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**Via Hand Delivery**

September 2, 2016

Mr. Jeff S. Jordan  
Federal Election Commission  
Office of Complaints Examination  
and Legal Administration  
Attn: Donna Rawls, Paralegal  
999 E Street NW  
Washington, DC 20436

1704442010000001

**Re: Response of Mr. Paul Singer - MUR 7101**

Dear Mr. Jordan:

We write on behalf of our client, Paul Singer, in response to your letter dated July 14, 2016. Your letter states that the Commission "received a complaint that indicates" Mr. Singer may have violated the Federal Election Campaign Act ("the Act"). But because the complaint does not name Mr. Singer as a Respondent and because he faces no potential liability, Mr. Singer should never have been added as a Respondent. Accordingly, the Commission's letter of July 14, 2016 should be withdrawn. Moreover, even if Mr. Singer was properly added as a Respondent—which he was not—the complaint is completely without merit and controlling law requires that it be dismissed.

**I. Mr. Singer Should Not Have Been Added as a Respondent**

The Commission should rescind its July 14, 2016 letter to Mr. Singer. According to the Commission's enforcement manual, the Commission should not add an individual as a respondent unless the individual "faces potential liability." FEC, *OGC Enforcement Manual* § 3.2.3 (June 2013). But Mr. Singer faces no potential liability here and the complaint does not even allege that he does. The complaint does not name Mr. Singer as a Respondent, none of the alleged "violations" involve assertions that Mr. Singer violated any law or regulation, and the "prayer for relief" seeks only "declaratory and/or injunctive relief against future acceptance of excessive contributions" by the named Super PAC Respondents. See Compl. ¶¶ 86-96. Even as to the Super PACs themselves, the complaint acknowledges that penalties may not be assessed for past conduct in light of a controlling FEC advisory opinion. See *id.* ¶ 7 ("In light of this

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advisory opinion and 52 U.S.C. § 30108(c)(2), complainants do not ask the FEC to seek civil penalties or other sanctions for past conduct, but rather only declaratory and/or injunctive relief against future acceptance of excessive contributions.”).

Because even the complaint acknowledges that no liability can be assessed for past conduct, *see id.*, and because the complaint seeks declaratory relief only with respect to the Respondent Super PACs’ later potential acceptance of contributions, Mr. Singer faces no “potential liability” here. Accordingly, Mr. Singer should not have been added as a respondent and the July 14, 2016 letter should be rescinded. *See FEC, Reports Analysis Division Review and Referral Procedures for the 2015-2016 Election Cycle* at 48 n.13 (“Independent Expenditure only PACS or non-contribution accounts of Hybrid PACs will not be questioned for receipt of excessive contributions.”).

## II. Controlling Law Requires that the Commission Dismiss the Complaint

Even if the July 14, 2016 letter to Mr. Singer was proper, the complaint is still completely without merit and should be dismissed. Binding federal appeals court decisions and controlling FEC advisory opinions, forms, and enforcement manuals make clear that individuals like Mr. Singer may make unlimited contributions to federal Super PACs. Indeed, every sitting FEC Commissioner has acknowledged that these contributions are legal.

### A. Pursuant to Binding Federal Appeals Court Decisions, Individuals May Make Unlimited Contributions to Super PACs

In a unanimous *en banc* decision, the U.S. Court of Appeals for the District of Columbia Circuit held that statutory limits on the amount an individual may contribute to Super PACs are unconstitutional and cannot be enforced. *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (“The contribution limits of 2 U.S.C. § 441a(a)(1)(C) [later re-codified as 52 U.S.C. § 30116(a)(1)(C)] . . . violate the First Amendment by preventing plaintiffs from donating to SpeechNow in excess of the limits.”). This decision is binding on the FEC. *See Carey v. FEC*, 864 F. Supp. 2d 57, 63, 63 n.11 (D.D.C. 2012) (citing *Indus. Turnaround Corp. v. N.L.R.B.*, 115 F.3d 248, 254 (4th Cir. 1997)) (decision of D.C. Circuit was “binding” on the FEC).

Indeed, every federal appellate court in the country that has directly considered the question since *Citizens United v. FEC*, 558 U.S. 310 (2010), including the Second Circuit where Mr. Singer resides, has concluded that limits on contributions to Super PACs are unconstitutional. *See N.Y. Progress and Protection PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013); *Texans for Free Enter. v. Tex. Ethics Comm’n*, 732 F.3d 535, 537-38 (5th Cir. 2013); *Wis.*

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*Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 154–55 (7th Cir. 2011); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 696 (9th Cir. 2010); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1121 (9th Cir. 2011); *Republican Party of N. M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013). Even before *Citizens United*, the Fourth Circuit had reached a similar conclusion. See *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 293 (4th Cir. 2008). As the Second Circuit noted, “[f]ew contested legal questions are answered so consistently by so many courts and judges.” *N.Y. Progress and Protection PAC*, 733 F.3d at 488; see also *id.* at 487 n.2, 488 (listing federal appellate and district court cases in agreement).

B. The Commission Has Repeatedly and Consistently Concluded that Individuals May Make Unlimited Contributions to Super PACs

The Commission itself has frequently and explicitly stated that individuals may make unlimited contributions to Super PACs. In two 2010 advisory opinions, the Commission held that federal Super PACs may solicit and accept unlimited contributions despite the statutory limitations in the Act. See FEC AO 2010-11 (Commonsense Ten) (“Given the holdings in *Citizens United* and *SpeechNow*, . . . there is no basis to limit the amount of contributions to the Committee from individuals, political committees, corporations and labor organizations.”); see also FEC AO 2010-09 (Club for Growth) (“[B]ecause the Committee, like *SpeechNow*, intends to make only independent expenditures, there is no basis to impose contribution limits on the Committee.”).<sup>1</sup> Both decisions were unanimous as to the right of individuals to make unlimited contributions to Super PACs. See FEC AO 2010-11 (Commonsense Ten) Certification (July 23, 2010); FEC AO 2010-09 (Club for Growth) Certification (July 23, 2010); FEC AOs 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten), Statement of Commissioner Steven T. Walther (July 22, 2010) (explaining his approval of unlimited contributions from individuals to Super PACs but not from entities). In deciding whether there is reason to believe a violation occurred, the FEC is bound by these advisory opinions. See 52 U.S.C. § 30108(c)(2) (those

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<sup>1</sup> Since 2010, the Commission’s advisory opinions have consistently upheld the right of individuals to make unlimited contributions to Super PACs. In FEC AO 2011-12, the Commission stated that Super PACs “may accept unlimited contributions from individuals, political committees, corporations, and labor organizations.” FEC AO 2011-12 (Majority PAC and House Majority PAC). Similarly, in FEC AO 2012-34, the Commission explained that making an unlimited contribution to a Super PAC was “a lawful purpose” for a campaign committee. FEC AO 2012-34 (Freedom PAC and Friends of Mike H.). Many other advisory opinions acknowledge the legality of Super PACs. See, e.g., FEC AO 2011-11 (Colbert); FEC AO 2011-24 (StandLouder.com); FEC AO 2012-03 (ActRight); FEC AO 2012-18 (National Right to Life Committee, Inc.); and FEC AO 2015-09 (Senate Majority PAC and House Majority PAC).

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acting in good faith reliance on commission advisory opinion shall not “be subject to any sanction”); *see also* 11 C.F.R. § 112.5.

Indeed, both opinions expressly provided a method to create committees that could accept unlimited contributions for independent expenditures. Pursuant to these opinions, a committee “may include a letter with its Form 1 Statement of Organization clarifying that it intends to accept unlimited contributions for the purpose of making independent expenditures.” AO 2010-11 at n.4; *see also* AO 2010-09 at n.1. The Commission specifically stated that the letter should include a statement making clear that the contribution limits do not apply: “This committee intends to make independent expenditures and, consistent with the U.S. Court of Appeals for the District of Columbia Circuit decision in *SpeechNow v. FEC*, it therefore intends to raise funds in unlimited amounts.” *Id.* at Attachment A (emphasis added). The Commission now makes a version of these letters available online in an easily-fillable format. *See* *FEC, IE-Only Letter*, [http://www.fec.gov/pdf/forms/ie\\_only\\_letter.pdf](http://www.fec.gov/pdf/forms/ie_only_letter.pdf); *FEC, Non-contribution Letter*, [http://www.fec.gov/pdf/forms/noncontribution\\_letter.pdf](http://www.fec.gov/pdf/forms/noncontribution_letter.pdf).

Consistent with these forms, the FEC explicitly told the public that it would “no longer enforce statutory and regulatory provisions that . . . limit the amounts permissible sources may contribute to [non-contribution] accounts.” Press Release, FEC, *FEC Statement on Carey v. FEC: Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011). Having created forms and issued other public statements making clear that Super PACs may accept unlimited contributions, the Commission cannot find reason to believe a violation occurred when an individual acts in good faith in reliance on these statements. Because Mr. Singer acted in accordance with these advisory opinions and statements, the Commission may not impose “any sanction” whatsoever on him. *See* 52 U.S.C. § 30108(c)(2); *see also* 11 C.F.R. § 112.5.

C. Every Sitting FEC Commissioner Has Acknowledged That Individuals May Make Unlimited Contributions To Super PACs

All six Commissioners on the FEC have acknowledged that individual U.S. citizens may make unlimited contributions to federal Super PACs:

- In her statement opening her year as Chair of the Commission, Commissioner Ellen L. Weintraub wrote, “I use the term ‘super PAC’ here to connote both IEOPCs [independent expenditure only political committees] and the soft money non-contribution accounts that political committees *are allowed to establish* pursuant to the Commission’s interim guidance.” Ellen L. Weintraub, Chair, FEC, *Statement of Chair Ellen L. Weintraub at*

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n.2, January 31, 2013,  
[http://www.fec.gov/members/weintraub/statements/weintraub\\_statement\\_20130131.pdf](http://www.fec.gov/members/weintraub/statements/weintraub_statement_20130131.pdf) (emphasis added).

- Commissioner Weintraub joined with Commissioner Ann M. Ravel and Vice Chair Steven T. Walther in a Statement of Reasons acknowledging that “[a]n organization like Crossroads GPS, which does not make direct contributions to candidates, would in no way be restricted from accepting unlimited contributions” even if it had to register as a political committee. FEC MUR 6396 (Crossroads GPS), Statement of Reasons of Vice Chair Ann M. Ravel and Commissioners Steven T. Walther and Ellen L. Weintraub (emphasis added).
- Vice Chair Walther and Commissioners Ravel and Weintraub wrote in MURs 6487, 6488, 6485, 6711, and 6930 that, “the ability of individuals and corporations to make unlimited contributions to super PACs is a post-*Citizens United* and *SpeechNow* phenomenon . . . .” FEC MURs 6487, 6488, 6485, 6711, and 6930, Statement Reasons of Vice Chair Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub (footnote omitted).
- In the same matter, Chair Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman wrote that *Citizens United* “compelled the U.S. Court of Appeals for the District of Columbia to hold unconstitutional the Act’s contribution limits as applied to individuals’ contributions to political committees that only made independent expenditures.” MURs 6487, 6488, 6485, 6711, and 6930 Statement of Reasons of Chair Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at n.1 (citing *SpeechNow*, 599 F.3d 686).

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**III. Conclusion**

Because Mr. Singer faces no potential liability, the Commission's July 14, 2016 letter should be withdrawn. Even if the letter is not withdrawn, the Commission should find no reason to believe that a violation occurred. Binding federal court decisions, the Commission's own advisory opinions and manuals, and the public statements of all six current FEC Commissioners make clear that individuals may make unlimited contributions to Super PACs.

Respectfully submitted,



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