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August 1, 2017

Kenneth Mackie  
548 W. 21st St  
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**Notice regarding "Fresno Watchdogs for Ethical Bidding"**

***By Hand Delivery***

Re: Cease and Desist Using Name "Fresno Watchdogs for Ethical Bidding"

Dear Mr. Mackie:

I am legal counsel to Fresno Watchdogs for Ethical Bidding, an association incorporated under California law with the mission of encouraging ethical practices in government. This letter is to notify you that my client has acquired a common law trademark in the name "Fresno Watchdogs for Ethical Bidding." Please understand that my client has a duty to protect its trademark. Your use of the identical name "Fresno Watchdogs for Ethical Bidding" risks confusing potential donors, contractors, and others, and is therefore actionable. We demand that you immediately cease using the name "Fresno Watchdogs for Ethical Bidding."

A common law trademark is established by virtue of one being the first to use a particular name ("senior user") in a specific area. (*Sengoku Works Ltd. V. RMC Int'l, Ltd.* (2006) 96 F.3d 1217, 1219.) A common law trademark attaches at legally-sufficient market penetration and is enforceable against other, newer users ("junior users") of the mark in the geographic and professional area in which it is recognized. (*Glow Industries, Inc. v. Lopez* (2002) 252 F.Supp.2d 962, 983.) In determining infringement, a court will weigh: (1) the strength of the mark; (2) the proximity of the goods; (3) the similarity of the marks; (4) evidence of confusion; (5) the marketing channels used; (6) the type of outputs and the degree of care likely to be exercised by the purchaser; (7) the defendant's intent in selecting the mark; and (8) the likelihood of expansion into the competing lines. (*AMF Inc. v. Sleekcraft Boats* (1979) 599 F.2d 341, 348-49.)

My client is the senior user of the name, "Fresno Watchdogs for Ethical Bidding." It established operations in 2017 and filed its articles of incorporation with the Secretary of State. Further, it operates in the professional field of public policy and civic affairs, and in the geographic area of California in a manner that was continuous and uninterrupted since its inception. (*Dep't of Parks and Recreation v. Bazaar Del Mundo Inc.* (2006) 44 F.3d 1118, 1126 [senior user status requires maintenance of the mark].) Your organization, to the extent one exists, similarly conducts operations for civic or public policy purposes in California, bringing its use of the mark into close proximity

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with my client's. Further, the types of outputs that the two organizations produce are similarly intended to convince the public with respect to issues, and lines will likely cross into during the forthcoming election season as both of our organizations champion our own causes and procure support – under the same name. The marketing channels used by the two organizations are also likely to be similar, since both operate in the same field.

All of this creates confusion among the public generally and among those who do business with us specifically. (*Toho Co., Ltd. V. Sears, Roebuck & Co.* (1981) 645 F.2d 788, 791 [“likelihood of confusion as to source or sponsorship” is the purpose of common law trademark protection].) It therefore invades my client's “zone of expression” with regard to the use of the name. (*Brookfield Communications v. West Coast Entertainment* (1999) 174 F.3d 1036, 1047.) The law provides that a senior user may seek a remedy against an infringing junior user in the form of an injunction prohibiting your use of the name. (*Id.*)

Please stop using the name “Fresno Watchdogs for Ethical Bidding” immediately. If you do not, we intend to seek a court order enjoining your use of the name.

Thank you in advance for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "TJM", with a horizontal line extending to the right.

Terry J. Martin