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FEDERAL ELECTION  
COMMISSION

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
McNerney for Congress, et al. (Case ) MUR 6379  
Closure EPS) )

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 30, 2011, the Commission decided by a vote of 6-0 to take the following actions in MUR 6379:

1. Find no reason to believe that McNerney for Congress and Sue Staley, in her official capacity as treasurer, Jerome C. Pandell, and the Pandell Law Firm, Inc. violated 2 U.S.C. § 441b(a).
2. Close the file and send the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

July 1, 2011  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

11044300451



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 12 2011

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Donald L. Nelson

Danville, CA 94506

RE: MUR 6379  
McNerney for Congress

Dear Mr. Nelson:

The Federal Election Commission reviewed the allegations in your complaint received on September 17, 2010. On June 30, 2011, based upon the information provided in the complaint, and information provided by the respondents, the Commission determined that there was no reason to believe the respondents violated the Federal Election Campaign Act of 1971, as amended. Therefore, the Commission decided to close its file in this matter on June 30, 2011.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the dispositive General Counsel's Report is enclosed for your information. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g (a)(8).

Sincerely,

Christopher Hughey  
Acting General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

11044300453



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 12 2011

**VIA FIRST CLASS MAIL**

Brian G. Svoboda  
Perkins Coie LLP  
604 14<sup>th</sup> Street, NW  
Washington, DC 20005

RE: MUR 6379  
Representative Jerry McNerney  
McNerney for Congress  
Sue Staley, Treasurer

Dear Mr. Svoboda:

On September 23, 2010, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 30, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you on behalf of your clients, that there is no reason to believe your clients violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Kim Collins, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 12 2011

**VIA FIRST CLASS MAIL**

Jane Curran Pandell  
Pandell Law Firm, Inc.  
1990 N. California Blvd. Suite 1010  
Walnut Creek, CA 94596

RE: MUR 6379

Dear Ms. Pandell:

On September 23, 2010, the Federal Election Commission notified Pandell Law Firm, Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

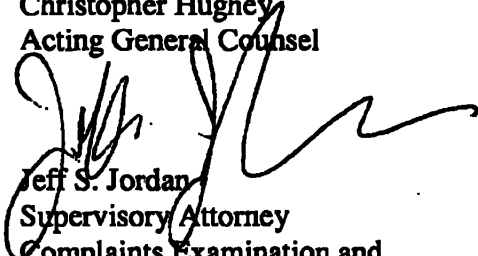
On June 30, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Pandell Law Firm, Inc. violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Kim Collins, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

BY:   
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

11044300457



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 12 2011

**VIA FIRST CLASS MAIL**

Jerome C. Pandell  
Pandell Law Firm, Inc.  
1990 N. California Blvd. Suite 1010  
Walnut Creek, CA 94596

RE: MUR 6379

Dear Mr. Pandell:

On September 23, 2010, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

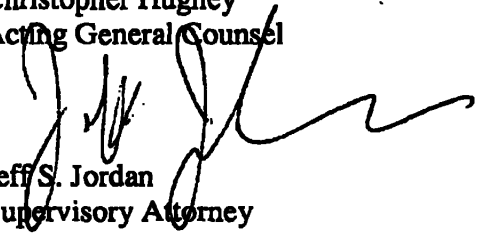
On June 30, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Kim Collins, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

BY:   
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

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RECEIVED  
FEDERAL ELECTION  
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2011 JUN 21 PM 12:09

SECRETARIAT  
2011 JUN 21 P 12:54

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In the Matter of

MUR 6379

MCNERNEY FOR CONGRESS ET AL.

)  
)  
) CASE CLOSURE UNDER THE  
) ENFORCEMENT PRIORITY SYSTEM

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SENSITIVE

GENERAL COUNSEL'S REPORT

9 Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring  
10 criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not  
11 limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of  
12 activity and the amount in violation, (2) the apparent impact the alleged violation may have had on  
13 the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in  
14 potential violations of the Act, and (5) development of the law with respect to certain subject  
15 matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-  
16 rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to  
17 dismiss certain cases, or in certain cases where there are no facts to support the allegations, to make  
18 no reason to believe findings. For the reasons set forth below, this Office recommends that the  
19 Commission make no reason to believe findings in MUR 6379.

20 In this matter, complainant Donald L. Nelson alleges that McNerney for Congress and Suz  
21 Staley, in her official capacity as treasurer ("the Committee"), Jerome C. Pandell, and the Pandell  
22 Law Firm, Inc. ("the Firm") violated the Federal Election Campaign Act of 1971, as amended ("the  
23 Act"), when the Firm made, and the Committee accepted, a prohibited in-kind corporate  
24 contribution.<sup>1</sup> See 2 U.S.C. § 441b; 11 C.F.R. § 114.2(b). Specifically, the complaint alleges that  
25 while employed by the Firm, Mr. Pandell drafted and sent a letter on behalf of the Committee to a

<sup>1</sup> Jerry McNerney currently serves as the U.S. Representative from California's 11<sup>th</sup> District.

1 television station, demanding that the station stop airing a negative advertisement. The complaint  
2 argues that while Mr. Pandell may have volunteered his time to write the letter for the Committee,  
3 he was nonetheless employed and being compensated by the Firm, and therefore the Firm made a  
4 prohibited in-kind contribution to the Committee.

5 The Committee responded and included an affidavit prepared by Mr. Pandell.<sup>2</sup> According to  
6 the Committee's response and Mr. Pandell's affidavit, in September 2010 an outside group began  
7 airing advertisements negatively depicting Congressman McNerney. The Committee asked  
8 Mr. Pandell to write a letter on its behalf to the television station airing the advertisements.  
9 Mr. Pandell, using his personal computer, drafted a letter on his personal letterhead and e-mailed  
10 the letter to the television station using his business email account. The letter stated that  
11 Mr. Pandell and the Firm "serve as volunteer legal counsel to the McNerney for Congress  
12 campaign," and requested that the station stop airing the advertisement. Mr. Pandell later made a  
13 follow-up call to the station on his personal cell phone. Mr. Pandell maintains that the entire  
14 process took no more than four hours. Mr. Pandell further asserts that his supervisors did not ask  
15 him to write the letter, he did not use Firm stationary, and, other than using his business email  
16 account and office to work on the letter, this activity did not increase the Firm's overhead. Finally,  
17 Mr. Pandell states that he works long and irregular hours, and the Firm often allows him to take  
18 time off during the day to attend to personal matters. Mr. Pandell maintains that in this case he  
19 made up the missed time by working longer hours later in the week.

20

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<sup>2</sup> Jane Curran Pandell, principal of the Firm, and Jerome C. Pandell both filed short responses, adopting and agreeing with the assertions in the Committee's response.

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1 While corporations are prohibited from making contributions to candidate committees, *see*  
2 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b),<sup>3</sup> under Commission regulations an individual may  
3 volunteer personal services to a campaign without making a contribution as long as the individual  
4 remains uncompensated. 2 U.S.C. § 431(8)(B)(i); 11 C.F.R. § 100.74 (the "volunteer exception").  
5 Additionally, a corporate employee may make "occasional, isolated, or incidental" use of corporate  
6 facilities to provide volunteer services to a political campaign during paid working hours, provided  
7 the employee does not use the facilities more than one hour per week or four hours per month, the  
8 time is made up by the employee within a reasonable time, and the activity does not increase the  
9 overhead of the corporation and is not performed under coercion. 11 C.F.R. §§ 100.54(a) and  
10 114.9(a)(2). Moreover, no corporate contribution results if an individual engages in volunteer  
11 Internet activities on behalf of a candidate, such as sending or forwarding messages or any other  
12 form of communication distributed over the Internet using computers, software, domain names, and  
13 any other technology that is used to provide access to or use of the Internet, regardless of who owns  
14 the equipment and services. 11 C.F.R. § 100.94.

15 According to the available information, it appears the work performed by Mr. Pandell, on  
16 behalf of the Committee, falls under the safe harbor for individual volunteer activity. *See* 11 C.F.R.  
17 § 114.9(a)(2). Specifically, Mr. Pandell's use of the Firm's corporate facilities appears to have been  
18 incidental. Mr. Pandell's work for the Committee only took about four hours and Mr. Pandell made  
19 up the missed time by working longer hours. Further, it does not appear that the activities  
20 performed in Mr. Pandell's office increased the operating costs of the Firm. Mr. Pandell used his

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<sup>3</sup> A "contribution" is defined as: (1) "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," and (2) "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. § 431(8)(A)(i) and (ii); *see also* 11 C.F.R. §§ 100.52 and 100.54.

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1 personal computer to draft the letter and only used his business email account to send the letter.  
2 Finally, there is no information suggesting that Mr. Pandell was coerced into doing the work.  
3 Therefore, this Office recommends that the Commission find no reason to believe that McNerney  
4 for Congress and Sue Staley, in her official capacity as treasurer, Jerome C. Pandell, and the Pandell  
5 Law Firm, Inc., violated 2 U.S.C. § 441b(a).


6 **RECOMMENDATIONS**

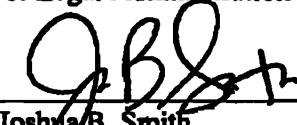
- 7 1. Find no reason to believe that McNerney for Congress and Sue Staley, in her official  
8 capacity as treasurer, Jerome C. Pandell, and the Pandell Law Firm, Inc., violated 2 U.S.C.  
9 § 441b(a).  
10  
11 2. Close the file and send the appropriate letters.

12  
13 Christopher Hughey  
14 Acting General Counsel

15  
16  
17 6/21/11  
18 Date

19  
20  
21 BY:   
22 \_\_\_\_\_  
23 Gregory R. Baker  
24 Special Counsel  
25 Complaints Examination  
26 & Legal Administration

27  
28   
29 \_\_\_\_\_  
30 Jeff S. Jordan  
31 Supervisory Attorney  
32 Complaints Examination  
33 & Legal Administration

34  
35   
36 \_\_\_\_\_  
37 Joshua B. Smith  
38 Attorney

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