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2012 JUN -6 AM 10: 58

CELENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 6487
DATE COMPLAINT FILED: August 8, 2011
DATE OF NOTIFICATION: August 18, 2011
DATE OF LAST RESPONSE: October 7, 2011
DATE ACTIVATED: November 16, 2011

EXPIRATION OF STATUTE OF LIMITATIONS:
March 31, 2016

MUR: 6488
DATE COMPLAINT FILED: August 12, 2011
DATE OF NOTIFICATION: August 18, 2011
DATE OF LAST RESPONSE: October 7, 2011
DATE ACTIVATED: November 16, 2011

EXPIRATION OF STATUTE OF LIMITATIONS:
March 31, 2016

COMPLAINANTS:

Campaign Legal Center
Democracy 21

RESPONDENTS:

F8 LLC
Unknown Respondents

Steven J. Lund
Eli Publishing, L.C.

Restore Our Future and Charles R. Spies, in his
official capacity as Treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)(A)
2 U.S.C. § 431(9)(A)
2 U.S.C. § 432
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441f
11 C.F.R. § 110.1(g)
11 C.F.R. § 110.4(b)

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1 **INTERNAL REPORTS CHECKED:** Disclosure reports
2
3 **FEDERAL AGENCIES CHECKED:** None

4 **I. INTRODUCTION**

5 In these two closely related matters, the Complaints allege that Restore Our Future, an
6 independent expenditure-only committee, and Charles R. Spies in his official capacity as
7 Treasurer ("ROF"), accepted two \$1 million contributions on the same date that nominally were
8 made in the name of entities that were not in fact the true sources of the contributions. Both
9 complaints allege violations of section 441f of the Federal Election Campaign Act of 1971, as
10 amended ("the Act").

11 In MUR 6487, the Complaint alleges that certain unknown persons unlawfully made a
12 \$1 million contribution in the name of F8 LLC ("F8"), and that F8 in turn violated the Act by
13 knowingly permitting its name to be used for making such a contribution. Compl. at 4, MUR
14 6487 ("F8 Compl."). In MUR 6488, the Complaint alleges that Steven J. Lund unlawfully made
15 a \$1 million contribution in the name of Eli Publishing, L.C. ("Eli Publishing"), and that Eli
16 Publishing in turn violated the Act by knowingly permitting its name to be used for making such
17 a contribution. Compl. at 4, MUR 6488 ("Eli Publ'g Compl."). The Complaints also allege that
18 F8 and Eli Publishing violated sections 432, 433, and 434 by failing to register as political
19 committees and neglecting to file relevant disclosure reports with the Commission. F8 Compl. at
20 6-7; Eli Publ'g Compl. at 7.

21 The Response of F8 ("F8 Response") in MUR 6487 and the joint Response of Eli
22 Publishing and Lund ("Joint Lund Response") in MUR 6488 deny that respondents violated the

1 Act.¹ They argue that, because the Complaints rely on a single media report, they rest on “sheer
2 speculation” and fail to allege sufficient facts to establish that a violation may have occurred.
3 See F8 Resp. at 1-2; Joint Lund Resp. at 1-2. They further contend that the contributions to
4 ROF, “on their face,” were lawful corporate contributions. See F8 Resp. at 2; Joint Lund Resp.
5 at 2. Finally, they claim that the Complaints fail to allege any facts demonstrating that either F8
6 or Eli Publishing satisfies the legal requirements for political committees. See F8 Resp. at 2-3;
7 Joint Lund Resp. at 2-3.

8 There is abundant evidence establishing reason to believe that the \$1 million
9 contributions made on the same day to ROF nominally by Eli Publishing and F8 were in fact
10 engineered and made by Lund and other unknown respondents. Accordingly, we recommend
11 that the Commission find reason to believe that Lund and Unknown Respondents violated
12 2 U.S.C. § 441f by knowingly making a contribution in the name of another, and that F8 and Eli
13 Publishing violated 2 U.S.C. § 441f by knowingly permitting their names to be used to make
14 contributions in the name of another. We further recommend that, to investigate these possible
15 violations of section 441f, the Commission authorize compulsory process, as necessary.

16 There is no basis, however, to conclude at this point that F8 or Eli Publishing is a
17 political committee, rather than a pass through or conduit for contributions by Lund and the
18 Unknown Respondents. We therefore recommend that the Commission take no action at this
19 time with respect to the allegations that F8 and Eli Publishing violated 2 U.S.C. §§ 432, 433, and
20 434.

21 Finally, we recommend that the Commission take no action at this time with respect to
22 ROF.

¹ Lund did not respond in MUR 6487, despite formally designating counsel when notified of the Complaint and responding in MUR 6488.

1 **II. FACTUAL BACKGROUND**

2 **A. Eli Publishing, F8, and Steven Lund**
3

4 Eli Publishing is a single-member, limited liability company registered with the State of
5 Utah. Joint Lund Resp. at 2; Utah Division of Corporations and Commercial Code, Business
6 Search, <https://secure.utah.gov/bes/action/details?entity=2035057-0160> (last visited May 4,
7 2012). Lund founded the company in 1997, Joint Lund Resp. at 2, and Utah state records reflect
8 that Lund is Eli Publishing's registered agent. Eli Publ'g Compl. at 2. Lund claims that he
9 created Eli Publishing "for the purpose of publishing a range of specialty books." In the roughly
10 15 years of its existence, Eli Publishing has published one book; Lund says that the company
11 "inten[ds] to publish additional books" in the future. Joint Lund Resp. at 2. According to
12 publicly available information, Eli Publishing had estimated sales of only \$72,000 in 2011 and
13 \$70,000 in 2012. See D&B Market Identifiers Database, <http://www.westlaw.com>.

14 In ROF's 2011 Amended Mid-Year report to the Commission, ROF disclosed that it
15 received a \$1 million contribution from Eli Publishing on March 31, 2011. ROF's reports to the
16 Commission and Utah state records both identify Eli Publishing's address as 86 N. University
17 Avenue, Suite 420, Provo, Utah 84601.

18 Formed in 2008, F8 is also a limited liability company registered with the State of Utah.
19 See F8 Resp. at 2; Utah Division of Corporations and Commercial Code, Business Search,
20 <https://secure.utah.gov/bes/action/details?entity=7172076-0160> (last visited May 4, 2012). F8's
21 Response states only that its purpose is "commercial." F8 Resp. at 2. F8 lists two managers in
22 its annual report: Jeremy S. Blickenstaff and Shannon Anderson. Blickenstaff is F8's registered
23 agent. F8 LLC Annual Report (Mar. 15, 2010), [https://secure.utah.gov/besimage/
24 search.html?entityNumber=7172076-0160](https://secure.utah.gov/besimage/search.html?entityNumber=7172076-0160) (last visited May 4, 2012). Blickenstaff is also
25 reportedly Lund's son-in-law and an employee of Nu Skin Enterprises, another company co-

1 founded by Lund. See T.W. Farnam, *Donation Helps Romney Get Some Skin in the Presidential*
2 *Game*, WASH. POST, Sept. 12, 2011; 2 *Utah Companies Donate \$1 Million a Piece to Romney*
3 *PAC*, Fox 13 News, [http://utahcountysouth.fox13now.com/news/news/59208-2-utah-companies-](http://utahcountysouth.fox13now.com/news/news/59208-2-utah-companies-donate-1-million-a-piece-romney-pac)
4 [donate-1-million-a-piece-romney-pac](http://utahcountysouth.fox13now.com/news/news/59208-2-utah-companies-donate-1-million-a-piece-romney-pac), cited in F8 Compl. ("Fox 13 News Broadcast"); see also
5 Tr. of Fox 13 News Broadcast of Aug. 4, 2011 ("Transcript"), Attach. A.² F8's Designation of
6 Counsel appears to be signed by Blake M. Roney. Roney, along with Lund, is a founder and
7 senior executive officer of Nu Skin. See Designation of Counsel Form, MUR 6487 for F8 LLC
8 (filed Sept. 1, 2011).

9 ROF's 2011 Amended Mid-Year Disclosure Report reports that it received a \$1 million
10 contribution from F8 on March 31, 2011 — the same date it received the \$1 million contribution
11 from Eli Publishing. Utah state records and ROF's disclosure reports both also show that F8 has
12 the same address as Eli Publishing: 86 N. University Avenue, Suite 420, Provo, Utah 84601.

13 **B. The Allegations in the Complaint and the Fox 13 News Report**

14 The Complaint relies on an August 4, 2011, news broadcast aired by Fox 13 News, a
15 television station based in Salt Lake City, Utah. The broadcast focused on the \$1 million
16 contributions that ROF reported were made by Eli Publishing and F8 on the same day. The
17 broadcast includes footage taken at the address that both companies report as their principal
18 place of business in Utah state records, and that ROF lists in its reports to the Commission. This
19 Fox 13 News footage shows that neither F8 nor Eli Publishing was listed on the directory of the
20 building and did not occupy any office space in the building.

21 Suite 420 was not identified on any door in the building. An accounting firm occupied
22 suite 400, and an employee who spoke on camera told Fox 13 News that suite 420 was included

² The Complaints provided a citation to an internet address for the Fox 13 News Broadcast that no longer appears to host the video; the full video and accompanying written report remain available on the Fox 13 News related website at the link we provide above.

1 within the space occupied by the accounting firm. The accounting firm employee said that
2 entities named F8 or Eli Publishing did not operate out of that space.³

3 Lund reportedly spoke to a Fox 13 News reporter concerning the contributions from Eli
4 Publishing and made a number of admissions relating to his direction and control over the funds
5 used to make the contributions to ROF. "Lund told Fox 13 he's not trying to hide the donation.
6 *He made it through a corporation* he created to publish a book years ago because donating
7 through a corporation has accounting advantages. Lund says the size of *his* donation shows the
8 extent of *his* concern for the direction of the country." See Fox 13 News Broadcast (emphasis
9 added). According to the Fox 13 News reporter, Lund claimed he made the contribution through
10 Eli Publishing because he did not want "*to be real public* about being a part of the campaign."
11 Robert Smith, *On the Million-Dollar Trail of a Mystery SuperPAC Donor*, NPR (Apr. 26, 2012),
12 <http://www.npr.org/blogs/money/2012/04/26/151379832/on-the-million-dollar-trail-of-a->
13 [mystery-superpac-donor](http://www.npr.org/blogs/money/2012/04/26/151379832/on-the-million-dollar-trail-of-a-mystery-superpac-donor) (last visited May 11, 2012) (the "NPR Broadcast") (emphasis added).

14 **III. LEGAL ANALYSIS**

15 **A. The Available Information Provides Reason to Believe that Eli Publishing**
16 **and F8 Were Not the True Sources of the Contributions Made to ROF**

17
18 **1. The Legal Standard in 441f Matters**

19 The Act prohibits a person from making a contribution in the name of another or
20 knowingly permitting his or her name to be used to effect such a contribution. 2 U.S.C. § 441f.

³ Numerous Lund-related businesses and trusts, as well as businesses formed by other senior Nu Skin executives use the accounting firm's address as their registered place of business. A corporate filings search for Steven Lund in Utah state records reflects that Lund operates 14 entities with this mailing address. See <http://www.lexis.com>. Blickenstaff is registered as the agent of 20 companies at this address. See *id.* The family trusts of Lund and Roney reportedly use it as well. See Jonathan Martin & Kenneth P. Vogel, *PAC Brings in \$12.2 Million for Mitt*, POLITICO, July 31, 2011. A charitable foundation of Sandra N. Tillotson also reportedly uses the address, although Tillotson reportedly denies any connection to the questioned contribution from F8. See Nicholas Confessore, *et al.*, *In Republican Race, a New Breed of Superdonor*, N.Y. TIMES (Feb. 21, 2012). Tillotson, along with Lund and Roney, is a co-founder and senior executive officer of Nu Skin. NU SKIN ENTERS., http://www.nuskin.com/content/nuskin/en_US/people/management/founders.html (last visited June 4, 2012).

1 Correspondingly, the Act prohibits a person from knowingly accepting a contribution made by
2 one person in the name of another person. *Id.* The term “person” for purposes of the Act and
3 Commission regulations includes corporations. 2 U.S.C. § 431(11); 11 C.F.R. § 100.10.

4 Commission regulations provide illustrative examples of activities that would constitute a
5 violation of the Act by making a contribution in the name of another:

- 6 (i) giving money or anything of value, all or part of which was
7 provided to the contributor by another person (the true
8 contributor) without disclosing the source of money or the thing
9 of value to the recipient candidate or committee at the time the
10 contribution is made, or
11
12 (ii) making a contribution of money or anything of value and
13 attributing as the source of the money or thing of value another
14 person when in fact the contributor is the source.

15
16 11 C.F.R. § 110.4(b)(2)(i)-(ii).

17 The Act and Commission regulations focus on the “true” source responsible for making
18 the contribution. The determination of the true source of the contribution turns on consideration
19 of who “exercise[d] direction or control” over the funds distributed to the recipient. *United*
20 *States v. O'Donnell*, 608 F.3d 546, 550 n.2 (9th Cir. 2010) (an intermediary who serves a
21 “ministerial role” should not be viewed as the source of a contribution unless “an intermediary
22 *exercises direction or control over a gift . . .*”) (citing 11 C.F.R. § 110.6(d)) (emphasis added).

23 Requiring contributions to be made in one’s own name, rather than in the name of
24 another or through a conduit, promotes full disclosure of the actual source of political
25 contributions. *O'Donnell*, 608 F.3d at 553 (“[T]he congressional purpose behind § 441f — to
26 ensure the *complete and accurate disclosure* of the contributors who finance federal elections —
27 is plain.”) (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000)
28 (rejecting constitutional challenge to section 441f based upon compelling governmental interest

1 in disclosure). Given this important governmental interest in full and accurate disclosure, "it is
2 implausible that Congress, in seeking to promote transparency, would have understood the
3 relevant contributor to be the intermediary who merely transmitted the campaign gift."
4 *O'Donnell*, 608 F.3d at 554.⁴ Consequently, courts have flatly rejected the argument that "only
5 the person who actually transmits funds to a campaign makes the contribution. . . ." *United*
6 *States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011). Rather, to determine the true source of a
7 contribution, "we consider the giver to be the *source* of the gift, not any intermediary who simply
8 conveys the gift from the donor to the donee." *Id.* (citing *O'Donnell*, 608 F.3d at 550) (emphasis
9 added).

10 The case law is thus clear: if the true source of the contributions here — made
11 nominally by Eli Publishing and F8 — was in fact Lund or someone else, such that Eli
12 Publishing or F8 served merely as intermediaries for the true donor, the contributions were made
13 in violation of section 441f.

14 2. The Responses and the Sufficiency of the Complaints

15 The Joint Lund Response neither denies the truth or authenticity of Lund's reported
16 statements in the Fox 13 News broadcast nor refutes the information recounted in the
17 Complaints. Instead, the Respondents simply contend that the Complaints fail to adequately
18 allege a violation of the Act and should be dismissed on that basis. The contention lacks merit.

19 It is telling that the responses do not deny that Lund was the true source of the funds used
20 to make the Eli Publishing contributions. Instead, they assert that "*nothing in the complaint*
21 *suggests* that the funds provided by Eli Publishing to Restore Our Future are from any source

⁴ See also *Citizens United v. FEC*, 130 S. Ct. 876, 914-16 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 130 S. Ct. 2811, 2820 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

1 other than its corporate funds, a lawful transaction on its face." F8 Resp. at 2; Joint Lund Resp.
2 at 2 (emphasis added). But that assertion simply elides the critical factual question — who was
3 the true source of the contribution. And to the extent it is meant to imply that simply because the
4 contribution came from an Eli Publishing account, it is "a lawful transaction," the contention
5 fails as a matter of law. *See O'Donnell*, 608 F.3d at 554 ("the relevant contributor" is not "the
6 intermediary who merely transmitted the campaign gift"). Every contribution made "in the name
7 of another" appears "on its face" to have been made from that source. Thus, respondents'
8 assertion simply begs the question.

9 The Complaints rely on an investigative news report of a major broadcaster, a Fox
10 affiliate, which provides video footage and reports on an interview with Lund in which he
11 reportedly admits using Eli Publishing to make a contribution to ROF. To be sure, the
12 complainants do not purport to make their allegations on the basis of personal knowledge. But
13 there is no such requirement in either the Act or the Commission's regulations. To the contrary,
14 the Act requires only that a complaint "be in writing, signed and sworn to by the person filing
15 such complaint, and . . . be made under penalty of perjury . . ." 2 U.S.C. § 437g(a)(1). And the
16 Commission's regulations expressly provide that a complainant may allege a violation of the Act
17 "*based upon information and belief.*" 11 C.F.R. § 111.4(d) (emphasis added); *see also*
18 *Guidebook for Complainants and Respondents on the FEC Enforcement Process* at 6 (May 2012)
19 ("Statements not based on personal knowledge should identify the source of the information.").
20 Further, the Complaints here do not recite mere conclusory assertions of possible violations; they
21 outline a sufficient factual predicate for each Respondent to understand what conduct allegedly
22 violated the Act. 11 C.F.R. § 111.4(d)(3).

1 The factual basis for the Complaints, the Fox 13 News broadcast, centers on Utah state
2 records and information reportedly provided by Lund himself. Lund's statements regarding his
3 contribution to Eli Publishing, as recounted in that Fox news report, if authentic, are inherently
4 reliable as admissions. And the details Lund himself supplies concerning his reasons for making
5 the contribution through a corporation he controls also provide a level of specificity that rises far
6 above mere surmise. See Statement of Reasons, Comm'rs Mason, Sandstrom, Smith, and
7 Thomas, MUR 4960 (Hillary Clinton) ("Complaints not based upon personal knowledge must
8 identify a source of information that reasonably gives rise to a belief in the truth of the
9 allegations presented.").

10 Accordingly, the Complaints are more than adequate to satisfy the Act and Commission
11 regulations at this stage: they provide a sufficient basis to assess whether there is a reason to
12 believe that the alleged violations may have occurred and warrant further investigation. See
13 Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the
14 Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007).

15 3. There is Reason to Believe that Lund Used Eli Publishing as a Pass
16 Through to Convey His Contributions to ROF

17 In MUR 6488, the allegations in the Complaint and the news reports it cites indicate that
18 Lund effectively admitted that he was the true source of the contribution by Eli Publishing to
19 ROF. The Fox 13 news broadcast recites several statements attributed to Lund in which he
20 acknowledges as much. According to the voice-over component of the broadcast, *Lund was*
21 *"glad to donate a million dollars."* Tr., Attach. A (emphasis added). The Fox 13 newscast
22 reports that Lund admitted that he used Eli Publishing as the vehicle to make the contribution
23 simply as a matter of an "accounting" convenience: "Lund told Fox 13 he's not trying to hide
24 the donation. *He made it through a corporation he created to publish a book years ago because*

1 *donating through a corporation has accounting advantages.*" Fox 13 News Broadcast (emphasis
2 added). According to another news report, Lund also said that he made the contribution through
3 Eli Publishing instead of in his own name because he did not want "to be real public about being
4 a part of the campaign." See NPR Broadcast. Fox 13 reported that Lund also explained why *he*
5 made the contribution: he represented that the large amount of the contribution "show[ed] how
6 concerned *he* is about the direction of the country." Tr., Attach. A (emphasis added).

7 Lund's Response does not address the authenticity of these admissions. And, if
8 accurately reported, these statements are more than adequate by themselves to conclude there is
9 reason to believe the contribution in the name of Eli Publishing may have violated section 441f,
10 and that the question warrants further investigation.

11 But there is more. Dunn & Bradstreet reports show that the gross annual sales of Eli
12 Publishing were approximately \$72,000 in 2011 and \$70,000 in 2012. No other publicly
13 available information indicates that Eli Publishing had sales in prior years sufficient to fund an
14 unreimbursed \$1 million contribution to ROF.

15 Accordingly, there is ample reason to believe that, in violation of the Act, Lund was the
16 true source of the \$1 million contribution made by Eli Publishing to ROF.

17 4. There is Reason to Believe that the F8 Contribution Was Made in
18 Violation of Section 441f

19 There is also reason to believe that F8 was a conduit and not the true source of the
20 \$1 million contribution by F8 to ROF. Lund is not reported to have made admissions relating to
21 the F8 contribution. Nonetheless, there is a solid foundation to support a reason to believe
22 finding.

23 *First*, as noted, the contributions from Eli Publishing and F8 were made on the same day
24 in the same \$1 million amount — suggesting a like-minded purpose at work. *Second*, the two

1 entities claim to have the same (erroneous) physical address. The claimed address for both is in
2 fact the address of an accounting firm. The Fox 13 News Broadcast reflects that neither business
3 has a functioning office at their shared address. As noted, the address appears to serve as a mail
4 stop for Eli Publishing and F8 — along with numerous others entities associated with Lund and
5 Blickenstaff and other Nu Skin founders. *Third*, both Eli Publishing and F8 appear to be
6 controlled by Lund or his family members or business associates. *Fourth*, the registered agent
7 for F8 is Lund's son-in-law Blickenstaff, and F8's designation of counsel appears to be signed by
8 another member of the Nu Skin board, Roney. *Fifth*, Eli Publishing, F8, and Lund retained the
9 same counsel in response to the allegations in the complaint. *Sixth*, there is no record evidence
10 showing that F8 had sufficient assets to make an unreimbursed \$1 million contribution to ROF.
11 The Complaint alleges that F8 does not conduct any business, and F8 does not deny the
12 allegation, stating only that F8's purpose is "commercial." F8 Resp. at 2.

13 For all these reasons, there is reason to believe that Unknown Respondents violated the
14 Act by making contributions using F8 as a conduit, and F8 violated that Act by permitting its
15 name to be used for this purpose.

16 **B. The Allegations Do Not Presently Support a Knowing and Willful Finding**

17 We do not recommend at this time that the Commission find that Respondents knowingly
18 and willfully violated the Act. A knowing and willful finding requires that the respondent knew
19 that his or her action was unlawful. *See* H.R. Rpt. 94-917 at 3-4 (Mar. 17, 1976); *AFL-CIO v.*
20 *FEC*, 628 F.2d 97, 98, 101 (D.C. Cir. 1980) (stating that "knowing and willful" means
21 "'defiance' or 'knowing, conscious, and deliberate flaunting' of the Act").
22

1 We currently lack sufficient information to support an inference that the Respondents
2 knew their actions were illegal. Lund's apparent admission that he made the contribution
3 through a corporate intermediary for beneficial "accounting purposes" — but by implication not
4 to avoid a disclosure requirement — is at best ambiguous and may tend to support the
5 proposition that his actions were not made in willful disregard of a known legal obligation. And
6 his reported claim that he did not want "to be real public about being a part of the campaign,"
7 without more, is not sufficient to support a finding of a knowing and willful violation.
8 Accordingly, at this time we do not recommend that the Commission find that Respondents
9 knowingly and willfully violated the Act.

10 **C. The Allegations Do Not Presently Support Finding Reason to Believe that**
11 **Either Eli Publishing or F8 Constitutes a "Political Committee"**
12

13 The Act defines a "political committee" as any committee, association, or other group of
14 persons that receives "contributions" or makes "expenditures" for the purpose of influencing a
15 federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C.
16 § 431(4)(A). The term "contribution" includes "any gift, subscription, loan, advance, or deposit
17 of money or anything of value made by any person for the purpose of influencing any election
18 for Federal office." *Id.* § 431(8)(A)(i). An "expenditure" under the Act is "any purchase,
19 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any
20 person for the purpose of influencing any election for Federal Office." *Id.* § 431(9)(A)(i). An
21 organization will be considered a "political committee" only if its "major purpose is Federal
22 campaign activity (*i.e.*, the nomination or election of a Federal candidate)." Political Committee
23 Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007);
24 *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S.
25 238, 262 (1986).

1 The Complaints allege that Eli Publishing and F8 were both conduits *and* political
2 committees. By definition, in the context of a possible section 441f violation, an entity can be a
3 conduit or a political committee, but not both. The record here provides reason to believe that
4 Eli Publishing and F8 acted as conduits for \$1 million contributions to ROF, not that Eli
5 Publishing and F8 accepted or made contributions as set forth in section 431(4)(A) and thus
6 constitute political committees.

7 Advisory Opinion (“AO”) 1996-18 (Int’l Assoc. of Fire Fighters) is instructive. There,
8 the Commission determined that the passive receipt of federal campaign money into an
9 intermediary’s separate segregated fund would not trigger political committee status. In that
10 Advisory Opinion Request, a labor union proposed to use a state-authorized “conduit account” to
11 receive and transfer an individual donor’s contribution to the union’s federal committee with the
12 donor’s written authorization. The Commission concluded that the contribution should be
13 attributed to the donor, not the union, because the donor exercised direction and control over the
14 funds and determined when and to whom they would be disbursed. AO 1996-18 at 2. The
15 conduit account merely served an accounting function where funds would sit idle awaiting
16 direction from the true donor. *Id.* at 3. Accordingly, the conduit account would not be
17 “accepting or making contributions for the purposes of the Act” and would not constitute a
18 political committee. *Id.* at 2-3.⁵

19 Thus, because there is reason to believe that Eli Publishing and F8 served simply as pass
20 throughs, or mere conduits, for the contributions to ROF, and consistent with AO 1996-18, the

⁵ The Commission further concluded that the union would be acting as a collecting agent under 11 C.F.R. §§ 102.6(c)(4) and 102.8(b)(1). *See* AO 1996-18 at 2. Here, neither Eli Publishing nor F8 purports to be “an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related,” 11 C.F.R. § 102.6(b), as necessary to constitute a “collecting agent.”

1 two corporate bodies did not “accept[] or make[]” contributions under 2 U.S.C. § 431(4)(A), and
2 do not appear to have triggered political committee status.

3 Even were there a factual basis to conclude that Eli Publishing or F8 used independent,
4 unreimbursed funds to make the contributions — and there is not — the present record would be
5 inadequate to draw an inference that the major purpose of either Eli Publishing or F8 was federal
6 campaign activity, that is, the nomination or election of federal candidates. Eli Publishing claims
7 its business purpose is the publishing of specialty books, that it has published one such book, and
8 that it plans to publish additional books. Eli Publ’g Resp. at 2. F8 claims its purpose is
9 “commercial,” not political, although it does not elaborate. F8 Resp. at 2. No other information
10 indicates they engaged in other political activities.

11 If an investigation ultimately confirms that Eli Publishing and F8 were used to affect a
12 contribution in the name of another, it follows that the two entities were not political committees.
13 At this stage, however, we recommend that the Commission refrain from making any finding
14 regarding Eli Publishing’s and F8’s status as political committees until we conclude our
15 proposed investigation.

16 **D. The Record Should Be Developed Before Taking Action as to ROF**

17 ROF contends that because the Complaint did not name it as a respondent, this Office
18 should not have so designated ROF. Depending on the result of further investigation into the
19 questioned contributions, ROF could be liable for violating 2 U.S.C. § 441f, which prohibits
20 knowingly accepting a contribution made in the name of another. Also, should a treasurer
21 discover after receipt of an apparently legitimate contribution that it was made in the name of
22 another, the treasurer must disgorge the contribution within 30 days. 11 C.F.R. § 103.3(b)(2);
23 *see* MUR 5643 (Carter’s Inc.) (informing recipient committee of its obligation to refund or

1 disgorge illegal contribution); AO 1996-05 (Jay Kim for Congress) (allowing for disgorgement
2 of illegal contributions to U.S. Treasury as an alternative to refunding contributions). Although
3 the Complaints do not allege that ROF violated section 441f, ROF may subsequently be required
4 to refund or disgorge the contributions of Eli Publishing and F8. Accordingly, we recommend
5 that the Commission take no action at this time with respect to ROF. If we obtain information
6 bearing on the question of ROF's liability under section 441f or its obligations to disgorge during
7 the investigation, we will make appropriate further recommendations at that time.

8 **IV. INVESTIGATION**

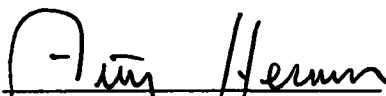
9 We intend to conduct a targeted investigation to determine the true source of the
10 contributions made to ROF. We will seek information regarding where and how Eli Publishing
11 and F8 obtained the funds to make the contributions to ROF. We also will attempt to determine
12 whether others played a role in funding those contributions. Although we will proceed
13 informally to the extent possible, formal discovery may be necessary. We therefore recommend
14 that the Commission authorize the use of compulsory process, including subpoenas for answers
15 to written questions, production of documents, and depositions as necessary.


16 **V. RECOMMENDATIONS**


- 17 1. Find reason to believe that Eli Publishing, L.C. violated 2 U.S.C. § 441f;
- 18 2. Find reason to believe that Steven J. Lund violated 2 U.S.C. § 441f;
- 19 3. Find reason to believe that F8 LLC violated 2 U.S.C. § 441f;
- 20 4. Find reason to believe that Unknown Respondents violated 2 U.S.C. § 441f;
- 21 5. Take no action at this time with respect to the allegation that Eli Publishing, L.C.
22 violated 2 U.S.C. §§ 432, 433, and 434;
- 23 6. Take no action at this time with respect to the allegation that F8 LLC violated
24 2 U.S.C. §§ 432, 433, and 434;

- 1 7. Take no action at this time as to Restore Our Future and Charles R. Spies, in his
- 2 official capacity as Treasurer;
- 3 8. Approve the attached Factual and Legal Analyses;
- 4 9. Authorize the use of compulsory process, as necessary; and
- 5
- 6 10. Approve the appropriate letters.

7
8 Date: 6/6/12


Anthony Herman
General Counsel


Daniel A. Petalas
Associate General Counsel for Enforcement


Roy Q. Lockett
Acting Assistant General Counsel


William A. Powers
Attorney

26
27 Attachments

- 28
- 29 A. Transcript of Fox 13 News Video
- 30
- 31

MURs 6487/6488

Transcript of Fox 13 News Video

Speaker	Narrative
New Announcer #1	One day last March two Utah companies each sent a million dollars to a organization supporting Mitt Romney for President.
News Announcer #2	Now the companies share an address in Provo and today Fox 13s Max Roth went there to find out what they do. Fox 13's Max Roth joins us tonight in the studio, Max.
Investigative Reporter Max Roth	Yeah Hope and Bob, Restore Our Future is a so called "Super-PAC", it's a Political Action Committee that can take donations of any size so long as they disclose the donors. The Supreme Court made that legal in March of 2009. In March of this year two men from Utah with two obscure companies have shown just how much presidential politics have changed. From January through June, Restore Our Future got three \$ 1million dollar donations, two of them from this building in Provo, from Eli Publishing and F8 LLC, for donors making political history there hard to find.
Roth (footage of Roth at the building)	No listing on the directory and 420 isn't even on any door in the building.
Roth	Wanted to talk to someone from Eli or F8 LLC. [Voiceover of Roth: But the nice folks in Suite 400 said they were also 420.]
Roth	Are you familiar with those?
Tenant	I, I am not, so I don't know, I don't work for Eli.
Roth	Ok and is F8 located here, F8.
Tenant	No.
Roth	Ok they, they listed this address as their address on the political donation.
Tenant	I'm not familiar with F8. Are you familiar with F8?
Michael Beckel, Center for Responsive Politics	Donations are being tied to companies that you know we don't know anything about.
Roth	State corporate records show Steve Lund as the only officer in Eli Publishing. He's a cofounder and former CEO of the Nu Skin Corporation. F8 LLC was created by Jeremy Blickenstaff an attorney who also has ties to NuSkin. Contacted by Fox 13, Lund says he's not hiding

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	<p>anything. He's glad to donate a million dollars. He says it shows how concerned he is about the direction of the country.</p> <p>Two years ago, Lund and Blickenstaff could express their concern with just over \$2,000 dollars each, maybe buying one or two prime commercial slots in a primary state. This year their money can flood the air waves where the balance is teetering.</p>
Beckel	The doors have been blown off the wall in terms of how much money can flow into political committees.
Roth	Restore Our Future raised twelve million dollars from January thru June, but they're not alone. A "Super-Pac" called Priority's USA is supporting President Obama, they have only raised about three million dollars, two million of that coming from Jeffrey Katztenburg of DreamWorks Animation. Live in the studio Max Roth Fox 13 News Utah.

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