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SAN FRANCISCO, CALIFORNIA 94111-5894

2005 DEC 28 P 3:57

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

wbizzell@winston.com
(202) 282-5855

December 28, 2005

BY HAND

Ms. Rhonda J. Vosdingh, Esq.
Associate General Counsel
Federal Election Commission
Office of General Counsel, Enforcement Division
999 E Street, N.W.
Washington, D.C. 20463

Re: Sua Sponte Complaint: Morton Grove Pharmaceuticals, Inc.

Dear Ms. Vosdingh:

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, I am writing to initiate a *sua sponte* submission on behalf of my client, Morton Grove Pharmaceuticals, Inc. ("Morton Grove") and its President, Chief Executive Officer, and Chairman of the Board, Mr. Brian A. Tambi. Morton Grove Pharmaceuticals is a relatively small manufacturer of low cost pharmaceuticals located in Morton Grove, Illinois.

This letter serves to notify the Federal Election Commission ("Commission") of potential unknowing violations of the Federal Election Campaign Act of 1971, as amended, ("Act") by Morton Grove and Mr. Tambi. Morton Grove and Mr. Tambi are committed to conducting all of Morton Grove's business, including any political activity by the company, its officers, or employees in a lawful and ethical manner. In that spirit, Morton Grove and Mr. Tambi are ready and willing to cooperate fully with the Commission and its staff in this matter by making all relevant documents available to the Commission and by making its officers and employees available for interviews and/or depositions that may be requested by the Commission's Office of General Counsel.

Consequently, on behalf of Morton Grove and Mr. Tambi, we request (1) that the Office of General Counsel initiate an enforcement proceeding; (2) that the Commission find reason to believe that Morton Grove and Mr. Tambi violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 441f but that such violations by Morton Grove and Mr. Tambi were not knowing and willful; (3) that the Office of General Counsel obtain the Commission's authorization to engage in a pre-probable cause conciliation with Morton Grove and Mr. Tambi pursuant to 11 C.F.R. § 111.18(d); and (4) pursuant

2005 DEC 28 P 3:47

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Ms. Rhonda J. Vosdingh, Esq.

***Sua Sponte* Complaint: Morton Grove Pharmaceuticals, Inc.**

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to such authorization that the Office of General Counsel engage in pre-probable cause conciliation negotiations with respect to the matters described herein.

I. Factual Background

Morton Grove is a small, privately-held company headquartered in Morton Grove, Illinois, and is organized under the laws of the state of Illinois. Morton Grove is a specialty pharmaceutical company that develops, manufactures, and markets prescription oral liquid and topical liquid pharmaceuticals. In total, Morton Grove has a work force of approximately 300 employees. Mr. Tambi is the President of Morton Grove Pharmaceuticals. It has no lobbying group, has not and does not participate in political processes, and has not requested any intervention by any of the recipients to whom political contributions have been made. Morton Grove Pharmaceuticals does not have a public affairs function, public relations or legal departments.

On different occasions in 2001, 2002, 2004, and 2005, Mr. Tambi made political contributions to two candidates for federal office and a political party on behalf of Morton Grove Pharmaceuticals. Thereafter, on being advised by his CFO, he submitted a routine request for reimbursement to the company. Because Mr. Tambi made these contributions on behalf of the company and neither Mr. Tambi nor the company's CFO knew of any legal prohibition, he was reimbursed for these matters as a business expense. Neither Morton Grove nor Mr. Tambi were in any way aware that corporate reimbursements of such contributions were unlawful. Prior to the first contributions in 2001, the privately-held company has not participated in the political process and has never organized a separate segregated fund. Moreover, Mr. Tambi himself was not familiar with campaign finance requirements. The two candidates for federal office were formally introduced to Mr. Tambi by the Generic Pharmaceutical Association ("GPhA") as friends and advocates of the Generic Pharmaceutical Industry. As noted above, Morton Grove Pharmaceuticals has no lobbying group, has not and does not participate in political processes, and has never requested any intervention by any of the recipients to whom these contributions were made. Morton Grove Pharmaceuticals does not have a public affairs function, public relations or legal departments. A search of the Commission's on-line records does not reveal any previous Federal contributions by Mr. Tambi prior to 2001 when these contributions began. Indeed, the reimbursement requests submitted to Morton Grove by Mr. Tambi clearly indicated that the purpose of each reimbursement was for political contributions. See Exhibit 1, Tambi Affidavit. Additionally, attached as Exhibit 2 are copies of the available reimbursement requests submitted by Mr. Tambi.

Based on Morton Grove's research to date, a total of \$28,000 in corporate funds was used over a period of four years to make contributions, to at least two candidates for Federal office and one political party committee.¹ None of the political candidates or committee was aware (nor is

¹ However, four of these corporate contributions, although reimbursed in violation of the Act, were made prior to the effective date of the Bipartisan Campaign Reform Act's ban on corporate contributions to national political parties.

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there any evidence that they were aware) that Morton Grove reimbursed Mr. Tambi for his contributions or that the payors on the contribution checks were conduits. Exhibit 3 provides a chart detailing each of these contributions, and noting the date the contribution was made, the recipient of the contribution, the amount of the contribution, and the amount of the reimbursement by Morton Grove.

In late spring 2005, one of Morton Grove's board members raised a question concerning these political contributions. Upon learning of the questions concerning these contributions, Mr. Tambi consulted legal counsel at Winston & Strawn LLP, which gave rise to this *sua sponte* submission. Upon discovering that corporate reimbursements for Federal political contributions were unlawful, Morton Grove and Mr. Tambi took immediate steps to remedy the violation and establish procedures to ensure future compliance.

On May 7, 2005, Mr. Tambi promptly reimbursed Morton Grove for these prohibited contributions. Attached as Exhibit 4 is a copy of the personal checks written by Mr. Tambi to reimburse Morton Grove for these contributions. Additionally, Morton Grove and Mr. Tambi engaged my services to investigate the matter and provide campaign finance counsel. With the assistance of counsel, Morton Grove began an internal review to collect all related documentation and identify the Federal candidates and political parties that received contributions from Mr. Tambi on behalf of the Company.

Morton Grove also drafted a company policy on political contributions that makes clear that employees may not be reimbursed for any political contribution. Attached as Exhibit 5 is a copy of the new company policy regarding political contributions by Morton Grove employees. Furthermore, Morton Grove has instituted corporate controls to make sure similar prohibited reimbursements do not occur in the future.

Concurrent with this *sua sponte* submission, Morton Grove and Mr. Tambi have notified each political committee and political party committee that received contributions from Mr. Tambi. Morton Grove is prepared to waive its right to a refund of all political contributions from the recipient committees and has requested that each recipient disgorge all illegal contributions referenced in this *sua sponte* submission to the U.S. Treasury.

Finally, Morton Grove and Mr. Tambi determined to bring this matter to the attention of the Commission and fully cooperate with the Commission and its staff in reaching a resolution.

II. Legal Analysis

The Act prohibits corporations from making contributions to Federal candidates or political committees and prohibits a corporation's officers from consenting to any such contribution by a corporation. See 2 U.S.C. § 441b(a) (2005). Additionally, the Act bars persons from making a contribution in the name of another. See 2 U.S.C. § 441f (2005). The Act defines the term

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“person” to include a corporation. *See* 2 U.S.C. § 431(11) (2005). Thus, in this specific case, the prohibition applies to a corporation’s reimbursement to an individual for his contribution to a Federal candidate or political committee. *See* F.E.C. Adv. Op. 41 (1986). It is apparent that, by reimbursing Mr. Tambi, Morton Grove and Mr. Tambi have unintentionally violated the Act’s prohibition on corporate contributions and the Act’s prohibition on making contributions in the name of another.

Although the Act requires increased penalties for “knowing and willful” violations, it does not define what constitutes such a violation. *See* 2 U.S.C. §§ 437g(a)(5)(C), (6)(C), and 437g(d) (2005). Consequently, consideration of the legislative history of the Act is essential to further understand the intended scope of the term “knowing and willful.” During the House debate on amendments to the Act, Congressman Wayne Hays, then Chairman of the U.S. House of Representatives (“House”) Committee on House Administration (the House committee with jurisdiction over Federal campaign finance law) and a sponsor of the 1976 amendments to the Act, noted that the phrase “knowing and willful” referred “to actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976) (statement of Rep. Hays). Thus, a knowing and willful violation requires knowledge that one is violating the law. *See Federal Election Comm’n v. John A. Dramesi for Congress*, 640 F. Supp. 985, 987 (D. N.J. 1986). Where there is no evidence of any “knowing, conscious, and deliberate flaunting” of the Act, there can be no finding of “knowing and willful” conduct. *American Fed. of Labor & Congress of Indus. Org. v. Federal Election Comm’n*, 628 F.2d 97, 101 (D.C. Cir. 1980)(citing *Frank Irey, Jr., Inc. v. Occupational Safety and Health Review Comm’n*, 519 F.2d 1200, 1207 (1975)); *see also Ratzlaf v. United States*, 510 U.S. 135, 141 (1994).

On the advice of counsel, Morton Grove and Mr. Tambi now understand that their actions violate both 2 U.S.C. § 441b(a) and 2 U.S.C. § 441f. At the same time, it is obvious that Morton Grove and Mr. Tambi were entirely unaware that the reimbursement of these contributions would violate the provisions of the Act. As is evidenced by the foregoing facts, at the time the contributions were made neither the (Exhibit 4) CFO, the corporation nor Mr. Tambi were consciously and deliberately flaunting the Act. Consequently, the Commission should not find that their violations were knowing and willful. Morton Grove and Mr. Tambi have acted firmly and decisively to investigate the activity, institute appropriate remedial action, develop enhancements to existing policies and procedures, and report the activity to the Commission, all of which indicate their violations of the Act were not intentional.

III. Conclusion

Because Morton Grove and Mr. Tambi now recognize that the events described above violate the Act, we submit to the Commission that it should find reason to believe that Morton Grove and Mr. Tambi violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 441f to the extent described herein but that the violations were not knowing and willful. On behalf of Morton Grove and Mr. Tambi, we request that the Commission’s Office of General Counsel initiate an enforcement

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proceeding and engage in pre-probable cause conciliation with respect to the potential violations described above. In determining any applicable civil penalty related to these unintentional violations, we further request that the Commission take into account the *sua sponte* nature of this complaint, the remedial steps taken to date by Morton Grove and Mr. Tambi, as well as their pledge of cooperation in this matter.

Thank you in advance for your assistance in this matter. Please feel free to contact me at (202) 282-5855 should you have any questions.

Sincerely,



Wesley D. Bizzell, Esq.

Counsel to Morton Grove Pharmaceuticals
and Brian Tambi

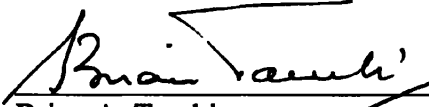
Enclosures

EXHIBIT 1

AFFIDAVIT OF BRIAN A. TAMBI

Brian A. Tambi, being duly sworn, hereby deposes and says:

1. I am President, Chief Executive Officer, and Chairman of the Board of Morton Grove Pharmaceuticals, Inc.
2. In the last 5 years, I made the following contributions to National Republican Congressional Campaign Committee ("NRCC"): \$500 (January 2001); \$500 (January 2001); \$500 (February 2001); \$1,000 (October 2002); \$5,000 (April 2004); \$10,000 (September 2004); and \$7,500 (October 2004).
3. In the last 5 years, I made the following contributions to Pallone for Congress: \$1,000 (September 2004) and \$1,000 (March 2005).
4. In the last 5 years, I made the following contribution to Friends of Schumer: \$1,000 (November 2001).
5. I do not recall making a Federal political contribution before the 2001 contribution to the NRCC listed above.
6. After each contribution, I submitted the cost of the contribution for reimbursement as a business expense.
7. I was unaware that corporate reimbursements of Federal political contributions were prohibited by Federal law and that corporations could not make direct contributions to Federal candidates.
8. Upon learning that the reimbursement violated Federal campaign finance law, I paid back Morton Grove Pharmaceuticals, Inc., in the amount of \$28,000 for all of these federal contributions -- including those pre-dating the Reform Act. I also authorized a revision of the company's expense and related policies to prevent similar mistakes in the future.


 Brian A. Tambi

SUBSCRIBED and SWORN before me
 This 15th day of DECEMBER 2005.


 Notary Public



My Commission expires: 11/9/08

28044190288

EXHIBIT 2

28044190387

NAME B. R. Smith 1 April 1951

LOCATION, DEPARTMENT _____

Morton Grove Pharmaceuticals, Inc.
EXPENSE STATEMENT

1007714

PERIOD COVERED
FROM Nov 10 1950
TO 11 14 1950

DATE	NATURE OF BUSINESS TRIP NAME AND TITLE OF PERSONS CALLED ON, FIRM AND LOCATION, BUSINESS PURPOSE.	BUSINESS TRAVEL EXPENSE						BUSINESS ENTERTAINMENT			Total Expense For Day
		Auto or Miles	Mileage	Tickets or Other	Lodging	Meals	Tips & Other	Meals*	Other*		
11/11/51	Ami Sicker (GPH Board Meeting)										142.50
11/11/51	Wheeler Hotel Washington DC										539.43
11/12/51	Domin (Botanid) - Buenos Aires										164.01
11/11/51	" (Peacock) Dr Butwin Hesa Blawm										123.00
11/12/51	" (Raglin) - G. H. A. Board Meeting										539.00
11/14/51	" (Luis) - G. H. A. Board Meeting										110.00
	Toric (Washington DC)										39.00
	Talk										31.00
*	Contribution (Senator Cramer)										500.00
	" (Senator Clark Seligson)										1000.00
	Spectra										23.87
	TOTAL										3225.87

SUMMARY OF ITEMS CHARGED TO THE COMPANY

ACOUNTING APPROVAL

TRAVEL ADVANCE SUMMARY

NATURE
AIR FARE
AUTO RENTAL
OTHER
TOTAL

CHECKED BY:
DATE

PREVIOUS TRAVEL ADVANCES (Permanent & Temporary)
ADD: CASH ADVANCED THIS PERIOD
TOTAL TRAVEL ADVANCES
TOTAL EXPENSES TO THIS REPORT

COMPLETE AND ATTACH RECEIPTS FOR ANY AMOUNTS LISTED ABOVE

EXPLAIN AMOUNTS FULLY ON BACK OF REPORT.

BALANCE (FROM) _____
MAIL CHECK TO: 1320924

I REQUEST TO BE REIMBURSED FOR EXPENSES INCURRED BY ME ON BEHALF OF THE COMPANY. I CERTIFY THAT THIS IS A CORRECT STATEMENT OF MY EXPENSES.

EMPLOYEE SIGNATURE Brown

APPROVALS R. A. [Signature]

Talk to Washington DC for G. H. A. Board Meeting and meeting with Senator Seligson and Senator Clark Seligson.

NAME Brian Tambi

LOCATION, DEPARTMENT CEO

Morton Grove Pharmaceuticals, Inc.
EXPENSE STATEMENT

V007714

SEP 14 2004

PERIOD COVERED FROM SEP 5 TO SEP 14 2004

DATE	NATURE OF BUSINESS TRIP NAME AND TITLE OF PERSONS CALLED ON, FIRM AND LOCATION, BUSINESS PURPOSE.	TRANSPORTATION					MEALS					BUSINESS ENTERTAINMENT			Total Expense For Day
		Auto Miles	Miles	Tickets or Other	Lodging	Break-fast	Lunch	Dinner	Tea & Other	Meals	Other	Other	Other		
9/13/04	"Palone for Congress" Fund														\$1,000.
9/14/04	NREE														\$14,000.
9/13/04	Senator Susan Garrett														\$500.00
TOTAL															\$15,500.00

Checked by
2455-5550

APPROVED BY
J. BOYER

QUANTITY 24
SEP 15 2004
INV # 353790

I REQUEST TO BE REIMBURSED FOR EXPENSES INCURRED BY ME ON BEHALF OF MGR. I CERTIFY THAT THIS IS A CORRECT STATEMENT OF MY EXPENSES.

EMPLOYEE SIGNATURE Brian Tambi

APPROVALS [Signature]

453-350-16,000-00

TRAVEL ADVANCE SUMMARY

PREVIOUS TRAVEL ADVANCES (Permanent & Temporary)

ADD: CASH ADVANCED THIS PERIOD

TOTAL TRAVEL ADVANCES \$

TOTAL EXPENSES TO THIS REPORT \$16,000.00

BALANCE (FROM) COMPANY \$16,000.00

MAIL CHECK TO: Brian Tambi

SUMMARY OF ITEMS CHARGED TO THE COMPANY

NATURE AMOUNT

AIR FARE

AUTO RENTAL

OTHER

TOTAL

COMPLETE AND ATTACH RECEIPTS FOR ANY AMOUNTS LISTED ABOVE

ACCOUNTING APPROVAL

CHECKED BY:

DATE

* EXPLAIN AMOUNTS FULLY ON BACK OF REPORT

NAME Paula Tully

Morton Grove Pharmaceuticals, Inc.
EXPENSE STATEMENT

LOCATION, DEPARTMENT

1007714

PERIOD COVERED
FROM October 2004
TO _____ 19__

DATE	NATURE OF BUSINESS TRIP NAME AND TITLE OF PERSON(S) CALLED ON, FIRM AND LOCATION, BUSINESS PURPOSE.	TRANSPORTATION						MEALS				BUSINESS ENTERTAINMENT		Total Expense For Day
		Auto Miles	Miles	Tickets or Other	Lodging	Break-fast	Lunch	Dinner	Tab. & Other	Meals*	Other*			
10/27/04	Conference from MSPT to NRec													7500 - 7500 -
RECEIVED OCT 27 2004 ACCTS PAYABLE														
TOTAL														7500 - 7500

ACCOUNTS PAYABLE
 ENTERED TO
 10/27/04
 INV # 355699

SUMMARY OF ITEMS CHARGED TO THE COMPANY

TRAVEL ADVANCE SUMMARY

I REQUEST TO BE REMBURSED FOR EXPENSES INCURRED BY ME ON BEHALF OF MGR. I CERTIFY THAT THIS IS A CORRECT STATEMENT OF MY EXPENSES

NATURE AMOUNT CHECKED BY: DATE

AIR FARE _____

AUTO RENTAL _____

OTHER _____

TOTAL _____

COMPLETE AND ATTACH RECEIPTS FOR ANY AMOUNTS LISTED ABOVE

PREVIOUS TRAVEL ADVANCES (Permanent & Temporary) \$ _____

ADD: CASH ADVANCED THIS PERIOD \$ _____

TOTAL TRAVEL ADVANCES \$ _____

TOTAL EXPENSES TO THIS REPORT \$ APPROVED

BALANCE (FROM) COMPANY TO BY W. BOYER

MAIL CHECK TO: _____

EMPLOYEE SIGNATURE Bonnie Lane

APPROVALS W. Boyer 10/27/04

453-3500 - \$ 7500.00

REPORT 147002

EXHIBIT 3

Reimbursed Contributions by Morton Grove Pharmaceuticals, Inc.


Recipient	Date of Contribution	Amount of Contribution	Amount of Reimbursement
NRCC ^o	January 10, 2001	\$500	\$500
NRCC ^o	February 7, 2001	\$500	\$500
NRCC ^o	February 20, 2001	\$500	\$500
Friends of Schumer*	November 15, 2001	\$1,000	\$1,000
NRCC ^{o*}	October 14, 2002	\$1,000	\$1,000
NRCC	March 14, 2004	\$5,000	\$5,000
NRCC*	September 11, 2004	\$10,000	\$10,000
Pallone for Congress*	September 12, 2004	\$1,000	\$1,000
NRCC*	October 28, 2004	\$7,500	\$7,500
Pallone for Congress	March 23, 2005	\$1,000	\$1000
TOTAL		\$28,000	\$28,000

^o These corporate contributions, although reimbursed in violation of the Act, were made prior to the effective date of the Bipartisan Campaign Reform Act's ban on corporate contributions to national political parties.

* These contributions are reflected on the Expense Statements, which are attached as Exhibit 2.

28044190392

28044190393


 BRIAN A. TAMBBI
 DAWN C. TAMBBI
 LAKE FOREST, IL 60045

2-15 4865
 710
 0651503708
 May 27, 2005

The order of *Morton Grove Pharmacy* \$35,500
 — *forty five thousand five hundred only*

THE NORTHERN TRUST COMPANY
 Northern Trust
Brian Tambbi

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EXHIBIT 5

Morton Grove Pharmaceuticals, Inc.

Policy on Political Activities

Morton Grove believes strongly in the democratic process, and the company encourages participation in the political process by its officers and employees on their own time and at their own expense. The company is legally prohibited from contributing directly or indirectly in support of political candidates for Federal elective office and is similarly prohibited from making such contributions in certain states. Thus, while officers and employees may spend their own time and funds supporting political candidates and issues, Morton Grove shall not reimburse such officers and employees in any way for their time or for their financial contributions to political candidates or parties. Furthermore, company assets, facilities, and resources may not be used for political purposes by Morton Grove or in the name of Morton Grove, except in accordance with applicable laws and regulations and after approval by the Board of Directors.

28044190394