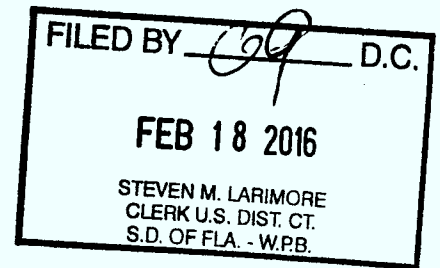


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA



\_\_\_\_\_  
FEDERAL ELECTION COMMISSION,  
999 E Street, N.W.  
Washington, DC 20463

Plaintiff.

v.

EDWARD J. LYNCH, Sr.,  
10269 Trianon Pl.  
Wellington, FL 33449,

LYNCH FOR CONGRESS,  
P.O. Box 210544,  
Royal Palm Beach, FL 33421,

and

EDWARD J. LYNCH, Sr.,  
In his official capacity as Treasurer of  
Lynch for Congress,  
c/o Lynch for Congress  
P.O. Box 210544,  
Royal Palm Beach, FL 33421,

Defendants.

Civil Action No. 15-81732-civ-Marra

ANSWER

**MOTION 1 TO DISMISS BASED ON THE EXPIRATION OF THE STATUTE OF  
LIMITATIONS**

1. In the Office of General Counsel's (OGC) own Conciliation Agreement, statements and complaint, there are no specific dates of any particular alleged violations other than "From 2008 through 2010" despite me asking for same. The reason that there are no specific dates is that any and all alleged violations occurred outside of the five (5) year statute of limitations. By the OGC's own admission, no violations occurred after 2010 which is five (5) years and nine (9) months since I was even a candidate for office. The complaint lists items that were never previously discussed and outside the statute of limitations.

2. For the purposes of the discussion of the statute of limitations the following factual dates need to be established. I was a candidate for US Congress in November of 2008 and once again in a special election having an election date of April 13, 2010. Therefore, again, over five years and nine months has elapsed since the time that I was a candidate.
3. The OGC's conciliation agreement calls for paying "civil penalties" for personal use violations and reporting violations "still remaining within the statute of limitations", This is patently false as there is nothing "still remaining within the statute of limitations" as it has been over five (5) years and nine (9) months since I was even a candidate. Once again, the OGC references alleged violations "from 2008 through 2010" with no specific dates for specific alleged violations although previous conciliation agreements reference alleged violations from the earliest part of the timeline.
4. I will address the statute of limitations based on the FEC's own "Guidebook for Complainants and Respondents on the FEC Enforcement Process" (May 2012 edition) ("FEC Guidebook"), federal law, previous FEC Commission rulings and case law.
5. The FEC Guidebook states on Page six (6), "Complaints should be filed as soon as possible after the alleged violation becomes known to the complainant in order to preserve evidence and the Commission's ability to seek civil penalties in federal district court within the five-year statutes of limitations period (measured from the time of the violation) provided by 28 U.S.C. § 2462 (civil) and 2 U.S.C. § (criminal)." Based on the FEC's own guidebook, the Commission only has the ability to seek civil penalties within the five-year statute of limitations period measured from the time of the violation. This citing of federal code and interpretation of federal law indicates that, due to the amount of time being over the five year statute of limitations, it is unlawful for the FEC to seek civil penalty.
6. Additionally, the FEC Guidebook, on page eighteen (18) states, "Because the Commissions' ability to seek civil penalties in federal district court is subject to a five-year statute of limitation, *see* 28 U.S.C. § 2462, OGC may request at any stage in the enforcement process that the respondent agree to toll the statute of limitations, including during the pendency of the pre-probable cause conciliation process." Any alleged violations are well outside of the five-year statute of limitations.
7. U.S.C. § 2462, Time for commencing proceedings clearly states, in part, "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued..." Due to the fact that it is more than five (5) years and nine (9) months since I was even a candidate, it would be significantly longer than that

since any of the alleged violations occurred and the statute of limitations has long been exceeded.

8. In *FEC v. National Republican Senatorial Committee* (93-1612) the court ruled, “In applying U.S.C. § 2462, the court determined that the statute of limitations started running from the date of the alleged violations-the period between November 1985 and November 1986. **Since the time between the dates of the violations and the date the FEC filed this case with the court exceeded the 5-year statute of limitations, the FEC could not pursue the imposition of civil penalties.**” (Emphasis added) Since the court established that the statute of limitations begins running “from the date of the alleged violations”, it is clear that any alleged violations would have occurred outside of the five (5) year statute of limitations and pursuing the imposition of civil penalties would be contrary to federal law. The OGC’s insistence that failure to sign a patently false conciliation agreement is meant as an intimidation factor and a blatant threat that the OGC, based on their own FEC Guidebook and interpretation of federal law, knows that it is bad faith and unlawful to, as the OGC states, “institute a civil suit in United States District Court and seek payment of a civil penalty” (letter dated October 14, 2015).
9. The court ruled that it is contrary to U.S.C. § 2462, to seek civil penalties after the statute of limitations has run. In an October 14, 2015 letter from the OGC, the OGC states, “Please make the check for the **civil penalty** payable to the Federal Elections Commission.” (Emphasis added) Therefore, since the court ruled in *FEC v. NRSC* (93-1612), “the FEC could not pursue the imposition of civil penalties.” Clearly, the OGC is wrongly seeking a “civil penalty” as part of their conciliation agreement.
10. In *FEC v. National Right To Work Committee* (90-0571), the court ruled, “In general, federal government agencies must initiate proceeding to assess civil penalties, fines and forfeitures within 5 years from “the date when the claim first accrued.” 28 U.S.C. § 2462. Again, in *FEC v. National Republican Senate Committee*, the court ruled that this statute of limitations applied to the FEC and that the statute of limitations began to run when the alleged offense was committed. The FEC is barred from filing a suit as the date of any alleged violation is well outside of the five (5) year statute of limitations.
11. In the Matter of PBS&J Corporation, *et al*, MUR 5903, the Commission ruled, “More importantly, by the time this matter was first brought before us in September 2009, the five-year statute of limitations had already expired on all violations...Therefore, because we could not conclude that the five-year statute of limitations could be tolled under the facts in this matter, we voted against pursuing this matter further.”
12. The Ninth Circuit Court of Appeals held that FEC enforcement actions are subject to the default five-year statute of limitations in 28 U.S.C. § 2462. According to

the *Williams* court, the limitations period began running at the time the activities occurred and, as a result, the FEC's complaint was time-barred. All of the occurrences of the alleged activities that the FEC claims are well outside the five (5) year statute of limitations. NONE of the occurrences of the alleged activities are within the five (5) year statute of limitations.

13. In The Matter of the Paul Broun Committee, Mur 6556, although the Commission did find that there were reporting violations, they ruled, in part, "these alleged reporting violations occurred more than five years ago and thus are outside the five-year statute of limitations period. See 28 U.S.C. § 2462; see also, *FEC v. Nat'l Repub. Senatorial Comm.*, 877 F. Supp. 15, 19 (D.D.C 1995). Because the original activity fell outside the five-year statute of limitations within approximately two months of the Complaint being filed, the Committee has substantially corrected the record, and there are no other violations at issue in this matter, the Commission dismisses the allegations in MUR 6556 that the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4) by failing to accurately report loans and disbursements and closes the file. See *Heckler v. Chaney*, 470 U.S. 821 (1985)."
14. It was well within the rights of and incumbent upon the FEC Commission (See *Heckler v. Chaney*) based on well-documented precedents and clear and concise federal law to dismiss the allegations. The FEC's overreach in filing suit is a clear case of bad faith and prejudice.
15. WHEREFORE, based on U.S.C. § 2462, the court ruling in *FEC v. National Republican Senatorial Committee* (93-1612), the court ruling in *FEC v. National Right To Work Committee* (90-0571), PBS&J Corporation, Paul Broun Committee, the ruling of The Ninth Circuit Court of Appeals, and the FEC Guidebook; since there is no additional tolling of the statute of limitations and it is, at a minimum, five (5) years and nine (9) months since I was even a candidate for office, Defendant prays that this matter should be dismissed with prejudice.

**MOTION 2 TO DISMISS BASED ON BREACH OF 52 U. S. C. §30109(a)(4)(A) REQUIRING THE COMMISSION TO SEEK TO CORRECT ANY VIOLATIONS THROUGH INFORMAL METHODS OF CONFERENCE, CONCILIATION AND PERSUASION FOR AT LEAST 30 DAYS AND NO MORE THAN 90 DAYS**

16. On October 14, 2015, a letter was sent by the OGC which attempted to allow for conciliation. The letter clearly allowed for, "no more than 90 days". Additionally, 52 U. S. C. §30109(a)(4)(A) **requires** The Commission to seek to correct any violations through informal methods of conference, conciliation and persuasion for at least 30 days and no more than 90 days and the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation. I was not provided the

particulars of the alleged violations until December 15, 2015, despite my several requests for same.

17. During the week of October 26, 2015 I had a conversation with OGC, Ana Pena-Wallace going over what we could do to conciliate this matter and put this matter to rest once and for all despite not having the work papers depicting the extent of the claims.
18. On November 6, 2015, I received a follow up email from Ana Pena-Wallace regarding our conversation the previous week.
19. On November 6, 2015, I responded asking for the OGC work papers as I disagreed with the claims that the OGC was making and I wanted a chance to refute their claims of alleged violations in order to eliminate or mitigate any civil penalty.
20. On November 9, 2015, Ana Pena-Wallace responded via email that she wanted to schedule another phone call.
21. On November 9, 2015, I responded via email that I felt that the best course of action would be for the OGC to send me their work papers so that our phone conversation would be more fruitful. I once again, requested the backup documentation substantiating their claim so that I may refute their claims as necessary and work towards a resolution eliminating or mitigating any civil penalty fine.
22. On November 10, 2015, Ana Pena-Wallace stated, "We are unable to provide you with any attorney work product..." and I was told to "review bank statements". It makes it impossible to refute any claim when I do not know the extent of an alleged claim and I was not able to adequately address any sort of conciliation agreement although, in good faith, I attempted.
23. The only way that I received the numbers that I sought was when I was forwarded a draft of the civil suit, despite my repeated requests for same. Reviewing the complaint allowed me the first opportunity to even know what the OGC was alleging.
24. I was also told, several times that the period for entering into a conciliation agreement would end on November 15, 2015, to which I vehemently disagreed due to the aforementioned letter and not being provided with the documentation that I requested providing the extent of the alleged violations claimed by the OGC.
25. On December 14, 2015 in an email to Mr. Blumberg, I emphasized my willingness to enter into a conciliation agreement to put this matter finally to rest and that I wanted to mitigate any financial burden which is why I was requesting

the work papers as I disagreed with the assertions of the OGC regarding the alleged violations..

26. On December 15, 2015 I received a draft of the civil complaint which mirrors this civil suit. It was at this point that, for the **first time**, I received what the OGC was claiming was in violation and it was significantly less than what they originally claimed. I was not even given a chance to review the information adequately disputing the OGC's claim that this was a personal use violation as the items in question were not personal.
27. Based on 52 U. S. C. §30109(a)(4)(A) The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days.
28. On December 16, 2015, I sent an email to OGC, Mr. Deeley, in an attempt to enter into a conciliation agreement negotiation utilizing the percentages of alleged penalties sent to me by the OGC previously despite disagreeing with the amount the OGC was claiming in order to mitigate this matter and finally put it to rest.
29. On December 17, 2015 OGC, Erin Chlopak sent me an email declining to accept the offer that I sent and I was told that the amount that I derived, utilizing the FEC's own mathematical formulas, was "not nearly commensurate with the extent of the violations at issue in this matter". The OGC was using the extent of civil violations as a measure, NOT the amount of the alleged violations, contrary to their ordinary and previous practice. She indicated that the 10% of the potential penalties was not enough however, the 10% of civil penalties sought is nearly 96% of the alleged violations, which is significantly higher than any percentages that were offered or used as a basis previously.
30. On December 17, 2015 I responded that I do not even know what they consider "commensurate with the extent of the violations at issue in this matter". According to the FEC's own suit, that I received the day before, the "extent of the violations at issue in this matter" and still remaining within the statute of limitations is \$1,622.49. This was an amount and for items that I never had information on.
31. Given the delay in getting the information that I requested almost 6 weeks prior to receiving the actual alleged violations in the claim and the OGC not accepting the EXACT percentage offered of the higher percentages in the government's conciliation agreement, it is a clear breach of the covenant of good faith and, in fact, bad faith to have not allowed me the opportunity for the full amount of time allotted by the government's own handbook and more specifically the October 14, 2015 letter sent by the OGC to me all governed by 52 U. S. C. §30109(a)(4)(A). Especially given the fact that the amount in question is quite minimal.

32. Additionally, the OGC would not discuss anything further unless I agreed to sign a tolling agreement yet there was no language in the tolling agreement so as not to resuscitate claims for which the limitations period has already passed despite my request for same. Based on the government's blatantly false claims of what was the actual amount of alleged violations still remaining within the statute of limitations and the "requirement" to provide an inadequate tolling statement or face civil suit violating the government's own timeline, there is clear and convincing evidence that the government is engaged in a blatant breach of its duty of good faith and fair dealing despite the government's **requirement** to do so as per 52 U. S. C. §30109(a)(4)(A). Contrarily, I have acted in good faith, without the assistance of counsel, as the continued costs of tens of thousands of dollars made it prohibitive to continue to engage outside counsel, in order to resolve this issue and enter into a conciliation agreement based on the alleged items still remaining within the statute of limitations and utilizing the OGC's very own percentages to do so, despite disagreeing with the OGC's assertions of a violation.
33. I continued to endeavor to avoid a civil suit, as I have this entire time, and I was still hopeful that we were able to resolve this issue in a timely manner. I can not imagine that a reasonable conciliation agreement could not be agreed to quickly based on the \$1,622.49 of alleged violations still remaining within the statute of limitations which I would disagree with. I would not have engaged in this strenuous exercise if I was not interested in seriously attempting to conciliate this matter and to infer such is wrong.
34. According to 52 U. S. C. §30109(a)(4)(A), The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. The OGC, by refusing to provide any work papers until 2 days prior to the filing of a suit, despite my repeated requests for same, violated 52 U. S. C. §30109(a)(4)(A) by only allowing 2 days, violating their obligation to allow at least 30 days. Additionally, I responded, in good faith, immediately upon receipt of correspondence from the OGC in an attempt to enter into a conciliation agreement negotiation and resolve this matter.
35. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation agreement. Additionally, the OGC refused to provide me with **any** work papers substantiating their claim until 2 days prior to initiating this claim. When their bad faith and misdeeds were discovered, they immediately tried to strong arm me into a settlement which is higher than the amount sought in this complaint and, when I would not acquiesce, they immediately filed suit despite their legal obligation to correct the alleged violations through informal methods. They would not even attempt to enter into negotiations based on the actual alleged violations as is required under 52 U. S. C. §30109(a)(4)(A).

36. WHEREFORE, based on direct violation of 52 U. S. C. §30109(a)(4)(A), Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable.

### **MOTION 3 TO DISMISS BASED ON BREACH OF FEC GUIDELINES**

37. On October 14, 2015, a letter was sent by the OGC which attempted to allow for conciliation. The letter clearly allowed for, “no more than 90 days”. Additionally, the FEC “Guidebook for Complainants and Respondents on the FEC Enforcement Process” allows for 30-90 days for Conciliation.
38. During the week of October 26, 2015 I had a conversation with OGC, Ana Pena-Wallace going over what we could do to conciliate this matter and put this matter to rest once and for all.
39. On November 6, 2015, I received a follow up email from Ana Pena-Wallace regarding our conversation the previous week.
40. On November 6, 2015, I responded asking for the OGC work papers as I disagreed with the claims that the OGC was making.
41. On November 9, 2015, Ana Pena-Wallace responded that she wanted to schedule another phone call.
42. On November 9, 2015, I responded that I felt that the best course of action would be for the OGC to send me their work papers so that our phone conversation would be more fruitful. I once again, requested the backup documentation substantiating their claim.
43. On November 10, 2015, Ana Pena-Wallace stated, “We are unable to provide you with any attorney work product...” and I was told to review bank statements.
44. The only way that I received the numbers that I sought was when I was forwarded a draft of the civil suit, despite my repeated requests for same.
45. I was also told, several times that the period for entering into a conciliation agreement would end on November 15, 2015, to which I vehemently disagreed due to the aforementioned letter and not being provided with the documentation that I requested. The time to enter into a conciliation agreement, which I was more than willing to do, did not end and it should not have ended until January 12, 2016.
46. Based on 52 U. S. C. §30109(a)(4)(A) The Commission is **required** to seek to



correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. Therefore, it is my right to have more than 2 days to negotiate a conciliation agreement without having to waive my civil rights and enter into a tolling agreement. The government has frustrated my ability to make an adequate counter offer due to refusing to provide me with the information that I requested until December 15, 2015 and is acting in bad faith demanding that I sign another tolling agreement by 9:00 AM by the next day or face a civil suit when the government's own letter allowed until January 12, 2016 (90 days), not the two (2) days that I was provided.

47. On December 14, 2015 in an email to Mr. Blumberg, I emphasized my willingness to enter into a conciliation agreement and that I wanted to mitigate any financial burden which is why I was requesting the work papers as I disagreed with the assertions of the OGC.
48. On December 15, 2015 I received a draft of the civil complaint which mirrors this civil suit. It was at this point that, for the **first time**, I received what the OGC was claiming was in violation and it was significantly less than what they originally claimed. I was not even given a chance to review the information adequately disputing the OGC's claim that this was a personal use violation.
49. I asked several times for the "work papers" which I was told, in the November 10, 2015 email, that the OGC would not be willing to provide. Finally, I was provided the documentation that I sought on December 15, for the first time, and given less than 2 days to conciliate this matter, utilizing the actual numbers, when the October 14, 2015 letter allows for "no more than 90 days" and the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation. This is despite me making a good faith effort and providing a counter to the OGC conciliation agreement the very same day that I was provided the actual amounts still remaining within the statute of limitations. Both the letter and the Guidebook would allow until January 12, 2016 to enter into a conciliation agreement.
50. On December 16, 2015, I sent an email to OGC, Mr. Deeley, in an attempt to enter into a conciliation agreement utilizing the percentages of alleged penalties sent to me by the OGC previously. I did this in good faith, as I disagreed with the assertion of the OGC that the items in question were for personal use.
51. On December 17, 2015 OGC, Erin Chlopak sent me an email declining to accept the offer that I sent and I was told that the amount that I derived, utilizing the FEC's own mathematical formulas, was "not nearly commensurate with the extent of the violations at issue in this matter". The OGC was using the extent of civil violations as a measure, NOT the amount of the alleged violations, contrary to their ordinary and previous practice. She indicated that the 10% of the potential penalties was not enough however, the 10% of civil penalties sought is nearly 96% of the alleged violations, which is significantly higher than any

- percentages that were offered or used as a basis previously.
52. On December 17, 2015 I responded that I do not even know what they consider "commensurate with the extent of the violations at issue in this matter". According to the FEC's own suit, that I received the day before, the "extent of the violations at issue in this matter" and still remaining within the statute of limitations is \$1,622.49. After all these years and the tens of thousands of dollars in paid attorney fees and undue stress, the extent of the alleged violations at issue in this matter comes down to \$1,622.49. This is an amount based on alleged violations that I was given, for the first time on December 15, 2015. I was given 2 days to review the information provided in this suit, contrary to the legal obligation stated in 52 U. S. C. §30109(a)(4)(A). I offered the EXACT same percentage that the OGC sought which is higher than every other conciliation agreement that I have researched. In good faith, I even offered if 100% of the \$1,622.49 in alleged violations still remaining within the statute of limitations be more appropriate. I also requested for the OGC to provide me with a counter offer. I based my counter offer on the numbers provided and utilized by the OGC.
53. Additionally, the OGC would not discuss anything further unless I signed a tolling agreement yet there was no language in the tolling agreement so as not to resuscitate claims for which the limitations period has already passed despite my request. Based on the government's blatantly false claims of what is the actual amount of alleged violations still remaining within the statute of limitations and the "requirement" to provide an inadequate tolling statement or face civil suit violating the government's own timeline, there is clear and convincing evidence that the government is engaged in a blatant breach of its duty of good faith and fair dealing. Contrarily, I have acted in good faith, without the assistance of counsel, as the continued costs of tens of thousands of dollars made it prohibitive to continue to engage outside counsel, in order to resolve this issue and enter into a conciliation agreement based on the actual items still remaining within the statute of limitations and utilizing the OGC's very own percentages to do so.
54. According to 52 U. S. C. §30109(a)(4)(A), The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days as is stated in the FEC's "Guidebook for Complainants and Respondents on the FEC Enforcement Process". The OGC, by refusing to provide any work papers until 2 days prior to the filing of a suit, despite my repeated requests for same, violated 52 U. S. C. §30109(a)(4)(A) by only allowing 2 days, violating their obligation to allow at least 30 days. Additionally, I responded, in good faith, immediately upon receipt of correspondence from the OGC in an attempt to enter into a conciliation agreement so as to finally resolve this costly matter.
55. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation

agreement. When their misdeeds were discovered, they immediately tried to strong arm me into a settlement which is higher than the amount sought in this suit and, when I would not acquiesce, they immediately filed suit. They would not even attempt to enter into negotiations based on the actual alleged violations as is required under 52 U. S. C. §30109(a)(4)(A). I had no knowledge of what the actual items that the OGC was claiming as personal use violations were until December 15, 2015 despite over 6 weeks of asking for same and, in bad faith, they filed suit 2 days after providing the requested documentation.

56. WHEREFORE, based on the direct violation of the standards set forth in the FEC's "Guidebook for Complainants and Respondents on the FEC Enforcement Process"; Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable.

#### **MOTION 4 TO DISMISS BASED ON BAD FAITH**

57. On October 14, 2015, a letter was sent by the OGC which attempted to allow for conciliation. The letter clearly allowed for, "no more than 90 days". Additionally, the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation.

58. During the week of October 26, 2015 I had a conversation with OGC, Ana Pena-Wallace going over what we could do to conciliate this matter and put this matter to rest once and for all.

59. On November 6, 2015, I received a follow up email from Ana Pena-Wallace regarding our conversation the previous week.

60. On November 6, 2015, I responded asking for the OGC work papers as I disagreed with the claims that the OGC was making.

61. On November 9, 2015, Ana Pena-Wallace responded that she wanted to schedule another phone call.

62. On November 9, 2015, I responded that I felt that the best course of action would be for the OGC to send me their work papers so that our phone conversation would be more fruitful. I once again, requested the backup documentation substantiating their claim.

63. On November 10, 2015, Ana Pena-Wallace stated, "We are unable to provide you with any attorney work product..." and I was told to review bank statements.

64. The only way that I received the numbers that I sought was when I was forwarded

a draft of the civil suit, despite my repeated requests for same.

65. I was also told, several times that the period for entering into a conciliation agreement would end on November 15, 2015, to which I vehemently disagreed due to the aforementioned letter and not being provided with the documentation that I requested. The time to enter into a conciliation agreement, which I was more than willing to do, did not end and it should not have ended until January 12, 2016.
66. Based on 52 U. S. C. §30109(a)(4)(A) The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. Therefore, it is my right to have more than 2 days to negotiate a conciliation agreement without having to waive my civil rights and enter into a tolling agreement. The government has frustrated my ability to make an adequate counter offer due to refusing to provide me with the information that I requested until December 15, 2015 and is acting in bad faith demanding that I sign another tolling agreement by 9:00 AM by the next day or face a civil suit when the government's own letter allowed until January 12, 2016 (90 days), not the two (2) days that I was provided.
67. On December 14, 2015 in an email to Mr. Blumberg, I emphasized my willingness to enter into a conciliation agreement and that I wanted to mitigate any financial burden which is why I was requesting the work papers as I disagreed with the assertions of the OGC.
68. On December 15, 2015 I received a draft of the civil complaint which mirrors this civil suit. It was at this point that, for the **first time**, I received what the OGC was claiming was in violation and it was significantly less than what they originally claimed. I was not even given a chance to review the information adequately disputing the OGC's claim that this was a personal use violation.
69. I asked several times for the "work papers" which I was told, in the November 10, 2015 email, that the OGC would not be willing to provide. Finally, I was provided the documentation that I sought on December 15 and given less than 2 days to conciliate this matter, utilizing the actual numbers, when the October 14, 2015 letter allows for "no more than 90 days" and the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation. This is despite me making a good faith effort and providing a counter to the OGC conciliation agreement the very same day that I was provided the actual amounts still remaining within the statute of limitations. Both the letter and the Guidebook would allow until January 12, 2016 to enter into a conciliation agreement.
70. On December 16, 2015, I sent an email to OGC, Mr. Deeley, in an attempt to enter into a conciliation agreement utilizing the percentages of alleged penalties sent to me by the OGC previously.

71. On December 17, 2015 OGC, Erin Chlopak sent me an email declining to accept the offer that I sent and I was told that the amount that I derived, utilizing the FEC's own mathematical formulas, was "not nearly commensurate with the extent of the violations at issue in this matter". The OGC was using the extent of civil violations as a measure, NOT the amount of the alleged violations, contrary to their ordinary and previous practice. She indicated that the 10% of the potential penalties was not enough however, the 10% of civil penalties sought is nearly 96% of the alleged violations, which is significantly higher than any percentages that were offered or used as a basis previously.
  
72. On December 17, 2015 I responded that I do not even know what they consider "commensurate with the extent of the violations at issue in this matter". According to the FEC's own suit, that I received the day before, the "extent of the violations at issue in this matter" and still remaining within the statute of limitations is \$1,622.49. After all these years and the tens of thousands of dollars in paid attorney fees and undue stress, the extent of the alleged violations at issue in this matter comes down to \$1,622.49. I offered the EXACT same percentage that the OGC sought which is higher than every other conciliation agreement that I have researched. I even offered if 100% of the \$1,622.49 in alleged violations still remaining within the statute of limitations be more appropriate. I also requested for the OGC to provide me with a counter offer. I based my counter offer on the numbers provided and utilized by the OGC.
  
73. Given the delay in getting the information that I requested almost 6 weeks prior to receiving the actual work papers and the OGC not accepting the EXACT percentage offered of the higher percentages in the government's conciliation agreement, it is a clear breach of the covenant of good faith and, in fact, bad faith to have not allowed me the opportunity for the full amount of time allotted by the government's own handbook and more specifically the October 14, 2015 letter sent by the OGC to me as well as what is required in 52 U. S. C. §30109(a)(4)(A). Especially given the fact that the amount in question is quite minimal.
  
74. Additionally, the OGC would not discuss anything further unless I signed a tolling agreement yet there was no language in the tolling agreement so as not to resuscitate claims for which the limitations period has already passed despite my request. Based on the government's blatantly false claims of what is the actual amount of alleged violations still remaining within the statute of limitations and the "requirement" to provide an inadequate tolling statement or face civil suit violating the government's own timeline, there is clear and convincing evidence that the government is engaged in a blatant breach of its duty of good faith and fair dealing. Contrarily, I have acted in good faith, without the assistance of counsel, as the continued costs of tens of thousands of dollars made it prohibitive to continue to engage outside counsel, in order to resolve this issue and enter into

a conciliation agreement based on the actual items still remaining within the statute of limitations and utilizing the OGC's very own percentages to do so.

75. I continued to endeavor to avoid a civil suit, as I have this entire time, and I was still hopeful that we were able to resolve this issue in a timely manner. I can not imagine that a reasonable conciliation agreement could not be agreed to quickly based on the \$1,622.49 of alleged violations still remaining within the statute of limitations, which I was willing to do despite disagreeing with the assertion of the OGC that the items were for personal use. I would not have engaged in this strenuous exercise if I was not interested in seriously attempting to conciliate this matter.
76. According to 52 U. S. C. §30109(a)(4)(A), The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. The OGC, by refusing to provide any work papers until 2 days prior to the filing of a suit, despite my repeated requests for same, violated 52 U. S. C. §30109(a)(4)(A) by only allowing 2 days, violating their obligation to allow at least 30 days. Additionally, I responded, in good faith, immediately upon receipt of correspondence from the OGC in an attempt to enter into a conciliation agreement and resolve this matter.
77. According to the FEC “Guidebook for Complainants and Respondents on the FEC Enforcement Process” (N), page 20, “If the Commission determines that there is “probable cause to believe” the law has been violated, the Commission must attempt to conciliate with the respondent for at least 30 days, but no more than 90 days.” The OGC would not provide me with their work papers until 2 days prior to filing suit. In good faith, I made several attempts to enter into a conciliation agreement immediately upon receiving the amounts in question despite disagreeing with the assertion of the OGC that the items were allegedly for personal use.
78. The government has an implied duty to act in good faith and fair dealing. By refusing to provide the actual amounts of alleged violations until 2 days prior to issuing a civil suit, which I requested several times, and providing alleged violations greatly exaggerated, the OGC acted in bad faith. By adding knowingly and willful fallacious and defamatory language making claims to alleged violations, which I deny, in the text of a public suit, the OGC is acting in bad faith.
79. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation agreement. When their misdeeds were discovered, they immediately tried to strong arm me into a settlement which is higher than the amount sought in this suit and, when I would not acquiesce, they immediately filed suit. They would

not even attempt to enter into negotiations based on the actual alleged violations as is required under 52 U. S. C. §30109(a)(4)(A).

80. WHEREFORE, based on the government acting in bad faith; Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable.

### **RESPONSE TO SUIT**

1. DISAGREE States disputed items and items outside the statute of limitations as fact. Had there actually been funds for personal use proven, this civil suit would have been for those amounts. Given that this suit is for \$1,622.49, this is a clear attempt to prejudice the court by stipulating alleged items not in question and/or not able to be addressed based on an expiration of the statute of limitations. This is also an additional attempt to put into public record items that have not been factually proven and that I completely disagree with. I request MOTION TO STRIKE any language referring to items not in question.
2. DISAGREE I deny allegations in this suit
3. AGREE
4. DISAGREE Alleged violations are not proven and, as such, I disagree
5. AGREE
6. AGREE, the exact date of the election was April 13, 2010 and it was the only federal election in the entire country
7. AGREE
8. DISAGREE In September, 2009 Christine Botta was brought in to act in the capacity of treasurer as she had experience with federal campaigns and our campaign, being the only federal election in the nation was getting very hectic. It was Christine Botta who entered transactions until February, 2010. Her experience included having been a staffer for several politicians.
9. AGREE
10. AGREE

11. AGREE

12. AGREE

13. AGREE

14. AGREE

15. AGREE

16. AGREE

17. DISAGREE

18. DISAGREE

19. DISAGREE, the admission was for the purposes of entering into a conciliation settlement agreement as well as the amount in question is derived from items well outside the statute of limitations. I request MOTION TO STRIKE

20. DISAGREE

21. DISAGREE

22. DISAGREE. The Act defines "personal use" as the use of a contribution or donation "to fulfill and commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 52 U.S.C. §30114(b)(2). The majority of these items were expenses due to having to travel for events for having been a candidate for US Congress, I would not have had cause to utilize those businesses or had cause to attend the events requiring travel. Since the ending of our campaign, I have gone to next to no political meetings in the area and none out of the area.

23. DISAGREE The matter was generated from records stolen from the campaign and allegations made by a person who was with the campaign for only a short period of time and NOT in the ordinary course of business.

24. AGREE

25. AGREE

26. AGREE

27. AGREE

28. AGREE



29. AGREE

30. AGREE

31. DISAGREE. I had agreed to enter into negotiations regarding a conciliation agreement and I had requested, several times, that the FEC provide their records as to what the allegations of misreporting were specifically. OGC, refused to provide work papers until 2 days prior to the filing of a civil suit. During those 2 days, I attempted to resolve the issue utilizing the FEC's own guidelines and previous conciliation agreement as a basis for calculation a civil penalty. The OGC rejected said offers but offered no rationale behind a counter offer nor any counter offer.

32. DISAGREE. There was no good faith effort on the part of the OGC to secure an acceptable conciliation agreement as they provided their alleged violations 2 days prior to filing suit despite my several request for their work papers.

33. DISAGREE The Commission failed to attempt to secure an acceptable conciliation consistent with the terms set forth in 52 U. S. C. §30109(a)(4)(A), the FEC's Guidebook for Complainants and Respondents on the FEC Enforcement Process, which allows for 30-90 days for conciliation and an October 14, 2015 letter allowing "no more than 90 days" to secure said conciliation. I was given the work papers 2 days prior to the FEC filing suit after requesting same, several times, and attempted to negotiate a conciliation agreement utilizing the mathematical formulas used by the OGC in previous conciliation agreements. The OGC acted in bad faith filing the civil suit prior to allowing for THEIR OWN guidelines with regard to the amount of time allowed for conciliation as well as in direct violation of 52 U. S. C. §30109(a)(4)(A). It can not be considered that the OGC attempted to achieve a conciliation agreement due to the fact that they refused to provide the work papers that I requested and I was unprepared to enter into any conciliation agreement conference without knowledge of the full extent of alleged violations. I was not in a position to be expected to reasonably enter into a conciliation agreement without all of the pertinent information, which I requested and the OGC, again, refused to provide. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation agreement. When their misdeeds were discovered, they immediately tried to strong arm me into a settlement and, when I would not acquiesce, they immediately filed suit. They would not even attempt to enter into negotiations based on the actual alleged violations.

34. AGREE

35. DISAGREE

36. DISAGREE

37. AGREE

38. DISAGREE

39. DISAGREE

**I declare under penalty of perjury that the foregoing is true and correct.**

Signed this 18<sup>th</sup> day of February, 2016.

Signature of Defendant Edward J. Lynch, Jr.

Address 10269 Trianon Place  
Wellington, Florida 33449

Telephone Number 561-445-3139