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March 19, 2009

San Jose Elections Commission  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Re: Anonymous Complaint Against McEnergy / Urban Markets, LLC

Dear Commission Members,

I am writing to follow up on the issues which were discussed at the March 11, 2009 meeting in connection with the complaint filed against my clients, the McEnergy family and Urban Markets, LLC.

We feel that it is important to point out to the Commission that we in no way are requesting that the Commission change the "rules of the game" in connection with the anonymous complaint filed against my clients. This term was bantered about at the Commission meeting in a way, which we believe, was intended to confuse the Commission as to the purpose of our request to come before the Board. On the contrary, we are simply asking the Commission to follow its own set of rules and regulations which are very clearly set forth in Resolution 72547. As we pointed out at that last hearing, that Resolution, specifically paragraph E(6), says that although a complaint may be filed anonymously "in this situation, the complainant must state good cause for anonymity."

The issue that we were asking the Commission to rule upon is whether or not good cause for anonymity has been shown. It is clear that neither the evaluator, in this case, Mr. Moye, nor the City Attorney were asked to make any specific finding of "good cause" for anonymity. Mr. Moye simply looked at whether or not he needed to know the identity of the complainant in evaluating the complaint. That is not the same issue as determining "good cause" for the filing of the anonymous complaint. He was never called upon to make that determination, nor in our opinion, is it his job. We think that Resolution 72547, and specifically paragraph E(6), makes it the commission's job.

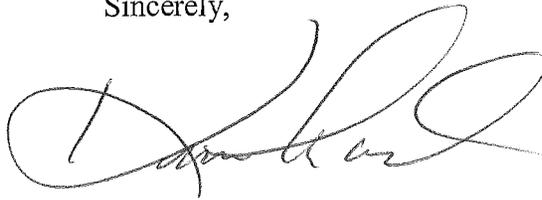
We pointed out to the Commission that before the complaint was sent to an evaluator, a finding of good cause for anonymity should have been made by someone, either the Commission, a sub-committee of the Commission or some third party. The rule is clear that good cause must be shown.

Again, this is not a change in the rules as Mr. McManis, attorney for the anonymous complainant, has urged but simply a request that an existing rule be followed. As was stated by the Chair of the Commission at that hearing, this is a novel case. Mr. Moyer indicated that to his knowledge there has been only one other anonymous complaint and the issue of good cause for its filing was not raised. It is being raised now and we think it must be addressed by the Commission. We think it should have been addressed before the evaluator had even been presented the complaint for an evaluation. As noted by one of the Commissioners at the last session, by not doing so, essentially the Commission skipped "step number one" which was to decide whether or not the anonymous complainant had shown good cause for anonymity and instead proceeded to "step number two," which was a referral of the complaint to the evaluator.

At the next Commission hearing in April, we would ask that the Commission make a finding that good cause for anonymity has not been shown and therefore this complaint should go no further and be dismissed. In the alternative, the Commission could review the complaint simply to make a determination of whether or not good cause for the anonymity exists. If it is then determined that there was not good cause shown for the anonymous filing, then following its own rules, the matter should be dismissed.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth J. Machado, Jr.", written in a cursive style.

Kenneth J. Machado, Jr.  
Attorney At Law

KJM/md

CC: Clients