that basis allege coordination of the advertisements. However, the mere classification as a “agent” is not in and of itself a violation of the Act. Therefore those grounds are insufficient to allege a violation of the FECA due to that relationship.

The Complaint fails to present any facts that the Committee participated or coordinate with the Dairy on the specific provisions of the Advertisements, other than the fact Mr. Oberweis appeared in the Advertisements. Absent such evidence, no violation of the Act that has occurred by the Committee.

The Dairy has submitted a response to the Complaint under separate cover. It is the understanding of Respondents that the Dairy’s response sets forth the reason why the Dairy chose to undertake the Advertisements at issue in the Complaint. The mere fact that Mr. Oberweis, in his capacity of Chairman of the Dairy’s board, appeared in the Advertisements does not indicate or evidence that the Committee coordinated those Advertisements with the Dairy. The evidence must support specific coordination, not merely impute it based upon overlapping relationships.

For example, there is no evidence, or even an allegation, that the Dairy targeted its time buys to selective sales in markets to benefit the Committee. Had the intent been to benefit the Committee, the Dairy could well have conducted a state-wide time buy, claiming to be developing new markets. That was not the case. The time buys by the Dairy were limited to its current sales markets to reinforce those markets; not to promote Mr. Oberweis. The Committee did not alter its media Advertisements based on the Dairy’s Advertisements, nor did the Committee coordinate its

time buy schedules with the Dairy about the Advertisements. Respondents submit that without evidence of such specific coordination, there is no violation of the Act.³

3. The Dairy was timely and fully compensated by the Committee for use of Dairy facilities related to the Sweepstakes.

The second factual claim of the Complaint alleges that the Dairy has improperly used its corporate facilities for the benefit of the Committee thereby creating a prohibited corporate in-kind contribution to the Committee in violation of 2 U.S.C. § 441(b). The records and disclosure reports of the Committee evidence that there is no basis for this claim.

The regulations authorized and incorporated vendor, such as the Dairy, to extend credit to a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to non-political debtors that are of similar risk in size of obligation.⁴ The regulations set out three criteria to determine whether credit was extended in the ordinary course of business.

The type of services provided by the Dairy to the Committee are the same type of services it provides in the ordinary course of the Dairy's business. The extension of credit by the Dairy was undertaken in the ordinary course of business and in compliance with the regulations. The Committee timely and completely compensated the Dairy for any and all expenses associated with the Sweepstakes. Attached hereto at Exhibit "A" are copies of checks issued by the Committee for payment to the Dairy for the expenses associated with the Sweepstakes. The payment for any and all expenses associated with the Sweepstakes were paid by the Committee in accordance with the applicable regulations.⁵ The Committee and Dairy therefore fully complied with the regulations in their sponsorship and services related to the Sweepstakes.

The Act does not prohibit the Committee from making use of the Dairy facilities provided associated expenses are paid for in a timely fashion. The mere fact that Mr. Oberweis is a federal candidate and the Chairman of Dairy does not in and of itself prohibit the Committee from the use of the Dairy for the type of activities undertaken in the Sweepstakes. The Act requires the Committee to make fair market value payments on a timely basis to the Dairy for the expenses incurred. The attached exhibits evidence of the full and timely payment to the Dairy. Therefore, no violation of the Act has occurred.

³ FEC v. Christian Coalition, 52 F Supp 2d 45 (D D C 1999)

⁴ 11 CFR § 116 3(b)

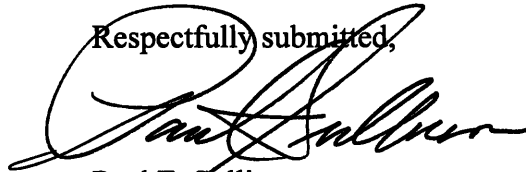
⁵ 11 CFR § 116 3(c)

Elaine Devine, Esq.
March 31, 2004
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Conclusion

For the reasons set out above, Respondents respectfully request that the Commission make a finding of no reason to believe and close this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul E. Sullivan", written over a circular stamp or seal.

Paul E. Sullivan
Counsel for Respondents

27044161727

James Oberweis and Oberweis for Senate
MUR 5410

EXHIBIT A
To
Answer to Complaint

27044161728

27044161729

OBERWEIS FOR U.S SENATE
830 GARFIELD AVE
AURORA, IL 63500

1106

DATE 29 Sept 03 72-108/719

PAY TO THE ORDER OF Oberweis Dairy \$ 343.51

Three hundred forty three - 51/100 DOLLARS @

VALLEY COMMUNITY BANK
830 GARFIELD AVE
AURORA, IL 63500

FOR Richard D. Hawks

1106 \$343.51 10/08/03

OBERWEIS FOR U.S SENATE
830 GARFIELD AVE
AURORA, IL 63500

1070

DATE 5 Sept 03 72-108/719

PAY TO THE ORDER OF Oberweis Dairy \$ 194.98

One hundred ninety four - 98/100 DOLLARS @

VALLEY COMMUNITY BANK
830 GARFIELD AVE
AURORA, IL 63500

FOR Richard D. Hawks

1070 \$194.98 09/10/03

OBERWEIS FOR U.S SENATE
830 GARFIELD AVE
AURORA, IL 63500

1193

DATE 11/15/03 72-108/719

PAY TO THE ORDER OF Oberweis Dairy \$ 257.16

Two hundred fifty seven and 16/100 DOLLARS @

VALLEY COMMUNITY BANK
830 GARFIELD AVE
AURORA, IL 63500

FOR Kelly A. O'Brien

1193 \$257.66 12/09/03

1220

OBERWEIS FOR U.S. SENATE
830 GARFIELD AVE
AURORA, IL 60006

DATE 12/18/03

PAY TO THE ORDER OF Oberweis Dairy \$ 31.44

Twenty-one and 44/100 DOLLARS

VALLEY COMMUNITY BANK
FOR DEPOSIT ONLY
3725

FOR [Redacted] Kerry A. O'Brien

1220 \$31.44 12/18/03

1281

OBERWEIS FOR U.S. SENATE
830 GARFIELD AVE
AURORA, IL 60006

DATE 1/11/04

PAY TO THE ORDER OF Oberweis Dairy \$ 282.41

Two Hundred Eighty Two and 41/100 DOLLARS

VALLEY COMMUNITY BANK
FOR DEPOSIT ONLY
FOR [Redacted] Kerry A. O'Brien

1281 \$282.41 01/13/04

1280

OBERWEIS FOR U.S. SENATE
830 GARFIELD AVE
AURORA, IL 60006

DATE January 9, 2004

PAY TO THE ORDER OF Oberweis Dairy \$ 2,754.00

Two Thousand Seven Hundred Fifty Four DOLLARS

VALLEY COMMUNITY BANK
FOR DEPOSIT ONLY
FOR [Redacted] Kerry A. O'Brien

1280 \$2,754.00 01/13/04

27044161730

27044161731

1336

OBERWEIS FOR U.S. SENATE
44 12 DOWNER PLACE
AURORA, IL 60506

PAY TO THE ORDER OF Oberweis Daisy DATE 1/24/04

One hundred and sixteen 30 \$ 116.30

VALLEY COMMUNITY BANK
1301 S. State St.
Aurora, IL 60506

FOR Val. Zurich A. Walter Kapp

1336 \$116.30 01/28/04

1339

OBERWEIS FOR U.S. SENATE
44 12 DOWNER PLACE
AURORA, IL 60506

PAY TO THE ORDER OF Oberweis Daisy DATE 1/27/04

Two hundred and forty four 42 \$ 244.42

VALLEY COMMUNITY BANK
1301 S. State St.
Aurora, IL 60506

FOR Bloomington A. Walter Kapp

1339 \$244.42 01/29/04

1342

OBERWEIS FOR U.S. SENATE
44 12 DOWNER PLACE
AURORA, IL 60506

PAY TO THE ORDER OF Oberweis Daisy DATE 1/28/04

Three hundred and twenty one 21 \$ 321.21

VALLEY COMMUNITY BANK
1301 S. State St.
Aurora, IL 60506

FOR General Karen A. O'Brien

1342 \$321.21 01/30/04

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60205

1351

DATE 1/29/04

PAY TO THE ORDER OF Oben's Dairy \$ 221.61

Two hundred and twenty one 61/100 DOLLARS

VALLEY COMMUNITY BANK
608 5th St
Aurora, IL 60205

FOR Alan Ellye 742 Richard J. Hawk

1351 \$221.61 02/02/04

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60205

1354

DATE 1/30/04

PAY TO THE ORDER OF Oben's Dairy \$ 162.00

One hundred and sixty two 00/100 DOLLARS

VALLEY COMMUNITY BANK
608 5th St
Aurora, IL 60205

FOR Polly Williams Richard J. Hawk

1354 \$162.00 02/03/04

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60205

1366

DATE 2/2/04

PAY TO THE ORDER OF Oben's Dairy \$ 24.90

Twenty four and 90/100 DOLLARS

VALLEY COMMUNITY BANK
608 5th St
Aurora, IL 60205

FOR Glen's Dairy Kevin R. O'Brien

1366 \$24.90 02/03/04

27044161732

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNEY PLACE
AURORA, IL 60006

PK DK 1367

DATE 2/2/04

PAY TO THE ORDER OF Oberweis Daisy \$ 415.86

FOUR HUNDRED AND FIFTY 86 DOLLARS

VALLEY COMMUNITY BANK
222 N. 10th St.
Aurora, IL 60006

FOR Paul Lidag Kelly R. O'Brien

1367 \$415.86 02/06/04

630-301-7495

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNEY PLACE
AURORA, IL 60006

DATE 2/3/04

PAY TO THE ORDER OF Oberweis Daisy \$ 277.29

TWO HUNDRED DOLLARS AND SEVENTY SEVEN AND 29/100 DOLLARS

VALLEY COMMUNITY BANK
222 N. 10th St.
Aurora, IL 60006

FOR Whitaker Kelly R. O'Brien

1371 \$277.29 02/05/04

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNEY PLACE
AURORA, IL 60006

DATE 2/4/04

PAY TO THE ORDER OF Oberweis Daisy \$ 384.40

THREE HUNDRED AND EIGHTY FOUR 40 DOLLARS

VALLEY COMMUNITY BANK
222 N. 10th St.
Aurora, IL 60006

FOR Mike Anson Richard A. Hunt

1378 \$384.40 02/05/04

27044161733

27044161734

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

1443

PAY TO THE ORDER OF Oberweis Dairy DATE 2/4/04 \$ 55.62

Forty-five and 62/100 DOLLARS

VALLEY COMMUNITY BANK

FOR Manager of Illinois (12-76) Kenn A. B. Brown

1383 \$55.62 02/09/04

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

1446

PAY TO THE ORDER OF Oberweis Dairy DATE 2/26/04 \$ 562.50

Five hundred sixty-two and 50/100 DOLLARS

VALLEY COMMUNITY BANK

#3245 Richard D. Hawk

1446 \$562.50 02/26/04

1512

OBERWEIS FOR U.S. SENATE

44 1/2 DOWNER PLACE
AURORA, IL 60506

70-2560/719

PAY
TO THE
ORDER OF

Cherise Davis
four hundred fifty and 99/100

\$ 460.99

DATE *3/6/14*

DOLLARS



VALLEY
COMMUNITY
BANK
630-584-4483
Main Office
620 E. Main St.
St. Charles, IL 60174

FOR

Richard A. Oberweis

52191816072

1306

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

DATE 1/18/04 70-150/770

PAY TO THE ORDER OF Oberweis Daisy \$ 218.83

Two hundred and eighteen 83 DOLLARS

VALLEY COMMUNITY BANK
FOR Beckitt

Richard D. Hawk

1306 \$218.83 01/21/04

1307

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

DATE 1/19/04 70-150/770

PAY TO THE ORDER OF Oberweis Daisy \$ 293.59

Two hundred and ninety three 59 DOLLARS

VALLEY COMMUNITY BANK
FOR [Redacted]

P. William Kemp

1307 \$293.59 01/22/04

1308

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

DATE 1/20/04 70-150/770

PAY TO THE ORDER OF Oberweis Daisy \$ 376.01

Three hundred and seventy six 01 DOLLARS

VALLEY COMMUNITY BANK
FOR Weber

P. William Kemp

65 C

1308 \$376.01 01/22/04

27044161736

1310

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

DATE 1/21/04 70-255/719

PAY TO THE ORDER OF Oberweis Dairy \$ 369.07

Three hundred and Sixty nine 07 DOLLARS

VALLEY COMMUNITY BANK
220 N. Main St.
Aurora, IL 60506

FOR See memo - Encl Kerry A. O'Brien

1310 \$369.07 01/27/04

1312

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

DATE 1/22/04 70-255/719

PAY TO THE ORDER OF Oberweis Dairy \$ 236.39

Two hundred and thirty six 39 DOLLARS

VALLEY COMMUNITY BANK
220 N. Main St.
Aurora, IL 60506

FOR See memo - Encl D. Williams

1312 \$236.39 01/26/04

1323

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60506

DATE 1/24/04 70-255/719

PAY TO THE ORDER OF Oberweis Dairy \$ 246.11

Two hundred and forty six 11 DOLLARS

VALLEY COMMUNITY BANK
220 N. Main St.
Aurora, IL 60506

FOR See memo - Encl Richard D. Hawk

1323 \$246.11 01/27/04

27044161737

1304

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60006

PAY TO THE ORDER OF Oberweis Dairy \$ 25.83
Twenty-five and 83/100 DOLLARS

DATE 1/16/04

FOR Valley Community Bank
 3725 Ken A. O'Brien

VALLEY COMMUNITY BANK
600 N. LAKE ST.
AURORA, IL 60006

1304 \$25.83 01/21/04

1305

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60006

PAY TO THE ORDER OF Oberweis Dairy \$ 169.46
One Hundred Sixty Nine and 46/100 DOLLARS

DATE 1/18/04

FOR Valley Community Bank
Richard D. Hunt

VALLEY COMMUNITY BANK
600 N. LAKE ST.
AURORA, IL 60006

1305 \$169.46 01/21/04

1324

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
AURORA, IL 60006

PAY TO THE ORDER OF Oberweis Dairy \$ 514.59
Five hundred and fourteen and 59/100 DOLLARS

DATE 1/24/04

FOR Schaumburg
Richard D. Hunt

VALLEY COMMUNITY BANK
600 N. LAKE ST.
AURORA, IL 60006

1324 \$514.59 01/27/04

27044161738

1325

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNER PLACE
ALBUQUERQUE, N. MEXICO

PAY TO THE ORDER OF Oberweis Dairy \$ 449.91
Four Hundred Forty Nine dollars and 91/100 DOLLARS ☒ ☐

DATE 1/25/64 26-570719

FOR Bolton Lodge Richard D. Hout

VALLEY COMMUNITY BANK 630 S.W. 435
Miami, Florida
123 S. Main St.
P.O. Box 10, Miami

1325 \$441.91 01/27/04

1326

OBERWEIS FOR U.S. SENATE
44 1/2 DOWNEY PLACE
AURORA, ILL. 60008

DATE 1/25/64

70-263170

PAY TO THE ORDER OF Oberweis Dairy

Two hundred and seventy two 52

1 \$ 272 52

VALLEY COMMUNITY BANK

500 S. 4th St.
St. Louis, Mo. 63103

900320041 01-26-04 40303159 08 DOLLARS @

FOR Danvers State Richard D. Hawk

1326	\$272.52	01/27/04
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1334

OBERWEIS FOR U.S. SENATE
44 1/2 DO' MILLER PLACE
AURORA IL 60015

PAY TO THE ORDER OF Oberweis Dining \$ 55.62

DATE 1/24/81 12-28-77

144 - five and 62/100 DOLLARS

VALLEY COMMUNITY BANK
1400 N. W. 11th St.
Miami, FL 33136

FOR 100 cash 100.00

Kerry A. O'Brien

1334 \$55.62 02/03/04