FROM PLAINTIFF IN CASE 12-CV-00004

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

NOTICE FROM PLAINTIFF OF CLASS ACTION REGARDING CAMPAIGN CONTRIBUTIONS THAT ALLEGEDLY EXCEEDED INDIVIDUAL FEDERAL LIMITS

SUMMARY

If you exceeded the Federal individual campaign contribution limit as published in tables provided by the Federal Election Committee (FEC), you are being sued to enforce the Federal Election Campaign Act (FECA). You may also be subject to the suit if you made certain other types of contributions directed via a third party like a corporation or foundation. The suit encompasses those that received the contributions, those that work for these organizations, and those that received benefit from them as outlined below.

At this time it is recommended that you obtain adequate counsel to represent your interests.

HOW DO I CONFIRM THIS IS FOR REAL?

Case number 12-CV-00004 was filed in the U.S. District Court on March 19, 2012 Philip B. Maise proposed Plaintiff and Citizen Attorney General of the United States acting on the behalf of the U.S. Federal Election Commission (Plaintiff). The case title has been abbreviated in the Court system to read "*Political Action Committees-Class I, et al.*"

Direct confirmation with the U.S. Court system can be made by examination of the Complaint on the U.S. Court on-line system called PACER. The system is available at www.pacer.gov. The best suggested search term is by individual's name. Enter: *Maise,Philip* Select the third case from the list. If you do not already have an account, you can establish one. Please be aware there is a nominal charge.

You may also phone the clerk of the Court for confirmation at (617) 473-9100. The Court is across the international date line and 10 hours ahead of eastern time. Based on this, calls are best made 11:30 pm to 4:30 am eastern time. Daylight savings time is not observed at the Court's location.

The court stamped cover sheet can be viewed for free at:
http://en.wikipedia.org/wiki/File:Class_action_lawsuit_against_illegal_campaign_donations_-_Maise_v._Political_Action_Commitees,_Donors_et_al.png

The full text version at:
http://commons.wikimedia.org/wiki/File:Super_PAC_lawsuit_-_Maise_v._Political_Action_Committees_et_al.pdf

Additional links files and updates can be viewed at:
http://www.facebook.com/SuperPacFederalLawsuit

Please be aware the Facebook site is maintained by the Plaintiff.

WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this notice is to inform as many potential members of the different classes as possible that they are Defendants in a lawsuit and that they should seek counsel for their defense.

WHAT IS THE LAWSUIT ABOUT?

The lawsuit seeks civil and/or criminal penalties against those that have made, received, or benefited from allegedly unlawful excessive or prohibited individual U.S. Federal campaign contributions.

WHAT IS THE BASIS OF THIS LAWSUIT?

Individual contributions to candidates, parties, and causes concerning candidates for U.S. Federal are limited according to Federal Election Campaign Law (FECL). The U.S. Federal courts have in recent rulings determined that when there is an understanding between parties that a campaign contribution will be used for electioneering purposes to support a candidate, party, or cause then the funds are legally as if given directly and subject to regulation.

The lawsuit contends that all contribution intended to be used at least in part to influence a Federal election constitute campaign contributions. It does not matter if the funds are given to third parties such as “super PACs”, “bundlers”, non-connected organizations, or similar entities.

The lawsuit also contends that when corporations, foundations, LLC, other legal entities, were controlled by a limited group of individuals with the power to control spending, that such spending is as if made by the individuals and not the legal entity. Funds given in this manner are alleged to be illegal as having been made in the name of another and/or excessive.

WHAT IS AN UNDERSTANDING?

The United States legal system is founded upon common law and recognizes the intent and understanding between parties according the reasonable person test. The reasonable person test allows a court to look at a situation based upon the evidence and judge if a reasonable person in the same situation would come to the same conclusion.

Example: Suppose a third group is known for supporting candidate John Doe. The group might for example advertise on a website it supports John Doe, or pledges to defeat opponents of John Doe. A reasonable person making a contribution to this third party would have an understanding their contribution would be used for election purposes.

I THOUGHT UNLIMITED INDIVIDUAL CONTRIBUTIONS WERE LEGAL?

The Plaintiff's position is that the only party that is relevant to determine the question is the Judicial Branch of the United States. The Plaintiff recognizes others may dispute this contention. However, the Plaintiff asserts that at trial the Judicial Branch will conclude contributions made by Defendants were excessive and/or prohibited by law.

BUT WHAT ABOUT THE FEDERAL ELECTION COMMISSION?

The FEC is not the Judicial Branch. Normally it has the duty and right to enforce the law. The Plaintiff has presented evidence how the FEC has failed to uphold the Federal Election Campaign Act (FECA) and claimed this gave him the right to enforce as a private citizen.

WHAT ARE THE INDIVIDUAL CONTRIBUTION LIMITS?

The FEC publishes a brochure on their website at http://www.fec.gov/pages/brochures/biennial.shtml . Consult that site for complete details. Notice there are both category limits per year or election as well as an overall biennial limit.

WHO IS THE PLAINTIFF LAWSUIT?

This action was initiated by a private individual that as a "private attorney general" aka "citizen attorney general" of the United States acting on the behalf of the U.S. Federal Election Commission. See http://en.wikipedia.org/wiki/Private_attorney_general.

The Plaintiff contends that the power to act was granted to him as a statutory right by Congress within Federal Election Campaign Act (FECA). In order to act the Plaintiff needed to demonstrate to the Court the FEC failed to enforce FECA and that the intentions of Congress where not being upheld. The Plaintiff contends in the original Complaint that both factors are present.

WHO ARE THE CLASS DEFENDANTS?

The lawsuit is a mandatory defendant class action suit. This means it brings suit against a class of individuals that can be readily identified using common factors. If you fall into any of the following classes, you are a defendant. The proposed classes must be certified by the Court and definitions have changed slightly from the original Complaint with additional clarifications.

Class I: Political action committees or other organizations that retained, within the past 5 years of the filing date of the Complaint, contributions to candidates for Federal Office and to the political committees that support them that exceeded limits. To be in this class a group needs to have had the appearance of retaining at least $30,400 from a single individual Class II (a-c) or a single non-individual that qualifies as Class II(d) or Class (e). Class I proposed Defendants are being requested as part of this action to comply with FEC directives 11 CFR 103.3(a) or (b). This action disputes the legality of funds of this nature and Class I defendants are reminded that according to the FEC "*If a committee finds that a contribution is prohibited based on evidence not available when the contribution was deposited, the committee must refund the contribution within 30 days of discovery.* 11 CFR 103.3(b)(2)".

Class II: Individuals, and non-individuals that acted on the behalf of individuals, are Defendants who made, within the past 5 years of the filing date of the action, contributions to

candidates for Federal Office and to the political committees that support them that were prohibited or exceeded limits. This Class is divided into sub-classes as follows:

Class II(a): Individuals who, within the past 5 years of this filing, made contributions that exceeded a category limit or the biennial limit, as set by the FEC, by $75,000 or more.

Class II(b): Individuals who, within the past 5 years of this filing, made contributions that exceeded a category limit or the biennial limit, as set by the FEC, by more than $10,000 but less than $75,000.

Class II(c): Individuals who, within the past 5 years of this filing, made contributions that exceeded a category limit or the biennial limit, as set by the FEC, by $10,000 or less.

Class II(d): Non-individuals where it is apparent a corporation, LLC, foundation, or similar entity was utilized by an individual(s) as an intermediary, within the past 5 years of this filing, to make contributions to a campaign for Federal Office that exceeded a category limit or the biennial limit for an individual(s), as set by the FEC, by $25,000 or more.

Class II(e): Organizations that received individual contributions from proposed Defendants Class II (a), (b), or (d) that were donated for the purpose of influencing a State or Federal campaign or ballot initiative. Included in this Class are organizations that have received donations wherein a reasonable person viewing the transaction would conclude the contribution was made to help elect or defeat candidates along party or ideological lines.

Class III(a) Individuals or organizations that conspired with Class II Defendants to disguise contributions, and/or frustrate the intent of FECA to either limit or disclose funds used in Federal elections. This class specifically includes any attorneys who assisted their client to commit actions that are illegal according to FECL. This class was prompted in part from Court documents that were revealed in another case. That case demonstrated some organizations anticipate legal fees as the cost of doing business and violating the law and that the purpose of the funds is to help donors evade the law.

Class III(b) Individuals or organizations that received payments in excess of $50,000 in a single year that originated from campaign contributions that were excessive or prohibited for salaries, bonus, rewards, or consulting fees, or commissions etc. The intention of the limit is to exclude the majority of workers for organizations that may have had no idea the funds they were receiving were illegal. Further, this excludes individuals that may have earned more from organizations where the bulk of their monies received are not from illegal funds.

Class III(c) Individuals or organizations that received payments in excess of $250,000 in a single year that originated from campaign contributions that were excessive or prohibited in exchange for services rendered such as advertising, telephone campaigns, and voter mailings.

WHERE IS INFORMATION COMING FROM AGAINST ME?

The leading source of information used by the Plaintiff when making the Complaint was a website http://www.opensecrets.org. Data from this site primarily comes from filings made to

the FEC. Some organizations for example are described as Political Action Committees, others as 527 organizations, and the site lists both donors and where monies were spent.

The majority of groups and donors appear to be in compliance with the laws and are not subject to the suit. However, many show large contributions that are from individuals or other persons such as foundations, other non-profit groups, companies etc.

All individuals that are potentially effected by this suit are not necessarily named on the website. In particular when a political group simply lists another group as the source of funds, it is the intention of the Plaintiff to require information regarding the original source of funds to see if they were prohibited.

WHAT IF I WORK FOR A FIRM THAT MADE A DONATION?

The Plaintiff is primarily seeking private individuals that made a prohibited campaign contribution in the name of another. This means they directed funds under their direct control to the election process. If you personally are not the original source of the funds, as in it is from a foundation set up in your own name, and if you otherwise could not have received those funds in another manner to your own person then you are not effected. For example Walt Disney Co is listed as having made contributions in 2012. However, it is highly unlike a single or group of employees that had the ability to direct funds also had enough shares of Disney stock to control a board level meeting.

WHAT ABOUT UNIONS AND OTHER MEMBER GROUPS?

Contributions to Federal Elections from member groups are consolidated from individual contributions that are almost always within individual contribution limits. Therefore, these are not seen as potential Defendants unless individual members exceeded limits. The threshold that would prompt inquiry is if any single member's contribution exceeds $35,000 for the year.

WHAT ABOUT DONATIONS FROM A FOUNDATION?

The Plaintiff is aware of some individuals that setup foundations with the intention of directing a significant share of funds into the Federal election process. This is a rare exception. Most foundations are not operated to help a private individual to exceed individual contribution limits. You are not Defendant unless all three of the following are true:

1. Over 50% of the foundations assets came from assets that were once available or could have been made available for personal use; and
2. The foundation donates more than 10% of its contributions in a single year towards Federal Elections; and
3. Contributions from the foundation towards Federal elections exceed $75,000 in one year.

WHAT IF CONTRIBUTION WAS FROM JOINT CHECKING ACCOUNT?

If the campaign contribution was made on a joint checking account, the FEC considers the contribution as follows:

If both parties signed, the entire amount of the contribution counts towards the limit;
If one party signed, the entire amount is attributed to the person that signed;

However, when one person signs, and that amount exceeds the maximum limit, the amount "the excessive portion may be attributed to the other account holder".

The Open Secrets website does not list whether checks were jointly signed, or if signed by only one party which party signed the check.

For the purposes of this action, the Plaintiff intends to split 50/50 the amount of a contribution made on a joint instrument. This split must be approved by the Court. Since after making the split both individuals may no longer be Defendants, or may fall into a different subclass. While this allocation route is in favor of both parties associated with the instrument as a whole, it is anticipated that some potential defendants may claim they had no knowledge and did not authorize the contribution. Therefore, a secondary means of allocation has been proposed and must be approved the Court. When a party that did not sign the check wishes to ascribe the contribution solely to the party that signed the check the following tasks must be completed.

1. Order a copy of canceled check from the institution it was drawn on.
2. Prepare a statement containing the following essential points:
   - 2.1. Case number 12-cv-00004 U.S. District Court of Guam
   - 2.2. Joint name as it appears on disclosures to FEC.
   - 2.3. Name of spouse that signed check.
   - 2.4. New allocation between two. Note: The spouse that did not sign the check can attribute between 0 and 50% of the contribution to their own name.
   - 2.5. Statement that canceled check is true and correct under penalty of law.
   - 2.6. Statement that you were not forced to sign the letter and that you understood its meaning.
3. Letter is to be mailed U.S. First class to the U.S. District Court of Guam.
   Note: This route is subject to approval of the Court and do not mail this letter until approval has been granted. However, owing to the lead time required for some banks to obtained canceled checks, it is suggested the check be ordered shortly.

AM I CURRENTLY REPRESENTED IN THIS CASE?

In a defendant class action suit a single or group of attorneys represent the interests of the entire class. When there are multiple classes, as is the case here, different attorneys may represent the different classes. If no attorney of legal firm steps forward to represent a class, the Court has the power to appoint a class counsel to represent the class. However, it is advisable to have seek the most qualified attorney to assist in your defense. Currently you are not represented.

WHY HAVE NO DEFENSE ATTORNEYS STEPPED FORWARD?

The Plaintiff has been attempting to make the case as widely known as possible. These efforts have included contacts to the largest super PACs that have the greatest interest in defending the funds they received, their employees, and the contributors that funded them. However, to date none have stepped forward to defend against this action.

Unlike typical Plaintiff class actions where the attorneys can expect to share a percentage of a large settlement, this form of class counsel is defending the against the settlement.

It is generally thought by the Plaintiff that most people depend upon the media and do not read actual court rulings when coming to the conclusion that unlimited individual campaign contributions are legal. Further the largest super PACs have a conflicted interest. If they step forward to defend the lawsuit, it may be seen as a confirmation that the monies they are receiving are in legal question. This in turn forces them to follow a set of rules outlined by the FEC that include a provision to return monies to the contributor. If they continue to ignore notices, then employees of these organizations may believe it is in their best interest.

HOW CAN I BE PARTY TO A LAWUIT WITHOUT RECEIVING A SUMMONS?

The trial is not against individuals instead it is a suit against a class of individuals. Further it is what is termed a "mandatory class action". This means an individual does not have the option to opt out and request a separate trial. The trial can proceed without notice to all members of the class if the class is sufficiently clear and represented. The U.S. Courts have held that a class member may not object to the certifying of a mandatory class without evidence that supports the case that a member should not be included.

The Court will look at several factors when determining whether the case can proceed as a mandatory defendant class action. If the class is certified, the action proceeds against the entire classes even if parties are not individually named. The actions of the Court rest upon three tenants. The actions must be "fair, adequate, and reasonable." Therefore, the Court will continue to look throughout the case that the interests of each class are sufficiently represented before the Court. Any pretrial settlements that are offered, or any trial judgments if the case goes to trial, must be fair to all class members, provide adequate deterrent that the activity will not be continued, and reasonable in light of the nature of the offense.

WHAT DO I DO IF INAPPROPRIATELY CONVICTED BY COURT?

If there is an adverse ruling against you, you will be contacted using either your address on file according to the IRS and/or what appears to be a more recent address listed on a campaign contribution. This contact will be in the form of a certified letter that informs you of the ruling and the dispute process.

It is being proposed to this Court that you will have a 90-day period to file a written petition requesting that the determination be modified or set aside in district court of the United States where you reside or transact business. Items that you may use in your defense may include:

You are not the correct party.
It was a joint check and allocation of the contribution should be reallocated.
You obtained a recent refund or contribution was reallocated to State elections.

If you offer the defense that you had no idea the group that received your contribution would utilize it for electioneering purposes you need to provide some evidence to this effect.

If you were a member of Class II(c) or were incorrectly named and not the real party, the Plaintiff has proposed to the Court that you may be reimbursed for attorney fees up to $2,000.

Funds to cover this fee will come from a special account established using fines paid in by other Defendants and can be utilized until depleted.

Note: The FEC, under its rules, only provides for a 30-day period and makes no mention of who will pay any attorney fees if a ruling is incorrectly applied against you.

DO I FACE POTENTIAL IRS ISSUES?

Yes. Examine your tax records to see if you made took a tax deduction for a contribution you made to a group that campaigned directly, or funneled funds to a second group that campaigned on their behalf. The IRS tends to look favorably upon those that voluntarily amend returns.

I MAY HAVE EXCEEDED CAMPAIGN CONTRIBUTION LIMITS, WHAT CAN I DO?

The FEC recommends you to obtain a refund and document your requests in writing. If a check was from a joint account, there is a procedure available to have the amounts reallocated. This is a different procedure than the one proposed by the Plaintiff and effects reporting to the FEC. Many political committees provide support for both federal candidates and state candidates for office. When they do so, they are supposed to maintain accounts for federal elections and state elections. The FEC recommends you contact the political action committee (PAC) and "request they transfer your contribution from their federal accounts to their nonfederal accounts, assuming that such transfers are legal under state law. See 11 CFR 102.6(a). The FEC recommends that you make requests in writing, and ask for written confirmation that the committees have made the requested transfer.

For the purposes of this legal action, it is important to make independent confirmation that your contribution was refunded, reallocated, or transferred from federal to state accounts to make it legal. Confirm with the political action committee that they will update filings with the FEC to reflect the new information.

According to the FEC taking the above steps is viewed as "mitigating circumstances, the Commission may decrease any potential civil money penalty". In light of this, the Plaintiff shall also as part of any settlement or eventual fines provide two forms of mitigation that must be approved by the Court and are therefore subject to change.

The first form of mitigation is in the form of a $500 credit that can be applied against any eventual penalty.

The second form of mitigation is considering where you stand at the end of the day after any refunds or reallocation of contribution. This is important particularly if it helps you drop to a lower class since the different classes have different multiplies for fines.

HOW CAN I DETERMINE IF I EXCEEDED CONTRIBUTION LIMITS?

The FEC tables are fairly detailed, however, they provide a telephone number to call with questions. Please keep in mind you need to look at all contributions you made that a reasonable person would consider to be in the support or opposition for candidates for Federal office. It does not matter if the group is an official political action committee. What matters is if your

money eventually ends up supporting or opposing Federal candidates. Be certain to evaluate some of your contributions carefully.

Examples:

If you responded to a group that stated something like the government would be better if there were more short members of U.S. Congress, and your help is appreciated, then your entire contribution would be considered a Federal campaign contribution. The limit to a general political action committee that is supporting multiple candidates for office is $5,000. It doesn't matter if the short candidates that were supported came from different parties, or monies were spent to defeat tall candidates. The monies were still earmarked to be used in a Federal election.

Be particularly concerned if you made any contributions above $5,000 to groups that you knew were supporting a particular cause, especially if they were supporting candidates based on their position for or against the cause. These type of organizations frequently have adopted the position that they can hide the names of the donors from the public and not report contributions. Sometimes these groups are termed special interest groups. Groups like this may have hidden your name and contribution from both State and Federal election commissions. The Federal Courts have ruled this to be illegal when a reasonable person can see your contribution will be used for campaigning. This makes your contribution subject to regulation. The contribution must be disclosed to the Federal and State commission and it is subject to limits.

Note: Most States have limits on campaign financing too. Therefore, any contribution you made that was ear-marked for State and local elections may have been subject to similar regulations that were used as the basis of this lawsuit.

WHAT IF THE GROUP I GAVE TO ONLY DOES SOME CAMPAIGING?

Much of the litigation involving Federal election spending starts with questions that ask "What if". What if this, what if that, what about this situation? Questions such as these are usually posed by those that are attempting to form a "bright-line" test. An example of a "bright-line" test is the Federal speed limit on highways. Your were driving above the speed limit or not.

Bright-line tests cannot cover every possible angle under which someone may try and support candidates for office. While election laws have grown longer and longer and more complicated to read, the under-pinning basis of the law is called common law and the reasonable person test still applies no matter what loop-holes are exploited.

Here is a real example: During the 2012 Presidential primary one candidate was running low on funds to continue their campaign. A special interest group sponsored several speaking engagements and paid the candidate handsomely. The Plaintiff learned about this by reading the paper. The reporter openly questioned whether this type of money paid to a candidate could be considered to be a campaign contribution. The group has been advised of this lawsuit and as of yet has not announced if they intend to defend.

The important question in this situation is where did the money come from that the special interest group used. The reporter in the news story when openly asking if this is considered to be a campaign contribution was doing so in part to call the situation to the attention of someone that

actually would do something about it. This Plaintiff has and the evidence of this transaction will be presented at trial as an example of why Defendants in class II(e) are guilty.

A reasonable person can examine the totality of the situation. This means a Court can look at the form, timing, and size of payments made to organizations and their subsequent spending to conclude the intention parties.

Before worrying that your donation to a non-profit interest group may be subject to scrutiny, first consider the proposed members of Class II(e). This class is made up of organizations that received individual contributions from proposed Defendants Class II (a), (b), or (d) that were donated for the purpose of influencing a State or Federal campaign or ballot initiative. If the organization didn't solicit your funds with a reasonable understanding with you that they would be used in this manner then you are not potentially guilty no matter how large your contribution to the group may have been.

In order for the organization to be a Defendant it must have received donations of a minimum size wherein the contributor knew their contribution would ultimately be utilized for electioneering. These are two tests the organization must pass before it rises to the attention of the Plaintiff.

The purpose of Class II(e) is to prevent those that are trying to evade election laws by hiding contributions from disclosure and or limit. Therefore, as part of the Discovery Plan the Plaintiff is intending to serve a subpoena upon groups that claim the group that paid this candidate for Federal office. The subpoena will seek the following information:

1. Names of contributors that have given over $15,000 in any single year over the last 5 years.
2. The date of the contribution.
3. Any correspondence or solicitation from the organization to the donor that may have prompted the contribution. This includes screen printouts from the groups website on any pages that request contributions, pages about the organization, as well as any typical examples of their past or intended future work.
4. If evidence indicates that a reasonable person would not conclude a donation given around the time frame of the large donation would be utilized for campaigning, then the group nor its donors are potential defendants.

DO I FACE CRIMINAL PENALTIES?

The answer depends upon the type and scale of the violation of Federal Election Campaign Law:

> Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation or expenditure—
>
> (i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or
>
> (ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than one year, or both.

The Plaintiff's view that the key word is “knowingly”. There has been a long history of individual campaign contribution limits and these limits have been known and available for anyone to see at anytime. The Plaintiff believes Defendants fall largely into three different groups:

1. Those that knew exactly what they where doing, that it was illegal, and that believed they could get away with it. These type of Defendants knew full well that the FEC has a long history of failing to enforce the provisions of the ACT. Or, when the FEC presses actions that it does so long after the elections take place and with fines that are so small they are meaningless. These type of Defendants believed they were exploiting yet another loop-hole in the law. They typically have been responsible for campaign spending in prior elections where they utilized other supposed loop-holes. The big difference with these Defendants is they knew in advance that eventually they will be called to task. Some may even have prepared in advance monies to use in their defense and to use as a cost of doing business.

2. The second type of Defendant are those that knew that there had to be some reason why unlimited individual campaign spending was really illegal. However, they didn't now exactly what it was that made it illegal. They proceeded to break the law as alleged by the Plaintiff after coming to the incorrect conclusion that if so many others are doing it, that what ever the legality they would get away with it too.

3. The third type of Defendant might be able to honestly claim they believed their actions to be legal, however, they were still aware of individual contribution limits, and really did believe their actions to be legal. These are individuals that are best described as simply following the herd.

One major difficulty that Class I Defendants have in particular is that the Plaintiff has contacted almost all of the major players known as super PACs more than once. These contacts have been via forms on their website or contacts on their websites for more information. Since these were the same forms the Defendants typically utilized to accept donations from the public, the Plaintiff knows his e-mails were read. Further, the Plaintiff has publicized the case to the greatest extent in his power. This has included Wikipedia which typically is the number one page that appears on Google when doing key searches like “Political Action Committee” or “super PACs” when this document was prepared the page had been viewed 50,740 times in the last 30 days. At the time this document was written the one and only image to capture a readers attention was the stamped filed first page of the Complaint.

Therefore, it is highly improbably that any Class I Defendants can make a successful claim that they are still unaware the lawsuit calls into question the funds they were receiving. Further, the Defendants failed to return or at least hold funds until the legal question was resolved. For these reasons the actions of these particular Defendants is certainly both knowing and willful.

WHAT IS THE CURRENT STATUS OF THE LAWSUIT?

The current phase of the trial is considered to be pre-trial. This means an actual trial on the merits of the case have not been set. In this phase parties are required to get to gather to formulate a plan of action

By June 4, 2012. A Scheduling Order and a proposed Discovery Plan must be prepared and submitted to the Court. To do this the Plaintiff must:

(1) Identify who is going to represent the interests of the different classes.
(2) Have those that will serve as counsel for the different classes state their appearances.
(3) Meet with the counsel to jointly develop the Scheduling Order and Discovery Plan.
(4) Meet with the counsel to formulate any pre-trial settlements that allow all or some classes to be removed as Defendants prior to trial.

The court has set a Scheduling Conference for **Monday, June 18, 2012 at 10:00 AM in the 3rd Floor Courtroom. DISTRICT COURT OF GUAM, TERRITORY OF GUAM**

WHY IS THE COURT IN GUAM?

The case had to be filed somewhere, and no matter where it was filed it would be distant to some Defendants. The Plaintiff has commitments in S.E. Asia and the U.S. District Court in Guam is by far several thousand miles closer to him than any other court.

WHO CAN STEP FORWARD TO REPRESENT THE CLASSES?

Since this is a class action suit, the attorney(s) that intend to represent the interests of the classes must be licensed to practice law before a U.S. Court and in the Territory of Guam. A attorney should have a background in law that best suits the nature of the case and the interests of the class. Knowledge of class actions, and in particular defendant class actions, election law, constitutional law, and principles governing standing according to statutory rights versus in-jury in fact are recommended.

It is anticipated that any attorney representing the class will first want to question the standing of the Plaintiff, however, before doing so should request a more complete position statement. Further, the Plaintiff is requesting confirmation of his immunity when acting on the behalf of the United States and the Court reminds all counsel that they should resolve the question of immunity early.

WHAT IS THE PROPOSED PRE-TRIAL SETTLEMENT?

Any pre-trial settlement must be formulated with the input of Class counsel and approved by the Court. Therefore, terms of a possible settlement are not yet available.

Elements of the pre-trial settlement have to be fair, adequate to deter future transgressions, and consistent with the intentions of U.S. Congress when writing FECA. Each class will have their own individualized pre-trial settlement offer.

WHAT IF A PRE-TRIAL SETTLEMENT IS ACCEPTED AND I WANT TO GO TO TRIAL?

If a pre-trial settlement is accepted and you wish to dispute it, the dispute process would be similar to that as an adverse ruling. You will need to demonstrate to a local U.S. District Court that the settlement cannot be applied to your situation with evidence that you are not within the class.

WILL THE COURT RULE ON THE FAIRNESS OF THE SETTLMENT?

Yes, the Court must determine if the proposed settlement is fair, reasonable and adequate. No date has been set for this hearing.

DO I HAVE TO ATTEND THE FAIRNESS HEARING?

No, you may attend if you like however, attendance is not required.

DO I HAVE TO PAY AN ATTORNEY TO REPRESENT ME?

Each individual class members is not required to hire their own attorney. Instead one or a limited group of attorneys represents the interests of all parties. If class members are not represented by an attorney of their selection, the Court may attempt to appoint one on their behalf. However, please keep in mind an entire class may be found guilty for failing to defend against the action. In essence a class without a counsel may suffer judgment by default. Some attorneys may be reluctant to take on the case without an adequate guarantee they will be paid for their services. A class in general pays for its own attorney fees. Whether these may be taken out of fines paid in as part of a pre-trial settlement or are additional is up to approval by the Court. As the Plaintiff has requested immunity to act as the United States in prosecuting the case, the Plaintiff is not intending to pay them on your behalf.

WHAT CAN I DO TO GET AN ATTORNEY TO DEFEND ME?

Unfortunately, I as the Plaintiff am unable to assist in the location of an attorney. However, I encourage you to network among each other, and identify the strongest defense possible. The plaintiff has a Facebook page to communicate information such as this document and suggest doing something similar.

WHAT IF I'M AN ATTORNEY AND WANT TO REPRESENT A CLASS?

Consult the American Bar Association website and look for an article called “Pick me, Pick me: Getting Appointed as Class Counsel. The Plaintiff wishes to hold three telephonic meetings with counsels the week of May proposed class counsels the week of on May 15th, 17th, and 18th 2012. Please be certain to carefully confirm dates and times of conferences since the Plaintiff is across the international date line and many times zones away.

You can monitor the case on PACER to see if another attorney has already stepped forward and already has been accepted. According to website Americanbar.org “To support your application to be appointed class counsel, you should submit a declaration that explains your qualifications, your experience, your investigation and work on the case to date, and your ability to finance the litigation.” Be certain you cover any conflicts you have.

See the Americanbar.org website article regarding fees and expenses you incur for the defense of the class.

WHAT IF I WANT TO REPRESENT THE PLAINTIFF?

The Plaintiff is currently representing the case on a pro se basis. An attorney currently running for U.S. Congress has already agreed to act as an attorney for the Plaintiff. If you wish to be considered as lead counsel, please contact the Plaintiff by e-mail.

IS THERE MORE DETAIL IN THE COURT FILE?

Yes, initial full complaint extends roughly 140 pages and this summary is only a general outline and does not cover the full legal basis for the action. All papers filed in this case, are available for you to inspect and copy (at your cost) at the office of the Clerk of the United States Court for Guam, the Territory of Guam. Alternately they can be viewed and downloaded from the on-line electronic website PACER. See section at beginning of this document for more options.

HOW CAN I BE SUED IF I DIDN'T INJURE PLAINTIFF?

Understanding who the Plaintiff is key to understanding the answer to this question. The Plaintiff is acting as a private or citizen attorney general of the United States on the behalf of the FEC. This means you are being sued as if it was the attorney general of the United States. You need not have injured the prosecutor personally in order to be taken to court. Rather you need only to have broken the law.

This is called being sued according to a statutory right. Congress gave the right for a private citizen such as myself to step forward and file suit. This basis is termed being able to stand before the court according to a case called *Akins*. It is true that some Defendants did injure the Plaintiff in a personal and particularized way. It is also true the Defendant could be made whole again if those Defendants personally paid the Plaintiff for his individual injuries. This type of standing is termed *Lujan* after a case by this name.

The problem with standing using injury in-fact, is the FEC requires enforcement of the act to be done on a non-partisan basis. Therefore, the Plaintiff is required to sue all that broke the law in a similar way. Even those that came they were helping the Plaintiff by their alleged illegal activity are subject to this suit.

In a recent case, the Courts confirmed that standing utilizing *Akins* in a suit of this nature was proper.

NOTES TO PROSPECTIVE ATTORNEYS FOR DEFENSE

Before initiating a challenge to the Plaintiff's standing review the both the arguments made in the Complaint and the following information that was not included:

1. The most recent case of a similar nature involved U.S. House Representative Chris Van Hollen who sued the FEC to enforce the FECA. He made similar charges against the FEC was incompetent since "*corporations have exploited the enormous loophole it created*" and *"the agency exceeded its statutory authority and because it is arbitrary, capricious, an abuse of discretion, and contrary to the disclosure scheme set forth in the*

BCRA." His case was also based upon an allegedly improper rule making that changed statutes in FECL that (*Hollen v. FEC*., Civil Action No. 11-0766 (ABJ) p. 8, 9 (D.C. Cir. March 30, 2012))

2. The U.S. Supreme Court declined to hear the case discussed in the Complaint regarding the National Organization for Marriage against Maine that was ruled upon at the appellate level on January 31, 2012. This left standing the Plaintiff's contention that the reasonable person test and contributions were subject to regulation at the State level when there is an understanding between parties. That ruling was both prompted the Plaintiff to act and is believed to be the one you need to focus on the most to defend your clients.
3. The second basis for the case is Courts rule that anyone with "ordinary intelligence" has "fair warning" of what the law prohibits.
4. Another case you are encourage to look at ahead of time, since it will be utilized if there is challenged to standing, are recent Supreme Court of Texas rulings in favor of Mayor John Cook of El Paso. Both Hollen and Cook sued to enforce election laws and neither were a member of the executive branch nor a government prosecutor.
5. The marked difference in this suit is the Plaintiff is naming the real parties of interest. It is the Plaintiff's belief the real parties of interest in the case are those that have helped create and utilize the loop-hole for their own benefit.
6. The following two law reviews will also help quickly bring you up to speed on the issues you should expect. F. Andrew Hessick, *Standing, Injury in Fact, and Private Rights,* 93:275 Cornell L. Rev. 275-324 (2008) and Francis X. Shen, *The Overlooked Utility of the Defendant Class Action*, 88 Denver L. Rev. 73 (2010)
7. Attorneys should also be advised that recent court documents have come to light that one of the Defendants had planned a large contingency fund that they knew they needed as their actions were questionable.
8. You will need to inform the Court that you consider the class you are counsel representing served. Be careful about naming specific individuals without first obtaining written permission that their name can be used.
9. Any appeal of this case according to FECA goes to the U.S. Supreme Court.
10. Dismissal of a pro se complaint without leave to amend is proper only if it is clear that the deficiencies of the complaint could not be cured by amendment. *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) and *Flowers v. First Hawaiian Bank*, 295 F.3d. (9th Cir. 2002).
11. It is the Plaintiff's belief Defendants that received funds in question have a duty to inform those that gave them that they are party to this lawsuit. Failure to forward information to these individuals injures their ability to defend. Finally it is the Plaintiff's position <u>any new donors should be warned that they will most likely be party to this lawsuit if they make a contribution in excess of Federal limits.</u>

NOTES TO PROSPECTIVE ATTORNEYS FOR PLAINTIFF

The Plaintiff has been reluctant to invest a large amount of resources to this case until there is some indication from the Court his arguments have merit. An attempt was made within the original Complaint to obtain this confirmation by requesting a preliminary injunction and declaratory judgment. However, until any party steps forward to defend the defendants the Court appears reluctant for understandable reasons to rule on these since it would like to see notice.

John Carroll who is currently running for U.S. Senate for the State of Hawaii has agreed to be a co-counsel. If you or your legal firm wishes to be considered to represent the Plaintiff please forward information to me. You will need to provide me some indication that you have the ability to coordinate a large class action that will ultimately involve a few thousand Defendants.

NOTICE TO POTENTIAL INTERVENORS

It is anticipated a few others may wish to intervene on the behalf of the Plaintiff or Defendant. Your input into the case is welcome as it will provide additional supporting basis for the Court to rule for either side. However, before Intervening, please observe standard rules of procedure and local Court rules closely.

NOTICE TO POTENTIAL CO-PLAINTIFFS

It has been anticipated that certain agencies of the U.S. Executive branch may desire involvement in the case owing to the nature and consequence of the allegations made. Please be advised the Plaintiff intends to fully cooperate with any enforcement agencies so that their interests may be furthered. Specifically it is anticipated that the IRS will desire coordination to convert any fines or judgments against Defendants into a tax.

CONTACTING THE PLAINTIFF

Except when at sea, the plaintiff has internet and PACER access. Be aware that local Court rules require certain documents to be sent by hard copy to the Plaintiff and that owing to the location the Plaintiff has additional days to respond. E-mail is best owing to time zone differences.

Miri, Malaysia, April 28th Day of March, 2012 (Signed aboard U.S. Flagged Vessel)

/s/ Philip B. Maise

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Federal Election Commission