



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2019 SEP 24 PM 2:55

SENSITIVE

September 24, 2019

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: Kristin D. Roser *KDR*/Ben Holly *BH*
Reports Analysis Division
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2019 Mid-Year Report for the
Administrative Fine Program

Attached is a list of political committees and their treasurers who failed to file the 2019 Mid-Year Report in accordance with 52 U.S.C. § 30104(a). The Mid-Year Report was due on July 31, 2019.

The committees listed on the attached RTB Circulation Report failed to file the report. In accordance with the schedule of civil money penalties for reports at 11 C.F.R. 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers, in their official capacity, listed on the RTB Circulation Report violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

Federal Election Commission
Reason to Believe Circulation Report
2019 MID-YEAR REPORT Not Election Sensitive 07/31/2019 UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
3747	C00687657	AMERICAN PRO-ISRAEL PAC		JEANNE SULLIVAN	\$137,162	0		Not Filed	\$137,162 (est)	\$6,541
3748	C00634964	NEW NATION RISING		OLUFEMI OGUNNAIKE	\$252,158	0		Not Filed	\$252,158 (est)	\$11,627

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Reason To Believe Recommendation - 2019)	
Mid-Year Report for the Administrative)	
Fine Program (AF 3747 and 3748):)	
AMERICAN PRO-ISRAEL PAC, and)	AF# 3747
SULLIVAN, JEANNE as treasurer;)	
NEW NATION RISING, and)	AF# 3748
OGUNNAIKE, OLUFEMI as treasurer;)	

CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 29, 2020 the Commission took the following actions on the Reason To Believe Recommendation - 2019 Mid-Year Report for the Administrative Fine Program (AF 3747 and 3748) as recommended in the Reports Analysis Division's Memorandum dated September 24, 2019, on the following committees:

AF#3747 Decided by a vote of 4-0 to: (1) find reason to believe that AMERICAN PRO-ISRAEL PAC, and SULLIVAN, JEANNE in her official capacity as treasurer violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Hunter, Trainor, Walther, and Weintraub voted affirmatively for the decision.

AF#3748 Decided by a vote of 4-0 to: (1) find reason to believe that NEW NATION RISING, and OGUNNAIKE, OLUFEMI in his official capacity as treasurer violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalty

Federal Election Commission
Certification for Administrative Fines
June 29, 2020

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would be the amount indicated on the report; (2) send the appropriate letter.
Commissioners Hunter, Trainor, Walther, and Weintraub voted affirmatively for the decision.



Attest:

Laura Sinram

Digitally signed by Laura
Sinram

Date: 2020.07.09 13:50:32
-04'00'

Laura E. Sinram
Acting Secretary and Clerk of the
Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AF

July 9, 2020

Olufemi Ogunnaike, in official capacity as Treasurer
New Nation Rising
P.O. Box 563
New York, NY 10030

Response Due Date

08/18/2020

C00634964

AF#: 3748

Dear Mr. Ogunnaike,

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a Mid Year Report of Receipts and Disbursements in any calendar year other than one during which a regularly scheduled general election is held. This report, covering the period January 1, 2019 through June 30, 2019, shall be filed no later than July 31, 2019. 52 U.S.C. § 30104(a). Because records at the Federal Election Commission ("FEC") indicate that you did not file this report within thirty (30) days of the due date, the report is considered not filed for the purpose of calculating the civil money penalty. You should file this report if you have not already done so.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109g(a)(4). On June 29, 2020, the FEC found that there is reason to believe ("RTB") that New Nation Rising and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before July 31, 2019. Based on the FEC's schedules of civil money penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$11,627. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 C.F.R. § 111.34. Your payment of \$11,627 is due within forty (40) days of the finding, or by August 8, 2020, and is based on these factors:

Sensitivity of Report: Not Election Sensitive

Level of Activity: \$252,158

Number of Days Late: Not Filed

Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

NEW NATION RISING

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1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or August 8, 2020. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

Please note, on June 18, 2020, the Federal Election Commission began the initial phase (Phase I) of its return to normal operations. At this stage, the agency's offices will remain closed to visitors and most of its employees will continue to telework in an effort to limit the spread of coronavirus (COVID-19). The Commission is processing some documents submitted by mail, though processing will not occur on a daily basis until the agency resumes normal mail operations. Nevertheless, a challenge to an RTB finding and/or calculated civil money penalty must be received on time. Thus, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and must be emailed to administrativefines@fec.gov. The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted challenges will be deemed received on the date it is electronically received by staff.

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff

NEW NATION RISING

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illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that New Nation Rising and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq. The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a

NEW NATION RISING

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payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Ben Holly in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

Sincerely,



James E. "Trey" Trainor III
Chair

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$11,627 for the Mid-Year Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online

NEW NATION RISING

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collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details below to complete the required fields. For additional payment options, please contact Ben Holly in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

FOR: New Nation Rising

FEC ID#: C00634964

AF#: 3748

PAYMENT DUE DATE: August 8, 2020

PAYMENT AMOUNT DUE: \$11,627



700 13th Street, NW
Suite 800
Washington, D.C. 20005-3960

T +1.202.654.6200
F +1.202.654.6211
PerkinsCoie.com

August 7, 2020

Brian G. Svoboda
BSvoboda@perkinscoie.com
D. +1.202.434.1654
F. +1.202.654.9150

BY EMAIL: administrativefines@fec.gov

James E. “Trey” Trainor III
Chair
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: AF#s 3748, 3776 and 3823

Dear Chairman Trainor:

We write as counsel to New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer (collectively, the “Committee”). A copy of a Statement of Designation of Counsel, executed by Mr. Ogunnaike on behalf of the Committee, accompanies this letter. We submit this consolidated response to the administrative fine notices in the above-referenced matters, which were dated July 9, 2020, July 20, 2020 and July 15, 2020, respectively.¹ We respectfully request that the Commission correct the amount of the penalties pursuant to 11 C.F.R. § 111.35(b)(2) and refer the Committee to the appropriate office for termination.

The Committee was a coalition of community organizers and religious leaders who wanted to mobilize historically disengaged voters of color. It was active during the 2018 election cycle, having registered with the Commission on March 2, 2017.² The Committee took on exceedingly complex regulatory obligations as a so-called “Carey PAC,” while lacking personnel and processes sufficiently experienced with Commission reporting requirements. By the end of the 2018 cycle, the Committee’s personnel became simply overwhelmed, and the Committee sharply diminished its activity in federal elections. The Committee did not take the steps necessary to terminate its registration with the Commission, and so it simply failed to file future reports, starting with the 2018 Post-General Report, thus drawing these referrals. The Committee would like to terminate its registration with the Commission and close down.

¹ The notice in AF#: 3748 had a due date of August 18, 2020 in the header on the upper right-hand corner of the first page—but of August 8, 2020 in the text. Respondents submit this response according to the latter deadline, which is forty days after the reason to believe finding. *See* 11 C.F.R. § 111.35(a) (2019).

² *See* New Nation Rising, Statement of Organization (Mar. 2, 2017), <https://docquery.fec.gov/pdf/799/201703149050767799/201703149050767799.pdf>.

Chairman Trainor
 August 7, 2020
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The Committee does not dispute the non-filing of the referenced reports, but it respectfully submits that the penalties were improperly calculated, and so asks the Commission to modify them.³ The method for calculating the fines fails adequately to consider the circumstances of a newly formed committee that only briefly engages in activity during a single election cycle, and then curtails operations before the cycle even ends. Here, as explained below, the Commission's fine schedule exaggerated the level of activity, arbitrarily increased the penalty, and arbitrarily subjected the Committee to fines based on these same metrics for its future reports.

The statute requires the Commission to “take[] into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.”⁴ Commission regulations accordingly prescribe a fine schedule that is supposed to be based on the respondent's level of activity.⁵ However, in the case of a non-filer, the calculation is based on an “estimated level of activity.”⁶ That estimated level of activity is based on: (a) total receipts and disbursements reported during the two year election cycle, minus any transfers received from any nonfederal accounts; divided by (b) the number of reports filed to date covering the activity in the current two-year election cycle.⁷ For an election cycle in which a respondent files no reports, the regulations look back to the previous cycle to calculate the estimated level of activity.⁸

In the case of a respondent like the Committee, while filed reports during only part of a single election cycle, the fine schedule substantially overstates “the amount of the violation involved.”⁹ The Committee formed in 2017 and collapsed in 2018, filing only six reports (excluding amendments). It did not file Post-General and Year-End Reports—two reports on the calendar which cover little more than a month and involve far less activity than other reports. In this particular case, the Commission's estimated level of activity calculation drives up the penalty by failing to consider the two reports that—had they been filed—would have brought the estimated level of activity substantially down.

To make matters worse, the fine schedule traps the Committee into that same, overstated, estimated level of activity for all of its reports following its collapse. This is because the fine schedule calculates the estimated level of activity for the 2020 cycle based on those few filings from the 2018 cycle. The fines arising from the 2019 Mid-Year, 2019 Year-End Reports and 2020 April Quarterly Reports bear no relationship to the amount of violation whatsoever. Thus, the administrative fine regulations place this Committee into a “no-exit” scenario, where it faces

³ See 11 C.F.R. §§ 111.35(b)(2), 111.37(c).

⁴ 52 U.S.C. § 30109(a)(4)(C)(i)(II).

⁵ See 11 C.F.R. § 111.43.

⁶ See *id.* § 111.43(d)(3)(ii).

⁷ See *id.* § 111.43(d)(2)(ii)(A).

⁸ See *id.* § 111.43(d)(2)(ii)(B).

⁹ 52 U.S.C. § 30109(a)(4)(C)(i)(II).

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endless, escalating penalties based on an overstatement of its activity, with no realistic way to resolve its compliance problems and terminate its registration.

The Administrative Procedure Act governs the administrative fine program.¹⁰ The APA requires the Commission to engage in reasoned decision-making, make decisions based on a consideration of the relevant factors, and to avoid clear errors of judgment.¹¹ For the administrative fine program specifically, the Commission must have examined the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made, in order for a penalty to stand.¹²

This case reveals a material flaw in the Commission's decision-making, which implicates the APA's boundaries. The Commission failed to consider how the fine schedule would affect a respondent that filed reports during only part of the election cycle and did not file the typically briefer reports at the end of the cycle. Nor did it consider how the extrapolation of a respondent's limited experience from only part of an election cycle would distort the projections of its activity in future election cycles. By creating the concept of an "estimated level of activity," defining that term to exaggerate the Committee's true activity and increase the penalties, and then imposing those penalties here, the Commission would act arbitrarily and capriciously.

Also, by imposing the prescribed fines, the Commission would seek excessive fines under the Eighth Amendment of the U.S. Constitution, which comes into play when "a punitive fine ... is grossly disproportional to the gravity of the offense that it is designed to punish ..."¹³ This case presents the necessary elements of a successful Eighth Amendment challenge that the United States District Court for the District of Columbia found lacking, when rejecting a different respondent's challenge to a Commission administrative fine. Here, it is the gap between the fine and the offense that is at issue—not the respondent's ability to pay.¹⁴ Moreover, because the Committee faces the perpetual application of an overstated estimated level of activity, it faces also the specter of a penalty that is "indefinite and unlimited and disproportionate to the offense."¹⁵ Finally, the fines "exceed the limits prescribed by the statute authorizing it,"¹⁶ because they rely on an overstated estimated level of activity, instead of the actual "amount of the violation involved" that Congress required the Commission to consider.¹⁷

¹⁰ See, e.g., *Lovely v. FEC*, 307 F.Supp.2d 294 (D. Mass. 2004).

¹¹ *Department of Homeland Security, et al. v. Regents of the University of California, et al.*, 591 U.S. ___, ___ (2020) (slip op. at 9).

¹² *Lovely*, 307 F.Supp.2d at 298 (citing *Bagdonas v. Dep't. of Treasury*, 93 F.3d 422, 426 (7th Cir.1996)).

¹³ See *Combat Veterans for Congress Political Action Committee v. FEC*, 983 F.Supp.2d 1, 18 (D.D.C. 2013) (citing *United States v. Bajakajian*, 524 U.S. 321 (1998)).

¹⁴ See *id.*

¹⁵ *Id.*

¹⁶ *Id.* at 19.

¹⁷ 52 U.S.C. § 30109(a)(4)(C)(i)(II).

Chairman Trainor
August 7, 2020
Page 4

Thus, the Committee requests the Commission to reconsider the calculation of the penalties in light of these defects, and tailor the penalties to reflect the Committee's true activity after its late 2018 collapse. Respondents would also respectfully request the Commission's initiative to help it terminate its registration, resolve any remaining pending issues, and curtail its future obligations. This is the sort of factual situation that would ordinarily be appropriate for referral to the Alternative Dispute Resolution Office, or to the Reports Analysis Division for administrative termination. Efficiency and the public interest make it appropriate for the Commission to help the Committee resolve its compliance issues and terminate its registration through normal processes.

We appreciate the Commission's consideration of this response.

Very truly yours,

The image shows two handwritten signatures in black ink. The first signature is on the left, followed by a second signature to its right. Both are fluid and cursive.

Brian G. Svoboda

Ezra W. Reese

Counsel to New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer

Enclosure: Statement of Designation of Counsel



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Statement of Designation of Counsel

Provide one form for each Respondent/Witness

Note: You May E-Mail Form to: CELA@fec.gov

CASE: AF #s 3748, 3776, and 3823

Name of Counsel: Brian G. Svoboda & Ezra W. Reese


Firm: Perkins Coie LLP

Address: 700 13th Street NW, Suite 800, Washington D.C. 20005

Telephone: (202) 434-1654 **Fax:** (202) 654-9150

The above named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8/4/2020
Date


Signature

Treasurer
Title

RESPONDENT: New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer
 (Committee Name/Company Name/Individual Named In Notification Letter)

MAILING ADDRESS:

P.O. Box 563, New York, NY 10030

Telephone:(H): _____ **(W):** _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person receiving the notification or the person with respect to whom the investigation is made.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 6, 2020

REVIEWING OFFICER RECOMMENDATION OFFICE OF ADMINISTRATIVE REVIEW ("OAR")

AF# 3748, AF# 3776, and AF# 3823 – New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer (C00634964)

Summary of Recommendations

Make a final determination in AF# 3748 that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627.

Make a final determination in AF# 3776 that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627.

Make a final determination in AF# 3823 that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627.

Reason-to-Believe Background

The 2019 Mid-Year Report was due on July 31, 2019. To date, the Committee has not yet filed the report. The report is not election sensitive and was not filed within 30 days of the due date; therefore, the report is considered not filed. 11 C.F.R. §§ 111.43(d)(1) and (e)(1). On June 29, 2020, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to file the 2019 Mid-Year Report. The Commission also made a preliminary determination that the civil money penalty was \$11,627 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter dated July 9, 2020 was sent to the respondents' email address of record by the Reports Analysis Division ("RAD") to notify them of the Commission's RTB finding and civil money penalty.

The 2019 Year-End Report was due on January 31, 2020. To date, the Committee has not yet filed the report. The report is not election sensitive and was not filed within 30 days of the due date; therefore, the report is considered not filed. 11 C.F.R. §§ 111.43(d)(1) and (e)(1). On June 29, 2020, the Commission found RTB that the respondents violated 52 U.S.C. § 30104(a) for failing to file the 2019 Year-End Report. The Commission also made a preliminary determination that the civil money penalty was \$11,627 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter dated July 20, 2020 was sent to the respondents' email address of record by RAD to notify them of the Commission's RTB finding and civil money penalty.

The 2020 April Quarterly Report was due on April 15, 2020. To date, the Committee has not yet filed the report. The report is not election sensitive and was not filed within 30 days of the

due date; therefore, the report is considered not filed. 11 C.F.R. §§ 111.43(d)(1) and (e)(1). On June 30, 2020, the Commission found RTB that the respondents violated 52 U.S.C. § 30104(a) for failing to file the 2020 April Quarterly Report. The Commission also made a preliminary determination that the civil money penalty was \$11,627 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter dated July 15, 2020 was sent to the respondents' email address of record by RAD to notify them of the Commission's RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act ("Act") states that the treasurer of a political committee not authorized by a candidate which is filing on a quarterly basis shall file, in a non-election year, a report for the period ending June 30 no later than July 31 and a report for the period ending December 31 no later than January 31 of the following calendar year. 52 U.S.C. § 30104(a) and 11 C.F.R. § 104.5(c)(2)(i). The treasurer of a political committee not authorized by a candidate which is filing on a quarterly basis shall file, in an election year, a report for the period ending March 31 no later than April 15. 52 U.S.C. § 30104(a) and 11 C.F.R. § 104.5(c)(1)(i). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Respondents' Challenge

On August 7, 2020, the Commission received the written response ("challenge") from counsel representing the respondents in AF# 3748, AF# 3776, and AF# 3823. The respondents request that the Commission correct the calculations of the assessed civil money penalties and process the Committee's termination. They further explain:

The Committee was a coalition of community organizers and religious leaders who wanted to mobilize historically disengaged voters of color. It was active during the 2018 election cycle, having registered with the Commission on March 2, 2017. The Committee took on exceedingly complex regulatory obligations as a so-called "Carey PAC," while lacking personnel and processes sufficiently experienced with Commission reporting requirements. By the end of the 2018 cycle, the Committee's personnel became simply overwhelmed, and the Committee sharply diminished its activity in federal elections. The Committee did not take the steps necessary to terminate its registration with the Commission, and so it simply failed to file future reports, starting with the 2018 Post-General Report, thus drawing these referrals. The Committee would like to terminate its registration with the Commission and close down.

The Committee does not dispute the non-filing of the referenced reports, but it respectfully submits that the penalties were improperly calculated, and so asks the Commission to modify them. The method for calculating the fines fails adequately to consider the circumstances of a newly formed committee that only briefly engages in activity during a single election cycle, and then curtails operations before the cycle even ends. Here, as explained below, the Commission's fine

schedule exaggerated the level of activity, arbitrarily increased the penalty, and arbitrarily subjected the Committee to fines based on these same metrics for its future reports.

The respondents conclude by requesting the Commission recalculate the civil penalties and assist the Committee in terminating its registration.

Analysis

The respondents acknowledge the Committee failed to properly terminate with the Commission, which subsequently resulted in their failure to file the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports. The Reviewing Officer confirms that a committee's filing obligation ends only when the committee files a termination report, and the Commission notifies them in writing that their termination report has been accepted. 11 C.F.R § 102.3; *Campaign Guide for Nonconnected Committees*, 93. Therefore, the respondents were required to timely file the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports.¹

The respondents further state the civil penalties assessed at RTB are based on an exaggerated estimate of activity and request the Commission recalculate the civil money penalties using the actual levels of activity disclosed on these reports. At the time of the RTB findings, the Commission appropriately used an estimated level of activity (\$252,158) to calculate the penalties because the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports had not yet been filed. 11 C.F.R § 111.43(d)(2)(ii). To date, the Committee has not yet filed these reports.² Therefore, the Reviewing Officer recommends no change in the civil money penalties at the time of this Reviewing Officer Recommendation. In order to calculate the civil money penalties using the actual level of activity disclosed on the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports, the Committee shall file these reports prior to the Reviewing Officer's Final Determination Recommendation to the Commission. The recommended civil money penalties in the Final Determination Recommendation will be calculated using the actual level of activity of the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports. 11 C.F.R § 111.43(d)(3)(ii)

At the time of this Reviewing Officer Recommendation, the Reviewing Officer recommends that the Commission make a final determination in AF# 3748, AF# 3776, and AF# 3823 that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627 in each of the three matters.

¹ Commission records indicate the Commission appropriately notified and reminded the Committee of its reporting requirements on multiple occasions for each filing deadline. See Attachments 3, 4, and 5.

² Since receiving the challenge, OAR and RAD have offered reporting assistance on multiple occasions. On October 5, 2020, counsel indicated the Committee intends to file the reports around October 31, 2020.

OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 3748 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 3748 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627;
- (3) Adopt the Reviewing Officer recommendation for AF# 3776 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination;
- (4) Make a final determination in AF# 3776 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627;
- (5) Adopt the Reviewing Officer recommendation for AF# 3823 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination;
- (6) Make a final determination in AF# 3823 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627; and
- (7) Send the appropriate letters.

Attachments

- Attachment 1 –
- Attachment 2 – Page 93 of *Campaign Guide for Nonconnected Committees*
- Attachment 3 –
- Attachment 4 –
- Attachment 5 – Declaration from RAD
- Attachment 6 – Declaration from OAR

DECLARATION OF KRISTIN D. ROSER

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission (“Commission”). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to New Nation Rising:
 - A) Non-Filer Letter, dated August 15, 2019, referencing the 2019 Mid-Year Report (sent via electronic mail to: finance@nnrpac.org and info@apolloindustries.us);
 - B) Non-Filer Letter, dated February 19, 2020, referencing the 2019 Year-End Report (sent via electronic mail to: finance@nnrpac.org and info@apolloindustries.us);
 - C) Non-Filer Letter, dated May 1, 2020, referencing the 2020 April Quarterly Report (sent via electronic mail to: finance@nnrpac.org and info@apolloindustries.us);
 - D) Reason-to-Believe Letter, dated July 9, 2020, referencing the 2019 Mid-Year Report (sent via electronic mail to: finance@nnrpac.org and info@apolloindustries.us).
 - E) Reason-to-Believe Letter, dated July 20, 2020, referencing the 2019 Year-End Report (sent via electronic mail to: finance@nnrpac.org and info@apolloindustries.us).
 - F) Reason-to-Believe Letter, dated July 15, 2020, referencing the 2020 April Quarterly Report (sent via electronic mail to: finance@nnrpac.org and info@apolloindustries.us).

4. I hereby certify that I have searched the Commission's public records and find that New Nation Rising has not yet filed the 2019 Mid-Year Report, 2019 Year-End Report, or the 2020 April Quarterly Report with the Commission.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed on the 13th day of August, 2020.

Kristin D. Roser

Kristin D. Roser
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

August 15, 2019

OGUNNAIKE, OLUFEMI, TREASURER
NEW NATION RISING
PO BOX 563
NEW YORK, NY 10030

IDENTIFICATION NUMBER: C00634964

REFERENCE: MID-YEAR REPORT REPORT (01/01/2019 - 06/30/2019)

Dear Treasurer:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced report of receipts and disbursements or failed to file a report covering the entire reporting period as required by the Federal Election Campaign Act, as amended. 52 U.S.C. §30104(a)

It is important that you file this report immediately with the Federal Election Commission, 1050 First Street, NE, Washington, DC 20002. Please note that electronic filers must submit their reports electronically, as per 11 CFR §104.18. A copy of the report or relevant portions must also be filed with the Secretary of State or equivalent State officer unless the State is exempt from the federal requirement to receive and maintain paper copies. You can verify the Commission's receipt of any documents submitted by your committee on the FEC website at www.fec.gov.

The failure to timely file a complete report may result in civil money penalties, an audit or legal enforcement action. The civil money penalty calculation for late reports does not include a grace period and begins on the day following the due date for the report. Due to heightened security screening measures, delivery of mail by the US Postal Service may be delayed. The Commission recommends that you submit your report via overnight delivery or courier service.

If you have any questions regarding this matter, please contact Jamie Sikorsky in the Reports Analysis Division on our toll-free number (800)424-9530. The analyst's direct number is (202)694-1137.

NEW NATION RISING

Page 2 of 2

Sincerely,

A handwritten signature in black ink that reads "Debbie Chacona". The script is cursive and fluid.

Deborah Chacona
Assistant Staff Director
Reports Analysis Division

250

DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) A political committee not authorized by a candidate which is filing on a quarterly basis shall file, in a non-election year, a report for the period ending June 30 no later than July 31 and a report for the period ending December 31 no later than January 31 of the following calendar year. A political committee not authorized by a candidate which is filing on a quarterly basis shall file, in an election year, a report for the period ending March 31 no later than April 15. Reports filed electronically must be received and validated at or before 11:59 pm, Eastern Standard/Daylight Time on July 31, 2019 for the 2019 Mid-Year Report to be timely filed, January 31, 2020 for the 2019 Year-End Report to be timely filed, and April 15, 2020 for the 2020 April Quarterly Report to be timely filed.
- 3) I hereby certify that I have searched the Commission's public records and New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, have not yet filed the 2019 Mid-Year Report, 2019 Year-End Report, and 2020 April Quarterly Report.
- 4) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 6th day of October, 2020.



Rhiannon Magruder
Reviewing Officer
Office of Administrative Review
Federal Election Commission



700 13th Street, NW
Suite 800
Washington, D.C. 20005-3960

T +1.202.654.6200
F +1.202.654.6211
PerkinsCoie.com

October 30, 2020

Brian G. Svoboda
BSvoboda@perkinscoie.com
D. +1.202.434.1654
F. +1.202.654.9150

BY EMAIL: secretary@fec.gov (cc: administrativefines@fec.gov)

James E. “Trey” Trainor III
Chair
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: AF#s 3748, 3776 and 3823

Dear Chairman Trainor:

As counsel to New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer (collectively, the “Committee”), we write in response to the Reviewing Officer’s Recommendation in the above-referenced matters. We appreciate the extension granted by the Reviewing Officer to respond to the Recommendation and respectfully repeat our request that the Commission correct the amount of the penalties pursuant to 11 C.F.R. § 111.35(b)(2) and refer the Committee to the appropriate office for termination.

After the Committee responded to the Commission’s reason to believe finding, presenting the circumstances of the non-filing and its desire to terminate, it has communicated both with the Reports Analysis Division and the Reviewing Officer, to discuss the circumstances under which it can terminate. The Committee has accordingly prepared and is now filing, concurrently with this response, the missing reports at issue in this referral—the 2019 Mid-Year, 2019 Year-End and 2020 April Quarterly Reports. The Committee has also filed the reports subsequently due, including a Termination Report covering the period October 1, 2020 through October 14, 2020.

The newly filed reports demonstrate that the aggregate administrative fines in these matters were, in fact, excessive. None of the reports was election-sensitive.¹ For each report, the Recommendation posited a penalty of \$11,627, based on estimated levels of activity derived from prior reports.² However, the actual levels of activity should yield lower penalties:

¹ See 11 C.F.R. § 111.43(d)(1); Reviewing Officer’s Recommendation at 1.

² See 11 C.F.R. § 111.43(d)(2); Reviewing Officer’s Recommendation at 1, 3.

Chairman Trainor
 October 30, 2020
 Page 2

- The 2019 Mid-Year Report shows \$7,123.49 in total receipts and \$111,300.42 in total disbursements, for a level of activity of \$118,423.91, and thus a penalty of \$6,656.00
- The 2019 Year-End Report shows \$40,416.04 in total receipts and \$79,776.55 in total disbursements, for a level of activity of \$120,192.59, and thus a penalty of \$6,656.00.
- The 2020 April Quarterly Report shows \$2,325.30 in total receipts and \$9,960.70 in total disbursements, for a level of activity of \$12,286.00, and thus a penalty of \$696.00.³

The Committee would accordingly repeat its request to the Commission that it reconsider the penalty calculations and tailor the penalties to reflect the Committee's true activity. The Reviewing Officer's Recommendation indicates that this can be done. It urged "no change in the civil money penalties at the time of this Reviewing Officer Recommendation," but indicated that the Committee "shall file these reports prior to the Reviewing Officer's Final Determination Recommendation to the Commission," and that the penalties in that recommendation "will be calculated using the actual level of activity of the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports."⁴ The Committee appreciates the Reviewing Officer's demonstrated openness to tailoring the penalties more closely and willingness to help the Committee terminate its filing obligations.

We appreciate the Commission's consideration of this response.

Very truly yours,



Brian G. Svoboda

Ezra W. Reese

Counsel to New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer

³ See Civil Monetary Penalties Annual Inflation Adjustment, 85 Fed. Reg. 47891, 47893 (Aug. 7, 2020). The above calculations assume no previous violations for Respondent. While the Commission has imposed administrative fines against the Committee in AF#s 3602, 3642 and 3700, it had made no final determinations in these matters until June 29, 2020—which was the same date on which it found reason to believe a violation occurred in these matters. With no violation having yet been found when the reports were due, nor before when the Commission found reason to believe, a penalty calculation in these matters that assumes previous violations would not be appropriate.

⁴ Reviewing Officer's Recommendation at 3.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

December 3, 2020

MEMORANDUM

To: The Commission

Through: Alec Palmer
Staff Director *AP*

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 3748, AF# 3776, and AF# 3823 –
New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer
(C00634964)

On June 29, 2020, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to file the 2019 Mid-Year Report and made a preliminary determination that the civil money penalty was \$11,627 based on the schedule of penalties at 11 C.F.R. § 111.43 (AF# 3748). On June 29, 2020, the Commission found RTB that the respondents violated 52 U.S.C. § 30104(a) for failing to file the 2019 Year-End Report and made a preliminary determination that the civil money penalty was \$11,627 based on the schedule of penalties at 11 C.F.R. § 111.43 (AF# 3776). On June 30, 2020, the Commission found RTB that the respondents violated 52 U.S.C. § 30104(a) for failing to file the 2020 April Quarterly Report and made a preliminary determination that the civil money penalty was \$11,627 based on the schedule of penalties at 11 C.F.R. § 111.43 (AF# 3823).

On August 7, 2020, the Commission received their written response (“challenge”). After reviewing the challenge, the Reviewing Officer Recommendation (“ROR”) dated October 6, 2020 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The respondents requested the Commission recalculate the civil money penalties using the actual levels of activity disclosed on these reports. However, as of the date of the ROR, the Committee had not yet filed these reports. Therefore, the Reviewing Officer recommended no change in the civil money penalties at that time. The ROR explained that in order to calculate the civil money penalties using the actual level of activity disclosed on the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports, the Committee shall file

these reports prior to the Reviewing Officer's Final Determination Recommendation to the Commission.

Within 10 days of transmittal of the recommendation, they may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). On October 30, 2020, the Commission received their response. Counsel reiterates the points made in the original challenge and highlights that all outstanding reports have since been filed, including a termination report. Further, counsel suggests the penalties for the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports should be recalculated to \$6,656, \$6,656, and \$696, respectively.

The Reviewing Officer confirms that the civil money penalties should be recalculated based on the actual level of activity of the reports. At the time of the RTB findings, the Commission appropriately used an estimated level of activity (\$252,158) to calculate the penalties because the 2019 Mid-Year, 2019 Year-End, and 2020 April Quarterly Reports had not yet been filed. 11 C.F.R. § 111.43(d)(2)(ii). On October 30, 2020, the Committee filed the reports. The reports are not election sensitive and were not filed within 30 days of the due date; therefore, the reports are considered not filed. 11 C.F.R. §§ 111.43(d)(1) and (e)(1). The penalties shall be calculated using the schedule of penalties in effect at the time of the RTB findings, as detailed below.¹

The 2019 Mid-Year Report discloses \$7,123 in total receipts and \$111,300 in total disbursements. Therefore, the actual level of activity of the 2019 Mid-Year Report is \$118,423. Using the schedule of penalties at 11 C.F.R. § 111.43(a) for the level of activity bracket of \$100,000 - \$149,999.99, the civil money penalty for AF# 3748 is \$6,541 x [1 + (.25 x 0 previous violations)] or \$6,541.

The 2019 Year-End Report discloses \$40,416 in total receipts and \$79,777 in total disbursements. Therefore, the actual level of activity of the 2019 Year-End Report is \$120,193. Using the schedule of penalties at 11 C.F.R. § 111.43(a) for the level of activity bracket of \$100,000 - \$149,999.99, the civil money penalty for AF# 3776 is \$6,541 x [1 + (.25 x 0 previous violations)] or \$6,541.

The 2020 April Quarterly Report discloses \$2,325 in total receipts and \$9,961 in total disbursements. Therefore, the actual level of activity of the 2019 Year-End Report is \$12,286. Using the schedule of penalties at 11 C.F.R. § 111.43(a) for the level of activity bracket of \$10,000 - \$24,999.99, the civil money penalty for AF# 3823 is \$684 x [1 + (.25 x 0 previous violations)] or \$684.

The Reviewing Officer recommends that the Commission make a final determination in AF# 3748, AF# 3776, and AF# 3823 that the respondents violated 52 U.S.C. § 30104(a) and assess civil money penalties of \$6,541, \$6,541, and \$684, respectively.

¹See <https://sers.fec.gov/fosers/showpdf.htm?docid=401529>. Counsel's proposed civil money penalties were calculated using the schedule of penalties which became effective August 7, 2020, after the RTB findings. See <https://sers.fec.gov/fosers/showpdf.htm?docid=412651>.

OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 3748 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 3748 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$6,541 (reduced from the RTB civil money penalty of \$11,627);
- (3) Adopt the Reviewing Officer recommendation for AF# 3776 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination;
- (4) Make a final determination in AF# 3776 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$6,541 (reduced from the RTB civil money penalty of \$11,627);
- (5) Adopt the Reviewing Officer recommendation for AF# 3823 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination;
- (6) Make a final determination in AF# 3823 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$684 (reduced from the RTB civil money penalty of \$11,627); and
- (7) Send the appropriate letters.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	AFs 3748, 3776 and 3823
Final Determination Recommendation:)	
New Nation Rising and Olufemi)	
Ogunnaike, in his official capacity as)	
Treasurer (C00634964))	

CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on May 26, 2021, the Commission decided by a vote of 6-0 to take the following actions in AFs 3748, 3776, and 3823:

1. Adopt the Reviewing Officer recommendation for AF# 3748 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 3748 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$6,541 (reduced from the RTB civil money penalty of \$11,627).
3. Adopt the Reviewing Officer recommendation for AF# 3776 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination.
4. Make a final determination in AF# 3776 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$6,541 (reduced from the RTB civil money penalty of \$11,627).
5. Adopt the Reviewing Officer recommendation for AF# 3823 involving New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, in making the final determination.

Federal Election Commission
AFs 3748, 3776, and 3823
May 26, 2021

6. Make a final determination in AF# 3823 that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$684 (reduced from the RTB civil money penalty of \$11,627).
7. Send the appropriate letters.

Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voted affirmatively for the decision.



May 27, 2021

Date

Attest:

**Laura
Sinram**

Digitally signed by Laura Sinram

Date: 2021.05.27
15:14:42 -04'00'

Laura E. Sinram
Acting Secretary and Clerk of the
Commission



June 4, 2021

Brian G. Svoboda
Ezra W. Reese
Perkins Coie LLP
700 13th Street, NW
Suite 800
Washington, DC 20005

New Nation Rising
C00634964
AF# 3748

Dear Counsel:

On June 29, 2020, the Federal Election Commission (“the Commission”) found reason to believe (“RTB”) that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file the 2019 Mid-Year Report. By letter dated July 9, 2020, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$11,627 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On August 7, 2020, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission’s RTB finding with its supporting documentation and your written response. At the time of the Reviewing Officer Recommendation, the report had not yet been filed. The Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$11,627. The Reviewing Officer Recommendation was sent to you on October 7, 2020.

On October 30, 2020, the Committee filed the 2019 Mid-Year Report. The Reviewing Officer subsequently recommended that the Commission reduce the RTB civil money penalty because it was calculated using an estimated level of activity, make a final determination that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and based on the actual level of activity disclosed on the 2019 Mid-Year Report filed October 30, 2020 (\$118,423), assess a civil money penalty in the amount of \$6,541 in accordance with 11 C.F.R. § 111.43.

On May 26, 2021, the Commission adopted the Reviewing Officer’s recommendation and made a final determination that New Nation Rising and Olufemi Ogunnaike, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and based on the level of activity disclosed on the

2019 Mid-Year Report (\$118,423), assessed a civil money penalty in the amount of \$6,541 (reduced from the RTB civil money penalty of \$11,627). It is based on the same factors used to calculate the civil money penalty at RTB except that the actual rather than the estimated level of activity was used. A copy of the Final Determination Recommendation is attached.

At this juncture, the following courses of action are available to you:

1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the U.S. District Court for the district in which the committee or you reside, or transact business, requesting that the final determination be modified or set aside. See 52 U.S.C. § 30109(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 52 U.S.C. § 30109. 11 CFR § 111.38.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.* If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact you to request payment. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, follow the payment instructions on page 4 of this letter. You should make payment within thirty (30) days of receipt of this letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS**4. Partial Payments**

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within 30 days from the date of this notification.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Shana M. Broussard
Chair

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at final determination is \$6,541 for the 2019 Mid-Year Report.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details below to complete the required fields. For additional payment options, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

COMMITTEE NAME: New Nation Rising

FEC ID#: C00634964

AF#: 3748

PAYMENT AMOUNT DUE: \$6,541