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December 19, 2014

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: AR 14-03 – Rod Lewis

Dear Mr. Jordan:

This office represents Mr. Rod Lewis in the above-captioned matter. Enclosed please find a signed designation of counsel form on behalf of Mr. Lewis designating this firm to represent him.

We are responding to your November 20, 2014 letter wherein you provided Mr. Lewis with a copy of the Final Audit Report of Canseco for Congress. Your letter stated that the Federal Election Commission ("FEC" or "Commission") had "ascertained information in the normal course of carrying out its supervisory responsibilities indicating that [Mr. Lewis] . . . may have made an excessive contribution to Canseco for Congress" in violation of the Federal Election Campaign Act of 1971, as amended ("FECA or "Act"), and Commission regulations. For the reasons outlined below, the Commission should dismiss the matter with respect to Mr. Lewis based upon prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

I. Factual Background.

Without identifying individuals by name, the Canseco for Congress Final Audit Report reflects that Canseco for Congress deposited a check written from an individual to Mr. Canseco personally and treated by the campaign as a loan from the candidate. Based on the timing of the deposit, and the fact that this letter from the FEC was sent to Mr. Lewis, Mr. Lewis believes that the check at issue reflected a loan he made to Mr. Canseco. Therefore, Mr. Lewis has informed us of the following facts: Mr. Lewis and Mr. Canseco have been personal friends for over 20 year. It is common practice for Mr. Lewis to make personal loans to his family, friends, employees, and former employees. In April 2010, Mr. Lewis made a \$150,000 loan to Mr. Canseco personally. As with other personal loans that he has

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made, Mr. Lewis's attorneys drew up a promissory note between Mr. Lewis and Mr. Canseco personally.¹ Consistent with the promissory note and his understanding that he was making a loan to Mr. Canseco personally, Mr. Lewis's loan check was made payable to Mr. Canseco.² At the time Mr. Lewis made the loan, he believed that he was making a lawful loan to Mr. Canseco personally. Mr. Lewis later learned that the FEC was conducting an audit of Canseco for Congress, but he believed that the FEC was concerned about the loan because Mr. Canseco had not yet repaid it—not because there was an issue concerning the propriety of the loan. In May 2013, Mr. Lewis received repayment of the loan.³ When the loan was repaid, there was no indication that it related to a violation of law. Thus, Mr. Lewis was unaware that his loan to Mr. Canseco could be considered an excessive contribution to Mr. Canseco's campaign until Mr. Lewis received the FEC's November 20, 2014 letter. This notice came nearly 5 years after the loan and 1 ½ years after the repayment of the loan confirmed in the Final Audit Report.

II. The Commission Should Exercise Its Prosecutorial Discretion and Dismiss the Matter with Respect to Mr. Lewis.

The Commission should exercise its prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), and dismiss the matter with respect to Mr. Lewis for several reasons. First, Mr. Lewis's personal loan to Mr. Canseco was an inadvertent violation of FECA. Second, Mr. Lewis has already received repayment for the portion of the loan that constituted an excessive contribution. Finally, now that Mr. Lewis is aware of the FEC's rules Mr. Lewis will take steps to ensure that he does not make any personal loans to federal candidates in the future, regardless of whether they are personal friends. Dismissing this matter with respect to Mr. Lewis would be consistent with the Commission's actions in other similar matters. See, e.g., MUR 5922 (Richard Morrison Congressional Committee) (declining to take any action with respect to the candidate's father who made an excessive contribution to his son's campaign in the form of a loan); ADR 554 (Friends for Menor) (omitting as respondents individuals who made excessive contributions to the campaign in the form of loans); ADR 315 (Minamyer for Congress) (omitting as

¹ The Final Audit Report indicates that the Commission has a copy of the signed promissory note.

² The Final Audit Report indicates that the Commission has a copy of Mr. Lewis's loan check.

³ The Final Audit Report indicates that the Commission has a copy of the loan repayment check.

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respondents the candidate's family members who made excessive contributions to the campaign in the form of loans).

Should the Commission not dismiss this matter as we believe appropriate, given the inadvertent nature of the violation and the fact that corrective action has already been taken, we alternatively request that the Commission refer this matter with regard to Mr. Lewis to Alternative Dispute Resolution.

Sincerely,

A handwritten signature in cursive script that reads "Carol A. Laham".

Carol A. Laham
Brandis L. Zehr

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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use *one* form for each Respondent/Entity/Treasurer
FAX (202) 219-3923

MUR # AR 14-03

NAME OF COUNSEL: Carol A. Laham

FIRM: Wiley Rein LLP

ADDRESS: 1776 K Street NW

Washington, DC 20006

TELEPHONE- OFFICE (202) 719-7301

FAX (202) 719-7049 **Web Address** www.wileyrein.com

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.

		Respondent
Date	Respondent/Agent -Signature	Title(Treasurer/Candidate/Owner)

RESPONDENT: Rod Lewis
 (Committee Name, Company Name, or Individual Named in Notification Letter)

MAILING ADDRESS: 10101 Reunion Place, Suite 1000
 (Please Print)

San Antonio, TX 78216

TELEPHONE- HOME () _____

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Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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