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December 18, 2006

Brooke Oliver
Oliver & Crain P.C.
50 Balmy Alley
San Francisco, CA 946110

RE: Investigation of Charitable Corporations Associated with the United Farm Workers Union of America

Dear Ms. Oliver:

This letter summarizes the findings of the investigation by the Charitable Trusts Section ("CTS") of the Office of the Attorney General and our review of transactions involving a number of charities which are associated, or have ties with the United Farm Workers Union of America ("UFW"). Those entities include, but are not limited to the following: the UFW Foundation, the National Farm Workers Service Center, LUPE, Vista Del Monte Affordable Housing, Inc., the Robert F. Kennedy Farm Workers Medical Plan, the Cesar E. Chavez Foundation, and the Farm Worker Institute for Education and Leadership Development.¹

BACKGROUND

In early January 2006, the *Los Angeles Times* ("LAT") ran at least five news articles critical of the UFW and the UFW charities. In general, the articles alleged that (1) the UFW had betrayed its legacy of organizing farm workers; and (2) the UFW and UFW insiders personally benefitted from a complex web of charities, because many key UFW members serve on the boards of those organizations.

Although there were numerous allegations of wrongdoing, not all of the allegations involved public benefit corporations, nor did they involve charitable trust issues. Our investigation focused only on potential violations of charitable trust and nonprofit corporation

¹The CTS acknowledges that each of these organizations is a separate entity with its own board of directors. For purposes of this letter and convenience, when we are referring to them in general we will refer to them as "UFW charities."

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laws. Those allegations fell within two broad categories: (1) misrepresentations in the course of solicitation and (2) the misuse or wasting of charitable assets.

In the course of the CTS inquiry, staff met with numerous board members from the various UFW charities along, with their counsel; we requested, received and reviewed documentary evidence and declarations in support of the UFW charities' positions; and we reviewed IRS Form 990's filed by the affected UFW charities. Based on that documentary evidence and the representations made we make the following findings and conclusions.

ANALYSIS OF ISSUES

I. ALLEGATIONS OF MISREPRESENTATION IN THE COURSE OF SOLICITATION

A. The United Mixtex Farm Workers ("UMFW") Solicitation: In the summer of 1999, the UFW allegedly solicited money on behalf of the UMF~~W~~. It was alleged that the UFW never sent any of the solicited money to the UMF~~W~~. UFW representatives stated that the solicitation discussed the plight of the UMF~~W~~, but was a general solicitation for all farm workers and not solely for the UMF~~W~~.

Both the UFW and UMF~~W~~ are labor organizations and not public benefit corporations, hence there is no charitable trust issue for us to examine. As you know, Business and Professions Code sections 17200 and 17500 prohibit misleading solicitations. Arguably, when two organizations are mentioned in the same solicitation campaign, a potential donor may believe the donations are for a specific organization. In order to avoid potential problems in the future, for any solicitation, whether for charitable purposes or not, we recommend that the solicitation clearly state the identity of the beneficiary of the campaign.

B. The Joe Serna, Jr. Civic Participation Fund ("Fund"): This August 31, 2005 fundraiser was a benefit for the UFW Foundation. The *LAT* alleged that invitations for the "September fundraiser" stated that contributions would benefit a nonpartisan fund to help register farm workers to vote, but that UFW President Arturo Rodriguez told the audience that donations money would be used to fight for immigration reform. The article does not allege that the money raised was in fact spent on immigration reform.

It is well settled that a charitable solicitation for a specific purpose creates a restricted charitable trust for that solicited purpose. (Bus. & Prof. Code §17510.8.) UFW President Rodriguez does not recall what he told the audience that night, although he stated that speaking about immigration would not be unusual as the Fund would be concerned with those issues.

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The UFW Charities assert that immigration issues are consistent with trying to empower farm workers. They also provided a copy of the August 5, 2005 invitation letter, which states the following:

“We are writing to request your support of an exciting non-partisan program that is helping farm workers and their families . . . become American citizens, register to vote, and learn how to play an active role in civic affairs. . . .” (Emphasis added.)

In addition, the invitation letter discusses raising funds to educate and empower migrant farm workers, and stresses the need for leadership development and educating farm workers about the government process. While the *LAT* article states that the fundraiser was specifically for voter registration, a review of that invitation shows that neither the invitation nor the Fund’s goals are so limited.

Assuming that UFW President Rodriguez had stated that funds would be used for immigration reform, such a statement would not be inconsistent with the invitation and the purposes of the Fund. Becoming an American citizen is an immigration issue. Only those who legally immigrate or receive amnesty can obtain permanent residence status. And, only those with permanent residency can eventually become U.S. citizens and thus become eligible to vote.

In order to avoid problems in future solicitation campaigns, please be aware of the need to comply with Business and Professions Code section 17510.8, and the need to clearly state the purpose for which money raised at fundraisers will be used.

II. MISUSE OR WASTING OF CHARITABLE ASSETS

A. UFW Charities Paid More than \$1 million to the UFW-Sponsored Health Plan:
One of the articles alleges that the “entities enrich one another, buying services from each other that are not necessarily the best available deal.” There is then a general allegation that the organizations paid \$1 million to the UFW-sponsored health plan. The article offers no further facts nor discussion of this allegation.

With regard to the allegation of “enriching” the Medical Plan, the financial contributions from the combined UFW charities totaled approximately \$558,623.00, and not \$1 million as reported. That amount accounted for less than 6% of the total contributions received by the Medical Plan.

With regard to the *LAT*’s implied allegation that the UFW charities overpaid for health

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services, in 2004, the average monthly contributions for each of the UFW charities ranged from \$233.12 per month for non-management employees and \$306.40 per month for management employees. In 2004, comparably sized employers to the total UFW charities paid approximately \$240 per employee².

Based on the foregoing, we do not find the costs to be unreasonable nor can it be said that charitable assets were wasted or misused.

B. UFW Charities Purchase of Services from UFW: The *LAT* articles alleged that numerous UFW charities purchased accounting and human resources services, worth approximately \$500,000, from the UFW. The article further alleges that state agencies criticized the UFW charities for using those services, though it does not identify those state agencies. Nor do the articles allege that the UFW charities are overpaying for those services. Instead, it appears that the allegation is that the UFW charities are, by purchasing services from the UFW, supporting the UFW.

The smaller UFW charities contract with the UFW for accounting and human resources services because it is not cost-efficient for them to hire staff dedicated to those services. The larger charities, like the National Farm Workers Service Center, do have in-house bookkeeping and human resources staff because it is more cost-effective than contracting out.

The UFW charities are located in Keene, California, approximately 30 miles outside of Bakersfield. The UFW provides these services at cost plus 5%, which appears to be lower than what the services would cost in Bakersfield. We conclude that it is not unreasonable for the smaller UFW charities to contract with the UFW for these services.

C. Purchase of Services by LUPE From UFW Charities: LUPE (La Union del Pueblo Entero) contracted with California First Five Commission (the "Commission") to do public education and outreach to migrant farm worker parents. One of the *LAT* articles criticizes LUPE for spending 40% of that \$2.2 million contract on services provided by UFW charities. There is no allegation that charitable assets were misspent or wasted, nor that services were not provided.

There is an implicit criticism in the article that Radio Campesina, a for-profit radio station owned by UFW charities, was overpaid airing public service announcements. We did not so find. The Commission had experienced problems reaching its target group. Accordingly, effective outreach was an important component of the contract proposal. That target group is

²This figure does not include a breakdown between management and non-management employees.

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served by Radio Campesina. The public service announcements were run numerous times a day, during prime listening hours, in order to effectively reach the target group.

Announcements during prime time command higher rates. Although Radio Campesina runs free public announcements, such announcements may only run once and during off-peak hours, which is standard in the industry. Accordingly, for the purpose of this campaign and, in order to effectuate the contract goals, payments for radio announcements during prime time are not unreasonable.

Normally, the CTS does not get involved in contract matters with a funding agency like the Commission. In order to put these allegations in context, as related to our broader inquiry, however, we contacted the Commission and reviewed LUPE's contract proposal.

The contract proposal LUPE submitted to the Commission stated that it would use a number of UFW charities, including FIELD (the Farm Workers Institute for Leadership Development), Radio Campesina, the National Farm Workers Health Group, and the National Farm Workers Service Center, Inc. Amounts that would be paid to each of these UFW charities were also set forth in the proposal. Hence, prior to entering into the contract, the Commission had full knowledge that LUPE would be subcontracting with those charities.

I interviewed the Commission Communications Director who is the most knowledgeable person regarding this contract. She informed me that the Commission had no problem with LUPE using the named UFW charities. The Commission was only concerned with results. I was further informed that LUPE is adequately performing under the contract, there are no fiscal problems, and that LUPE is still being monitored as the contract continues.

Commission Executive Director Kris Perry sent an e-mail in response to the *LAT* article, which was not printed. In that response she stated, "[T]he promised results were delivered far ahead of schedule. First Five's partnership with LUPE has proved to be both a good investment and benefit for those who need it most."

Based on a review of relevant documents, it appears that the grant funds were used as described in the initial grant proposals. The *LAT* article makes no specific allegations of misuse or wasting of charitable assets. As noted above, the Commission had full knowledge that LUPE would use UFW charities as subcontractors and the Commission has been satisfied with LUPE's performance. In light of the foregoing, there are no charitable trust issues to resolve.

D. Vista Del Monte Project: One article alleges that the National Farm Workers Service Center (the "Service Center") borrowed \$1.2 million at 11.75% interest from the Cesar

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E. Chavez Community Development Fund (the "Fund") to make improvements to Vista Del Monte, a low income housing project. The interest rate allegedly was much higher than rates the Fund charged other affordable housing projects.³

It was not the Service Center, but Vista Del Monte Affordable Housing, Inc., ("Vista") that took out the loan. During the property's rehabilitation it was discovered that there was substantial undetected dry-rot, which would require an additional \$1.2 million to repair. The property, however, was already fully collateralized, with three existing loans totaling approximately \$16 million.

Vista approached two of its secured creditors for an additional \$1.2 million loan, both of which refused to provide additional funding. An independent housing consultant advised Vista that finding another lender was highly unlikely since that lender would be a fourth position unsecured creditor. As such, a potential lender would demand a higher interest rate commensurate with the risks. Vista turned to the Fund, which resulted in the 11.75% loan. Given the facts and circumstances surrounding this transaction, we cannot say that entering into the loan was a breach of fiduciary duty.

A related question is whether the Fund breached its fiduciary duty by making an unsecured \$1.2 million loan to Vista. One of the Fund's charitable purposes is to make loans to nonprofits for low income housing. Prior to making the loan, the Fund concluded the following: (1) the higher risk mandated a higher interest rate, (2) Vista had sufficient monthly income to service all the loan payments, (3) the Service Center would have to guarantee the loan, and (4) the loan would need to be approved by the federal Housing and Urban Development Agency ("HUD") and the California Housing Finance Agency, both of which were secured creditors of Vista. Finally, Vista repaid the loan within 36 months. In light of the above, it appears that the Fund's board of directors conducted due diligence in conformance with its fiduciary duty.

E. The Tanis Ybarra Property and LUPE: One of the *LAT* articles states that LUPE rents space in a building owned by UFW Secretary/Treasurer Tanis Ybarra, who is also on the LUPE board of directors. The article does not allege that LUPE pays excessive rent, but we

³The *LAT* article also alleges that the Service Center's rehabilitation project resulted in prices that exceeded industry standards and wasted money. Investigation of this allegation would entail extensive discovery of facts that would certainly be subject to different interpretations, and require that we hire construction consultants. Because of significant cost the CTS would incur in retaining the expertise necessary to evaluate this allegation, we exercised our discretion in determining not to investigate this allegation, and chose to focus our inquiry on the whether the loan was fair and reasonable to Vista.

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reviewed the transaction as a possible self-dealing transaction.

A self-dealing transaction is a transaction in which the nonprofit is a party and one of its directors has a "material financial interest" in the transaction. (Corp. Code §5233, subd. (a).) There is no legal definition for "material financial interest," but, in general, the interest must be sufficient enough that it might affect how the interested director would vote on the transaction. In essence, with a sufficient financial interest, the interested director might vote for his or her own pocketbook instead of what is in the best interest of the nonprofit.

In January 2003, Tanis Ybarra leased the building to his son, Arturo, who is responsible for all building expenses. Tanis Ybarra's only involvement with the property is that his son gives him monthly payments to pay the mortgage. Ybarra's son has full and complete authority to manage the property and to sublease the space. He is not required to, and does not report to Ybarra about the operation of the property. Ybarra claims not to have known about LUPE's lease with his son until after it was consummated. The LUPE/Arturo Ybarra lease is for 73 cents/square foot. Comparable office space in the area rents for \$1.00 to \$1.25/square foot.

This does not appear to be a self-dealing transaction because Tanis Ybarra, the LUPE director, is not a party to the transaction. He leased the property to his son, who subleased office space to LUPE. The son is the landlord and he receives the payments from LUPE. Tanis Ybarra only receives money for the monthly mortgage payments. Nor do we find that entering into a lease which provides for rent at or below market rates a breach of fiduciary duty by the LUPE directors.

This does raise a governance issue, however. It does not appear that the LUPE board of directors ever reviewed this transaction, as it was negotiated and signed by LUPE staff. Please assure that the LUPE board understands that, while day-to-day matters may be delegated to staff, all final decisions involving the activities and affairs of the corporation must be approved by the board of directors, and that the board must be vigilant for potential self-dealing transactions or what may appear to be conflicts of interest. (Corp. Code §5210.)

F. Sale of a House by the UFW to Dolores Huerta's Daughter: One article alleged that the Service Center sold a West Los Angeles house to the UFW and that, in 2004, the UFW then sold the house to the daughter of UFW co-founder Dolores Huerta for \$200,000, far below fair market value. As the UFW is not a public benefit corporation, its sale of the house is not a charitable trust issue. However, we were concerned with the timing of the two sales as it was unclear when the initial sale to the UFW occurred and whether that sale was at fair market value.

Initial documents reviewed indicated that the two sales occurred nearly simultaneously.

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As discussed below, however, we determined that the Service Center's sale of the house to the UFW did not occur in 2004 as the article reports.

The first set of records received from the Service Center included a Service Center Board Resolution, dated August 9, 2002, which approved a May 19, 1998 sale to the UFW. The sales contract between the UFW and the buyer, Juana Virginia Chavez, was dated March 19, 2002. A Grant Deed from the Service Center to the UFW was executed on April 19, 2004.

The Service Center sold the house to the UFW in May 19, 1998, for \$130,000, but payment was not received until August 1998. There was no board resolution at that time. In September 1998, the executed Corporate Grant Deed transferring the house to the UFW was sent to the Los Angeles County Recorder's Office. That deed was never recorded because of "non-conformance."

The UFW's sale to the buyer occurred four years later, in March 19, 2002. Only during the escrow of the 2002 sale did the parties discover that the Corporate Grant Deed transferring title from the Service Center to the UFW had never been recorded. The UFW and buyer were unable to close escrow because of a multitude of problems, including the unrecorded Service Center-UFW Grant Deed. In order to assist in the closing of the UFW-buyer escrow, the Service Center executed the August 9, 2002 board resolution.

Accordingly, the Service Center's original sale to the UFW was in 1998, and the subsequent sale by the UFW occurred in 2002, four years later. The article was critical that the house was sold for \$200,000, which was far below 2004 market comparables. The sale, however, occurred in 2002.

As the UFW sale occurred four years after the purchase from the Service Center, our inquiry turned to what, if anything, the Service Center board did to determine the \$130,000 sales price to the UFW. In 1998, the Service Center had a Real Estate Development Staff with eight years of real estate experience among them. The Executive Vice President of Housing and Economic Development arrived at the sales price after visiting the property and conducting an area survey of the value of similar homes in the area. The house was deemed to be in poor to fair quality. After discussing the value of the property and taking into consider the needed repairs, it was concluded that the fair market value was \$130,000.

Directors, in exercising their fiduciary duties, may rely upon opinions of employees whom the directors believe are reliable and competent in the matters presented. (Corp. Code §5231, subd. (b)(1).) While it would have been more prudent, and we would have preferred that the Service Center used outside consultants, or real estate brokers, or placed the property on the

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market, we have concluded that above the steps would more likely than not be sufficient to shield the board of directors from a negligence cause of action. In the future, however, in order to avoid the appearance of impropriety, it is our recommendation that property either be sold on the open market or that independent real estate brokers be consulted in arriving at fair market value.

G. The \$1.8 Million Land Transaction with Emilio Huerta: The final issue under review involved the sale of undeveloped land by the Service Center to Landmark Residential ("Landmark"), a for-profit real estate development firm. At the time of the sale, Emilio Huerta, Dolores Huerta's son, was a Landmark partner. He had previously served as the Service Center's secretary and general counsel. The Service Center sold the property to Landmark for \$1.8 million. Before escrow closed, Landmark had secured another buyer, Ennis Homes, and eventually sold the same property to Ennis for \$2.9 million, at a \$1.1 million profit. The implication is that the Service Center sold the property at below market value to benefit Emilio Huerta.

One of the charitable purposes of the Service Center is the development of low income housing. Another of its purposes is the operation of Radio Campesina, which provides educational radio programming to farm workers.

Information received during the course of our inquiry revealed the following: The Service Center acquired the subject property in 1996. After attempts to sell the property were unsuccessful and its proposals to develop low-income housing faced opposition, the Service Center explored the possibility of developing affordable entry-level single family homes. In 2002, the Service Center received tentative approval of a subdivision map for 53 homes. The City of Fresno required that the tentative map be finalized by February 1, 2005, or the property would be down-zoned to "agricultural," which would significantly reduce its value.

In June 2004, the Service Center's housing development staff determined that the cost to complete finalization of the subdivision map was approximately \$600,000. Staff also estimated that if they could build and sell all 53 homes, the Service Center might only net approximately \$800,000. In addition, the Service Center had no construction financing in place, no final approval plan, and no experience in building and marketing single family homes.

At around the same time, the Federal Communications Commission had 37 FM broadcast licenses up for auction. The Service Center identified several areas in the country with a high concentration of Latinos and farm workers into which Radio Campesina could expand. In order to participate in the auction, the Service Center was required to submit a cash deposit for the frequencies it desired to purchase.

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The Service Center's Director of Housing Development had estimated the value of the property to be between \$1 million to \$1.2 million with the tentative map. The Service Center entered into negotiations with a third party, Explorer General, to sell the property. At the same time, Emilio Huerta approached the Service Center and asked if his new company, Landmark, could bid on the land.⁴

Thereafter, the Service Center received numerous offers and counter-offers from both Explorer General and Landmark. Landmark's final bid was \$1.6 million. The winning bid was for \$1.8 million from Explorer General. The parties agreed to a large down payment and a short escrow. Prior to signing the agreement Explorer General attempted to renegotiate the terms; specifically, it wanted a longer escrow.

Because the Service Center wanted a short escrow in order to generate the cash necessary for the radio frequency auction, it rejected the counter offer and turned back to Landmark, countering with the \$1.8 million sales price and a short escrow, to which Landmark agreed. After opening escrow, Landmark had a two-prong strategy: (1) to move forward to secure financing in order to finalize the tentative map; and (2) in the event it could not secure such financing, locate a buyer for the property. Landmark retained the services of a real estate broker to seek potential buyers.

In August 2004, Ennis Homes offered to purchase the property from Landmark, with the tentative map, for \$2,915,000, conditioned on its ability to secure the necessary financing. Ennis could not secure the necessary financing. As a result, Landmark closed escrow, but carried back a note for six months to allow Ennis time to finalize the map. Landmark was finally paid in June 2005.

The *LAT* article states that the Service Center was unsuccessful in its bid for the radio frequencies. In addition, the article states that Huerta was reappointed as the Service Center's secretary in January 2006. While this transaction is troubling, the CTS has determined not to prosecute for the following reasons.

With regard to the decision to sell, it can be argued that the directors did not breach their fiduciary duty in making the decision to sell to Landmark, which offered a short escrow and met the price offered by Explorer General. It can also be argued that, in making the decision to sell

⁴Huerta had served on the board of directors and as secretary of the Service Center. Approximately 10 months before he bid on the property, Huerta had resigned from those positions. He remained as general counsel, but did not participate in any of the discussions nor the analysis on the sale of the property.

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the land when it did, it was reasonable to take into consideration the risks associated with development. Moreover, because educational radio is one of the Service Center's primary charitable purposes, it can be argued that the decision to raise immediate cash in order to bid on additional radio frequencies was reasonable and in furtherance of the Center's charitable purposes.

Service Center directors staff had determined the fair market value of the land at \$1 million to \$1.2 million. As stated earlier, directors may rely on the advice and opinions of employees a director believes are reliable and competent (Corp. Code §5231, subd. (b)(1)).

Fair market value is defined as the "price a seller is willing to accept and a buyer is willing to pay on the open market in an arms length transaction." (*Black's Law Dictionary Deluxe 7th ed.*) The highest bid (\$1.8 million) was from Explorer General, a bona fide third party, which far exceeded the market value range estimated by staff.

The sale to Landmark only occurred when the highest bidder attempted to renegotiate the terms of the sale, and Landmark was willing to enter into the agreement as originally negotiated with Explorer General. Finally, it can be argued that Landmark incurred risk in its deal with Ennis Homes, as Landmark carried back a note for an additional six months.

Based on the foregoing, while the transaction is suspicious, we cannot conclude that the Service Center sold the property to Landmark for less than its fair market value, and, therefore, we find insufficient grounds to take enforcement action on this issue.

As discussed above, in the future, in order to avoid even the appearance of impropriety, particularly when involved in transactions with affiliated parties, we recommend the following: consultation with independent real estate brokers or placing property on the open market.

CONCLUSION

The *LAT* articles, on their face, appeared to raise serious questions regarding certain transactions. A closer review revealed that all of the allegations deemed by our office to require investigation were, in the end, found to be without merit. However, the CTS does note that the transactions outlined in the articles involved people with affiliations to the UFW and/or the UFW charities. When an organization does business with an affiliated person, even when the affiliation is distant, that organization risks being subject to suspicion and criticism. While we did not conclude that any of the reviewed transactions violated charitable trust law, the *appearance* of impropriety existed.

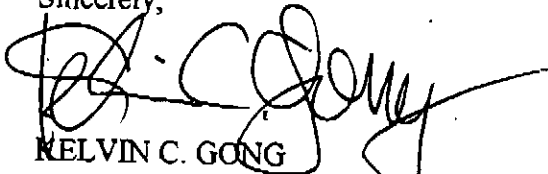
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Because the UFW is a highly visible organization, with both supporters and critics, whether justified or not, because of their affiliations to the UFW, the various UFW charities will also be subject to close scrutiny.

In order to avoid even the appearance of impropriety in the future, the CTS strongly recommends that, when an affiliated person or entity may be involved in a transaction, the organization use independent consultants and the open market to determine fair market value.

In light of the foregoing, the Charitable Trusts Section is closing this investigation. Thank you for your attention to this correspondence.

Sincerely,



MELVIN C. GONG
Supervising Deputy Attorney General

For BILL LOCKYER
Attorney General