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2010 OCT -6 AM 10: 03

FIRST GENERAL COUNSEL'S REPORT

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MUR: 6279

DATE COMPLAINT FILED: April 22, 2010

DATE OF NOTIFICATION: April 29, 2010

LAST RESPONSE RECEIVED: August 18, 2010

DATE ACTIVATED: June 29, 2010

EXPIRATION OF SOL: Earliest: August 12,
2014, Latest: August 20, 2014

COMPLAINANTS:

Citizens for Responsibility and Ethics in
Washington
Wayne Jerry Phillips

RESPONDENTS:

US Dry Cleaning Corporation
David Vitter
David Vitter for U.S. Senate and William
Vanderbrook, in his official capacity as treasurer
Robert and Regina Lee
Tim and Mary Denari
Riaz and Donna Chauthani
Jamal and Cymetria Ogbe

RELEVANT STATUTES:

2 U.S.C. § 441b
2 U.S.C. § 441f
11 C.F.R. §110.4(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Department of Justice

I. INTRODUCTION

The complaint alleges that US Dry Cleaning Corporation ("US Dry Cleaning") and its officers may have violated 2 U.S.C. §§ 441b(a) and 441f of the Federal Election Campaign Act of 1971, as amended (the "Act"), by making contributions in the name of another to David Vitter for U.S. Senate and William Vanderbrook, in his official capacity as treasurer ("the Committee")

1 through officers of US Dry Cleaning and their spouses.¹ The complaint also alleges that David
2 Vitter or the Committee may have violated 2 U.S.C. §§ 441b(a) and 441f by knowingly and
3 willfully accepting these contributions.

4 US Dry Cleaning acknowledges that four US Dry Cleaning officers and their spouses
5 made maximum \$4,800 contributions to the Committee on August 20, 2009. Response at 1. In a
6 supplemental response, sent after its receipt of a clarification letter from OGC, US Dry Cleaning
7 provided corporate records indicating that it made various payments to the officers during
8 August, including a payment of \$9,600 to each of the officers on August 12, 2009. See
9 Supplemental Response at 6, 9, 12, and 14.² However, the company states these payments were
10 for accrued unpaid back wages and other remuneration owed to the officers, and it states that the
11 payments in question reduced the debt owed to each officer by an equivalent amount. See
12 Response at 1, Supplemental Response at 2. Because the company owed the officers back
13 wages, and because the company recorded the payments as reducing US Dry Cleaning's debt
14 owed to each officer, the company asserts that the payments were not contributions in the name
15 of another by US Dry Cleaning. See Response at 1, Supplemental Response at 2.

16 Senator Vitter and the Committee filed a joint response, asserting that the complaint
17 offers no evidence to support the allegations as to Vitter and the Committee, and requesting that
18 the Commission dismiss the matter. Committee Response at 1. The Committee also requests
19 that if the Commission finds evidence of wrongdoing by the contributors and/or US Dry

¹ Although the complaint alleges that US Dry Cleaning made contributions in the name of another through reimbursements, it appears that the payments at issue were actually potential advancements of the contribution amounts. Both advancements for, and reimbursements of, contributions in the name of another are prohibited by 2 U.S.C. §441f. See *U.S. v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010)(reh'g pet'n. pending).

² Because US Dry Cleaning did not sequentially number the pages of its supplemental submission, we have numbered the pages of the submission and attached it to this Report for the Commission's convenience. See Attachment 1.

Cleaning, that the Commission let the Committee know so that it can disgorge the contributions.

Committee Response at 1.

As set forth below, there is reason to believe that US Dry Cleaning Corporation made corporate contributions in the name of another by advancing its officers funds for campaign contributions. Accordingly, we recommend that the Commission find reason to believe that US Dry Cleaning Corporation violated 2 U.S.C. §§ 441b(a) and 441f. In addition, we recommend that the Commission find reason to believe that US Dry Cleaning officers Robert Lee, Tim Denari, Riaz Chauthnai, and Jamal Ogbe violated 2 U.S.C. §§ 441b(a) and 441f by approving the corporate contributions in the name of another and by serving as conduits for the corporate contributions. We also request authorization for compulsory process.³ We further recommend that the Commission take no action at this time as to the spousal conduits and as to David Vitter and David Vitter for Senate.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Based on an article in the NEW ORLEANS TIMES-PICAYUNE, the complaint alleges that US Dry Cleaning reimbursed its officers and their spouses for contributions made to attend an August 2009 Vitter Committee fundraising dinner. See Bruce Alpert, Sen. David Vitter Crams Up With Donations From Dry Cleaning Executives, NEW ORLEANS TIMES-PICAYUNE (April 8, 2010) (hereafter, Complaint Exhibit B). The article reports that four officers of US Dry Cleaning and three of their spouses attended the event and contributed \$33,000 to Vitter's re-election

1 campaign,⁴ and that one of the officers, Jamal Ogbe, the former Director of Finance for US Dry
2 Cleaning, stated that "he was eventually reimbursed by his employer for his
3 \$4,800 contribution." *Id.* Ogbe reportedly said that "the company was facing financial
4 difficulties in 2009 and hoped that [Senator] Vitter would help the firm gain access to federal
5 stimulus financing or Small Business Administration Assistance." *Id.*⁵ The article noted that
6 Vitter opposed the stimulus package, but that he sat on the Senate Small Business Administration
7 Committee. *Id.*

8 In addition to the article, the complaint also includes copies of pages from the
9 Committee's Amended October 2009 Quarterly Report disclosing August 20, 2009 contributions
10 totaling \$38,400 from eight individuals linked to US Dry Cleaning: President and CEO Robert
11 Lee and his wife Regina Lee, Chief Financial Officer Tim Denari and his wife Mary Denari,
12 Director of Acquisitions Riaz Chauthani and his wife Donna Chauthani, and former Director of
13 Finance Jamal Ogbe and his wife Cymetria Ogbe. See Complaint Exhibit A.

14 US Dry Cleaning Corporation, Robert Lee, Tim Denari, Riaz Chauthani, and their
15 spouses submitted a joint response.⁶ Respondents state that the US Dry Cleaning officers in
16 question "were senior employees in management at US Dry Cleaning Services Corporation" and
17 were owed significant amounts of money in back wages. Further, Respondents claim that when
18 funds became available, the company wrote checks to these employees for these earned wages,
19 and that Jamal Ogbe is mistaken if he believes that the funds paid reimbursed his contribution.

⁴ The complainant reviewed the Committee's disclosure reports and determined that US Dry Cleaning officers and their spouses actually contributed \$38,400 on August 20, 2009.

⁵ US Dry Cleaning Corporation filed for federal bankruptcy protection on March 4, 2010, but continues to operate. Complaint Exhibit B. US Dry Cleaning Corporation is a Delaware registered corporation, according to the company's bankruptcy filing.

⁶ Jamal Ogbe no longer works for US Dry Cleaning. The Commission separately notified Jamal Ogbe and his spouse of the complaint, but they have not responded.

Response at 1. "Moreover, the funds paid out reduced the amount that the Company owed to these individuals." Response at 1. Respondents ask that the Commission take no action against US Dry Cleaning and the individual respondents in this matter. Response at 1.

The supplemental response includes copies of US Dry Cleaning's schedules of transactions between the company and the four officers at issue from January 2009 to August 2009. These schedules confirm that on August 12, 2009, US Dry Cleaning paid \$9,600 in consecutively numbered checks #4423-4426 to each of the four officers who, with their spouses, contributed \$9,600 to Vittor on August 20, 2009. Each of the four checks is described on the schedules as "Employee Advance ... Suspense." See Supplemental Response at 6, 9, 12, and 14. These equal payments appear to be the only time in the eight months of payments covered by the financial records that each of the four executives received the same payment on the same day. See Supplemental Response at 4-14. Also on August 12, 2009, CEO and President Robert Lee received another check, #4422, in the amount of \$5,000 labeled "Suspense." *Id.* at 6. The schedules also show that the company credited each officer as earning different salaries and benefits.⁷

The schedules appear to confirm that the company owed each of the officers except Denari money at the end of 2008: _____ to Lee, _____ to Chauthani, and _____ to Ogbe. See Supplemental Response at 4, 7, and 10. During 2009, US Dry Cleaning incurred additional debts for monthly salary and benefits to each officer. See

⁷ It appears from the schedules that Lee's compensation package totaled _____ per month, including _____ in salary and _____ in other benefits. See Supplemental Response at 4-6. Chauthani's compensation package appears to have been _____ per month, with _____ in salary. See Supplemental Response at 7-9. Denari's compensation package appears to have been _____ per month, with _____ in salary. See Supplemental Response at 10-11. Lastly, Ogbe's compensation package appears to have been _____ per month, with _____ in salary. See Supplemental Response at 12-14. On apparently random dates throughout the year, the company credited payments to the accounts of one or more of the officers. The credits are labeled as "Employee Advance - Suspense," "Suspense," "Expenses - Suspense," or "Loan Repayment - Suspense." The supplemental response provides no other explanation for what these labels mean.

1 Supplemental Response at 4-14. The schedules also support the company's assertion that it
2 subtracted each payment on the company's books from the previously-accrued amount owed,
3 reducing the company's stated debt to that employee. See Supplemental Response at 6, 9, 11,
4 and 14.

5 These schedules are accompanied by a brief sworn statement from Stacy Galeano, the
6 manager of the Accounts Payable department at US Dry Cleaning. Galeane notes that the four
7 schedules "show the balances owed on a monthly basis" to the officers from December 2008
8 through August 2009, and that the "schedules are based on amounts received and compensation
9 incurred by each employee on a monthly basis." Galeano Statement, Supplemental Response at
10 3. Galeano's statement does not explain the nature or timing of the payments recorded in these
11 schedules, nor does it directly address the allegation that US Dry Cleaning made corporate
12 contributions in the names of others through these payments. The supplemental response
13 contains no affidavits from any of the corporate officers involved or from their spouses regarding
14 the contributions or the \$9,600 payments. The response also does not indicate whether the
15 officers were aware that the company accounted for the \$9,600 payments as offsetting accrued
16 debt owed to them.

17 **B. Legal Analysis**

18 Corporations are prohibited from making contributions to federal candidates. See
19 2 U.S.C. § 441b(a). In addition, section 441b(a) prohibits any officer or director of any
20 corporation from consenting to any contribution by the corporation to a federal candidate. The
21 Act also provides that no person shall make a contribution in the name of another person or
22 knowingly permit his or her name to be used to effect such a contribution. 2 U.S.C. § 441f. Any
23 candidate or political committee who knowingly accepts or receives any contribution prohibited

1 by 2 U.S.C. § 441f also violates the Act. *Id.* Also, "no person shall ... knowingly help or assist
2 any person in making a contribution in the name of another." 11 C.F.R. 110.4(b)(iii). A
3 contribution made in the name of another results when the source of a contribution solicits a
4 conduit to transmit funds to a campaign in the conduit's name, subject to the source's promise to
5 advance or reimburse the funds to the conduit. *See U.S. v. O'Donnell*, 608 F.3d 546, 549 (9th
6 Cir. 2010); *see also* AO 1996-33 (Colantuono for Congress) (a contribution is made in the name
7 of another when the funds used for the contribution are "replenished" for the contributor, in
8 advance or afterward (and in whole or in part) by a different person). Thus, the named
9 contributor must be the "true source" of the contribution and have their "personal funds" reduced
10 in the amount of any contribution. AO 1984-52 (Marty Russo)(superseded in part on other
11 grounds); *U.S. v. Hsia*, 176 F.3d 517, 524 (D.C. Cir., 1999) ("We are convinced ... that [the
12 Act's] demand for identification of the 'person ... who makes a contribution' is *not* a demand for
13 a report on the person in whose name money is given; it refers to the true source of the money.")
14 The Commission defines the term "personal funds" only in the context of personal funds used for
15 a candidate's contributions to his or her own campaign. In the candidate context, "personal
16 funds" includes "amounts derived from any asset that, under applicable state law, ... [the
17 contributor] had legal right of access to or control over, and with respect to which ... [the
18 contributor] had legal and rightful title or an equitable interest. 11 C.F.R. § 100.33(a), *see also*
19 11 C.F.R. § 9003.2(c)(3). "Personal funds" also includes income including "a salary or other
20 earned income that the candidate earns from bona fide employment." 11 C.F.R. § 100.33(b)(1).⁸

⁸ The regulations concerning contributions by minors might also be helpful in defining "personal funds." Minors may only contribute "if the decision to contribute is made knowingly and voluntarily by the Minor," and "[the funds] contributed are owned or controlled by the Minor," and "the contribution ... is not in any other way controlled by another individual." 11 C.F.R. § 110.19.

1 Although this matter is a close call, there is reason to believe that US Dry Cleaning was
2 the true source of the money its officers contributed to the Vitter campaign and investigate. US
3 Dry Cleaning gave four senior officers \$9,600 in sequentially numbered checks, which it
4 identified on its records as "advances," and eight days later, the officers and their wives made
5 maximum \$9,600 contributions to the Vitter Committee. One of these officers, Ogbe, claimed he
6 was reimbursed for his contributions, and is quoted in a newspaper article as stating that the
7 company was facing financial difficulties and hoped that Sen. Vitter would help the company
8 obtain federal assistance. In addition, the company's explanation that these funds were back
9 wages is not conclusive because (1) the company paid the four officers the same amount of
10 money at the same time, even though they earned different salaries and were owed different
11 amounts at the time, and (2) the company gave CEO Robert Lee a separate \$5,000 "suspense"
12 payment on the same day instead of including it in his \$9,600 check. Also, the company's
13 records identify the payments under the ambiguous category of "suspense" and not clearly as
14 back wages.⁹ The records that the company provided also do not indicate whether it made
15 similar payments to non-contributing officers and employees at that time. In addition, none of
16 the officers who received these "advances" has filed an affidavit explaining the circumstances of
17 these payments. Finally, US Dry Cleaning has filed for bankruptcy, and it is not known whether
18 the company will ever distribute the accrued back pay to the officers, which raises the question

⁹ In accounting terms, a "suspense account" is an account whose "function ... is to separate and identify funds while additional actions ... are undertaken or while additional processing ... takes place." *Pajic v. American General Life Ins. Co.*, 419 F.Supp.2d 1380, 1383 (M.D.Fla. 2006). A "suspense account" is further explained as "a temporary resting place for charges which cannot be properly classified on the basis of information presently available. ... Use of suspense accounts should be held to a minimum, for their very nature makes them susceptible to abuse. Unless the account is frequently reviewed by someone in authority, expenditures once charged to Suspense are apt to remain there long after the means for such classification has ceased to exist." *Minigs and Lorenz, Principles of Auditing*, (1969). We conferred with the Audit Division, which confirmed that both of the above definitions are correct.

whether the offsets against the accrued back pay had an "irreversible economic effect" for them.

See MUR 5279 (Kushner) GCR#4 at 9.

The respondents' defense raises the question whether the funds donated to the Committee were the personal funds of the named contributors, and whether the available US Dry Cleaning financial records conclusively resolve the issue. As suggested by the definition of "personal funds" taken from other contexts, it appears that a contributor must have "access to" or "control over" funds in order to claim them as personal funds. Based on the available information, it is not clear that the contributors had such access or control. While we have no reason to dispute the company's claim that it owed back wages to its officers, it appears that US Dry Cleaning determined the dates and amounts of disbursements that offset the back wages and based these decisions on the availability of funds. There is no information that the officers were able to access their back wage accounts for voluntary draws. Thus, to the extent that US Dry Cleaning decided whether to release funds, it controlled the funds.

Related to the issue of control over the funds is whether the \$9,600 contributions were voluntary. If US Dry Cleaning exercised control over disbursement of the executive's back wages, it may have maintained the ability to target the disbursements for a specific purpose. According to Ogbe's statement, US Dry Cleaning had a corporate interest in supporting the Vitter campaign based on its hope that he would help the company obtain federal funding. As mentioned above, the timing and amounts of the four payments, and the separate \$5,000 check to CEO Lee could suggest that the corporation targeted the \$9,600 for political contributions. Also, at the time of the contributions, the four US Dry Cleaning officers had not been paid their full compensation in months, and Tim Denari, Jamal Ogbe, and all of the spousal contributors had

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1 never before contributed to any federal campaign.¹⁰ These factors raise questions whether all of
2 these individuals would voluntarily choose to make maximum contributions to the Committee.
3 Thus, US Dry Cleaning may have conditioned the release of the funds on the officers' agreement
4 to use the proceeds for the political contributions. This type of control could be evidence of a
5 "contribution made in the name of another." See *O'Donnell*, 608 F.3d at 549 (the source of a
6 contribution solicits a conduit to transmit funds to a campaign in the conduit's name, "*subject to*"
7 the source's promise to advance or reimburse the funds to the conduit)(emphasis added).¹¹

8 In a similar situation, the Commission has found RTB and authorized an investigation of
9 the respondents' business accounting to determine their liability for violations of the Act. In
10 MUR 5279 (Kushner), the Commission initially found reason to believe that a real estate
11 developer violated 2 U.S.C. § 441f by making contributions through conduits who were his
12 partners in real estate partnerships, because partnership accounting entries suggested that the
13 partners to whom the contributions were attributed may have received reimbursements in the
14 form of supplemental distributions to their partnership ledger balances. MUR 5279 (Kushner)
15 GCR#4 at 4. The subsequent investigation included an "extensive review" of the partnerships'
16 and partners' tax records and expert opinions from the respondents' accountants and an Internal
17 Revenue Service partnership tax expert. *Id.* at 9. Only after this investigation could the
18 Commission conclude that the supplemental distributions were actually offsets to debits to the
19 partners' capital accounts, which under accountancy and tax principles had the "irreversible
20 economic effect" of reducing profits for the contributing partner. *Id.* When the partnership

¹⁰ Robert Lee contributed to the Heartland Values PAC in 2008, and to the Mary Bono Mack Committee in 2006. Riaz Chaudhri contributed to Friends of John F. Kennedy in 2009.

¹¹ The definition of "personal funds" in other contexts in the Act also includes "salary or other earned income," and we do not know whether the \$9,600 payments were treated as income for tax purposes – the schedules do not indicate any withholding of taxes, which might indicate that the payments were not income. Ogbe's statement that he was "reimbursed" might also indicate he did not view the \$9,600 payment as income.

1 dissolved or when the partner exited the partnership, the partners' final partnership distribution
2 would be reduced in an amount equal to the political contributions made. *Id.* As in Kushner, we
3 recommend that the Commission authorize an appropriate investigation to determine the facts of
4 this case and make a fully-informed decision.

5 We recognize that there are factors that might militate against a reason-to-believe finding.
6 The company's schedules facially show that it deducted the \$9,600 from the officers' accounts.
7 Also, Ogbe did not file a response to the complaint, and both the newspaper article's report of
8 the total amount of the Vitter contributions related to US Dry Cleaning and its report that
9 Ogbe's contribution was "eventually reimbursed" are inaccurate. (If anything, it appears the
10 company advanced Ogbe the amount of his contribution.) Nonetheless, we believe that the better
11 course is to authorize an investigation to resolve the material factual ambiguities regarding the
12 complaint's serious allegations.

13 We do not, at this time, recommend a knowing and willful finding as to US Dry Cleaning
14 or its officers. The Act addresses violations of law that are knowing and willful. *See* 2 U.S.C.
15 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is
16 violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*,
17 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by
18 proof that the defendant acted deliberately and with knowledge that the representation was
19 false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to
20 show that the defendant had a specific knowledge of the regulations; an inference of a knowing
21 and willful act may be drawn from the defendant's scheme to disguise the source of funds used
22 in illegal activities. *Id.* at 213-15. It may be that an investigation will show that US Dry
23 Cleaning contributed \$38,400 of company money to the Committee through other persons, but

1 the respondents' stated belief that they thought the accrued back wages permitted the payments
2 could indicate that they did not know that their actions might be illegal. In addition, the
3 information that we currently have indicates that US Dry Cleaning contemporaneously
4 accounted for the \$9,600 payments on its books and did not make efforts to disguise those
5 payments in its responses to the Commission. An investigation may identify additional
6 information that could change our understanding, but at this time we do not recommend knowing
7 and willful findings as to US Dry Cleaning or its officers.

8 With regard to the officers' spouses, we recommend that the Commission take no action
9 at this time. In most cases, the Commission has not pursued conduits in contribution
10 reimbursement schemes because they were subordinate employees or spouses. We do not know
11 whether Regina Lee, Mary Denari, Donna Chauthani, and Cymetria Ogbe participated in the
12 alleged 441f violations in any way, and it may be possible that these conduits were not even
13 aware of contributions made on their behalf by their husbands. Thus, we recommend that the
14 Commission take no action at this time against Regina Lee, Mary Denari, Donna Chauthani, and
15 Cymetria Ogbe. *See, e.g.,* MUR 5871 (Noe) (Commission made no findings and took no action
16 against family member conduits except admonishment) and MUR 6231 (Marshall) (Commission
17 took no action as to conduits).

18 Likewise, we do not have information that David Vitar or David Vitter for U.S. Senate
19 knowingly accepted contributions in the name of another. However, Ogbe's representations in
20 the TIMES PICAYUNE article that the corporate officers determined to make contributions to the
21 Committee in order to attempt to secure stimulus funding or SBA funding for the company from
22 Sen. Vitter suggests that the investigation might possibly uncover information suggesting
23 otherwise. *See* Complaint Exhibit B. Therefore, we recommend taking no action at this time as

1 to David Vitter or David Vitter for U.S. Senate and William Vanderbrook, in his official capacity
2 as treasurer.

3 Therefore, we recommend that the Commission find reason to believe that US Dry
4 Cleaning Corporation violated 2 U.S.C. §§ 441b(a) and 441f. In addition, we recommend that
5 the Commission find reason to believe that the US Dry Cleaning officers violated 2 U.S.C.
6 §§ 441b(a) and 441f by authorizing the corporate contributions and consenting to serve as
7 conduits for the corporate contributions. We further recommend that the Commission take no
8 action at this time as to the family member conduits' liability for violating 2 U.S.C. § 441f by
9 permitting their names to be used to effect contributions in the name of another. Lastly, we
10 recommend that the Commission take no action at this time as to the allegation that David Vitter
11 or David Vitter for Senate and William Vanderbrook in his official capacity as treasurer
12 knowingly or willfully accepted corporate contributions made in the name of another, in
13 violation of 2 U.S.C. §§ 441b(a) and 441f.

14 **III. PROPOSED DISCOVERY**

15 In an investigation, we would seek information from the four officers of US Dry
16 Cleaning and a corporate representative about the circumstances of any decision by the company
17 and all individual respondents to contribute to the Committee, including the company's and
18 individual respondents' understandings of the advances on August 12, 2009.

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Accordingly, we request that the Commission authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

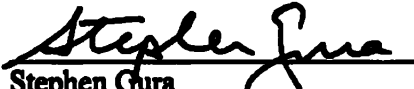
IV. RECOMMENDATIONS


1. Find reason to believe that US Dry Cleaning Corporation violated 2 U.S.C. §§ 441b(a) and 441f.
2. Find reason to believe that Robert Lee, Tim Denari, Riaz Chauthani, and Jamal Ogbe violated 2 U.S.C. §§ 441b(a) and 441f.
3. Take no action at this time as to the allegation that Regina Lee, Mary Denari, Donna Chauthani, and Cymetria Ogbe violated 2 U.S.C. § 441f.
4. Take no action at this time as to the allegation that David Vitter or David Vitter for U.S. Senate and William Vanderbrook, in his official capacity as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f.
5. Approve compulsory process.
6. Approve the attached Factual and Legal Analyses.


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7. Approve the appropriate letters.

10/6/10
Date


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Peter G. Blumberg
Assistant General Counsel


Audra Hale-Maddox
Attorney