

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

1901 HARRISON STREET, SUITE 1550
OAKLAND, CA 94612
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: aw@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin
Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

October 4, 2016

VIA EMAIL AND FEDERAL EXPRESS

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20436

Re: *MUR 7121*

Dear Mr. Jordan:

We are counsel to Michael Eggman, Eggman for Congress (“the Committee”), and Jay Petterson in his official capacity as Treasurer (collectively, “Respondents”). We write in response to the complaint filed by the Foundation for Accountability and Civic Trust (“FACT”) on July 26, 2016 (“the Complaint”). The Complaint alleges that Respondents were “integral players” in a “massive straw donor scam” and “knowingly and willfully used Eggman for Congress to launder the straw donor scam’s illegal contributions.”¹ These conclusions are based solely upon the fact that the Committee made a single \$1,000 contribution to Bera for Congress and subsequently received a single \$1,000 contribution from Congressman Bera’s father, Babulal Bera.

This is the second complaint filed by FACT about this same incident and, like the first, it must be dismissed. Simply put, there was no agreement or understanding between Respondents and Congressman Bera, Ami Bera for Congress or Babulal Bera that the Committee’s contribution would be reimbursed. Accordingly, the Complaint fails to allege any violation of the Federal Election Campaign Act (the “Act”) or Commission rules, and must be promptly dismissed.

¹ Complaint at 2, 3.

I. FACTUAL BACKGROUND

Michael Eggman is a candidate for Congress in California's Tenth Congressional District. Eggman for Congress is his principal campaign committee.² Mr. Eggman was also a candidate for the same office during the 2013-2014 election cycle.³

Shortly after becoming a candidate in 2013, Mr. Eggman attended the California Democratic Party's convention in Sacramento, California.⁴ There, he met Congressman Ami Bera, who was running for re-election in California's nearby Seventh Congressional District.⁵ Mr. Eggman enjoyed meeting Congressman Bera and thought highly of him, and wished to support Congressman Bera's campaign financially. Accordingly, he instructed his campaign to make a financial contribution to Bera for Congress.⁶

On June 30, 2013, the Committee received a contribution from Babulal Bera for \$1,000.⁷ This contribution was not made to "reimburse" the Committee for its contribution. Mr. Eggman did not have any agreement or understanding with Congressman Bera, Bera for Congress or Babulal Bera that the Committee's contribution would be reimbursed by Babulal Bera or any other Bera for Congress donor.⁸ Nor did he authorize any of his campaign staff to make such an agreement, and he is not aware of any staff doing so.⁹

After making the initial contribution to Bera for Congress, Mr. Eggman found himself locked in a competitive and expensive election contest, and decided that he needed to spend his campaign funds on his own election, instead of contributing those funds to other candidates. Accordingly, the Committee has not contributed to other campaigns since.¹⁰

² See Statement of Candidacy, Michael Eggman (amended June 19, 2015).

³ See Statement of Candidacy, Michael Eggman (filed Mar. 26, 2013).

⁴ See Declaration of Michael Eggman ("Eggman Decl."), ¶ 4, attached as Attachment A.

⁵ *Id.*, ¶ 4.

⁶ *Id.*

⁷ Eggman for Congress, 2013 July Quarterly Report (filed July 15, 2013).

⁸ Eggman Decl., ¶ 4.

⁹ *Id.*

¹⁰ *Id.*, ¶ 3.

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II. LEGAL BACKGROUND AND ANALYSIS

“The Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act].”¹¹ Moreover, “[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true.”¹²

Here, the Complaint makes three allegations against Respondents: (1) that they knowingly helped or assisted Babulal Bera to make a contribution in the name of another; (2) that they knowingly accepted a contribution in the name of another; and (3) that, as a result of the foregoing, Respondents failed to file complete and accurate reports with the Commission. These allegations are based on misguided speculation and a mistaken reading of the law, and accordingly, must be dismissed.

1. Respondents Did Not Permit the Committee’s Name to be Used to Make, or Help or Assist in Making, a Contribution in the Name of Another

The Act and Commission regulations prohibit any person from knowingly permitting his or her name to be used to make a contribution in the name of another.¹³ Likewise, Commission regulations prohibit anyone from knowingly helping or assisting any person in making a contribution in the name of another.¹⁴ Though, in recent matters, the Commission has been divided over the precise standard, at the very least, in order to violate the name of another provision, the true source of the contribution must convey the contributions to an intermediary and then exercise direction or control over the subsequent use of the funds.¹⁵

¹¹ Statement of Reasons, Commissioners Mason, Sandstrom, Smith & Thomas, MUR 4950 (Dec. 21, 2000); *see* 11 C.F.R. § 111.4(d).

¹² *Id.*; *see* Statement of Reasons, Commissioners Mason, Sandstrom, McDonald, Smith, Thomas & Wold, MUR 5141 (Apr. 17, 2002).

¹³ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(ii).

¹⁴ 11 C.F.R. § 110.4(b)(iii).

¹⁵ *See United States v. O’Donnell*, 608 F.3d 546, 550 (9th Cir. 2010); Statement of Reasons of Vice Chairman Walther, and Commissioners Ravel and Weintraub, MUR 6485, et al., at 4 (Apr. 1, 2016); *see also* Statement of Reasons of Chairman Petersen and Commissioners Hunter and Goodman, MUR 6485, et al., at 3 (requiring a “specific purpose of funding a campaign contribution in another person’s name”); *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (upholding jury instruction to find a violation if defendant knew the named contributors were not the true source of the contributions and defendant caused the donations to be made).

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In cases where the alleged intermediary for a contribution is a political organization, the Commission has only found reason to believe that respondents violated the Act when there was evidence that contributions were provided to the political organization with an understanding or intent that they be passed on to a third party. For example, in Advisory Opinion 1996-33, a state legislator running for Congress proposed to contribute surplus state campaign funds to the campaigns of several fellow state legislators, with the understanding that the legislators would contribute a roughly equivalent amount from their campaigns to the federal committee. The Commission concluded that the proposed exchange would be impermissible.¹⁶ Similarly, in MUR 5278, Former Rep. Gingrey made four donations totaling \$3,500 from his state senate campaign to a number of other state legislators; those state legislators, in turn, made corresponding donations to Gingrey's congressional campaign. Gingrey had previously entered into a consent order with the Georgia Ethics Commission in which he admitted to violating a Georgia law that prohibited the use of state campaign funds to run for another office. Because his admission indicated an intent to move funds from his state campaign to his federal campaign, the Commission found reason to believe that Gingrey violated the law.¹⁷

In contrast, in cases where there was no evidence of such an intent or understanding, the Commission has found no reason to believe. For example, in MUR 5304, former Rep. Cardoza's state committee made seven contributions to other state candidate committees and PACs, which in turn, contributed to Rep. Cardoza's federal campaign. In a few cases, these contributions were made less than a week apart and were in similar amounts.¹⁸ However, the Commission dismissed the matter, finding that the contributions were legal on their face and that the timing and amount of the contributions alone did not raise suspicion about their legality. "Without more to support the allegations of an illegal scheme, there is not a 'sufficiently specific allegation' warranting 'a focused investigation that can prove or disprove

¹⁶ Advisory Opinion 1996-33.

¹⁷ See First General Counsel's Report, MUR 5278 (Sept. 14, 2004). Notably, the Commission exercised its prosecutorial discretion by (1) pursuing the violation under the theory that it was an illegal transfer under 11 C.F.R. § 110.3(d) rather than as a contribution in the name of another and (2) declining to pursue enforcement against the other state legislators. See *id.* at 3, 9. See also Statement of Reasons, MUR 4408, 4409 (Feb. 9, 1998) (finding reason to believe when a candidate for congress made a \$3,500 contribution to a local party committee and at the same meeting, the party committee made a \$2,000 donation to the candidate, but declining to pursue enforcement due to the small amount at issue).

¹⁸ For example, on December 21, 2001, the nonfederal committee made a contribution of \$1,000 to Shelley for Secretary of State, and five days later, Shelley for Secretary of State made a \$1,000 contribution to Cardoza for Congress. Similarly, on February 6, 2002, the nonfederal committee made a \$3,000 contribution to Andrei Cherny for State Assembly; six days later, Andrei Cherny for State Assembly made a \$1,000 contribution to Cardoza for Congress. See First General Counsel's Report, MUR 5304 at 4.

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the charge,' and Complainant's 'unwarranted legal conclusions' and 'mere speculation' should not be credited."¹⁹

The precedent precludes a finding of reason to believe here. There was no understanding or agreement between the parties that the Respondent's contribution to Bera for Congress would be "reimbursed" by Babulal Bera.²⁰ Mr. Eggman had met Congressman Bera, who represents a nearby congressional district, while attending the California Democratic Party's convention.²¹ Mr. Eggman enjoyed meeting Congressman Bera and thought highly of him after the meeting. Accordingly, he – not Babulal Bera – directed the Committee to make a financial contribution to Congressman Bera's reelection campaign.²²

The Complaint presents no "specific facts" contrary to this conclusion. It identifies two contributions – a \$1,000 contribution from the Committee to Bera for Congress on June 20, 2013, and a \$1,000 contribution from Babulal Bera to the Committee on June 30, 2013 – and, from this alone, invents a "straw donor scam." But there is nothing to suggest that either contribution was made improperly and, as the Commission has made clear, the timing and amount of two contributions like these is not enough to lead to a finding of reason to believe. In MUR 5304, there were multiple reciprocal contributions made within an even shorter time span, and the Commission still dismissed the matter.²³ Accordingly, it must do the same here.

The Complaint argues that the June 2013 contribution to Bera for Congress was the only contribution that the Committee has made to another campaign committee.²⁴ But this fact also fails to support its imagined conspiracy. Mr. Eggman filed a statement of candidacy on March 26, 2013, and met Congressman Bera and contributed to his campaign shortly thereafter.²⁵ After making this contribution, he found himself locked in a competitive and expensive election contest, and thought it best to spend his campaign funds on his own election,

¹⁹ See First General Counsel's Report, MUR 5304 at 9 (Jan. 21, 2004) (internal citations omitted); see also First General Counsel's Report, MUR 5406 (Jan. 27, 2005).

²⁰ Eggman Decl., ¶ 4.

²¹ *Id.*, ¶ 2.

²² See *id.*

²³ First General Counsel's Report, MUR 5304 at 9.

²⁴ Complaint at 3.

²⁵ See Eggman Decl., ¶ 2.

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instead of contributing those funds to other candidates.²⁶ As a result, he has not contributed to other campaigns since.

Lastly, the Complaint tries to tie Respondents to the separate activities of Babulal Bera, who, earlier this year, pled guilty to making contributions in the name of another during the 2010 and 2012 election cycles.²⁷ This attempt at sensationalism falls flat. Contrary to the Complaint's assertion,²⁸ the federal investigation into Babulal Bera is no longer "ongoing"; on September 16, the Department of Justice announced that it was closing the investigation and that it would not pursue additional charges.²⁹ Notably, after an extensive investigation into Babulal Bera's activities, the United States Department of Justice did not, to Respondents' knowledge, identify the contribution made to the Committee as problematic.

In short, then, there is simply no basis to conclude that Respondents helped or assisted Babulal Bera in making contributions in the name of another.

2. Respondents Did Not Knowingly Accept a Contribution in the Name of Another

In addition to arguing that Respondents aided Babulal Bera in making a contribution in the name of another, the Complaint alleges that, because the Committee acted as a straw donor, Respondents *received* an illegal contribution in the name of another when it accepted a contribution from Babulal Bera.³⁰ On this point, the Complaint is analytically confused, conflating the prohibition on accepting a contribution in the name of another with the prohibition on acting as a straw donor.³¹

As described above, on June 30, 2013, the Committee received a contribution from Babulal Bera and reported it as such. If Respondents received a contribution made in the

²⁶ *Id.*, ¶ 3.

²⁷ See Plea Agreement, *United States v. Babulal Bera*, No. 16-cr-00097 (E.D. Cal. May 10, 2016).

²⁸ Complaint at 1.

²⁹ See Sarah D. Wire, *U.S. attorney's office says no more charges coming in Babulal Bera money laundering case*, L.A. Times (Sept. 16, 2016), available at <http://www.latimes.com/politics/essential/la-pol-sac-essential-politics-updates-u-s-attorney-s-office-says-no-more-1474052899-htmlstory.html>.

³⁰ Complaint at 3.

³¹ Compare 11 C.F.R. § 110.4(b)(ii), (iii) with *id.* § 110.4(b)(iv).

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name of another, it would mean that Babulal Bera, the contributor identified on the Committee's reports, was not the true contributor of the funds and, instead, used someone else's funds to make the contribution to the Committee. However, there is simply no factual basis to support that assertion. While Babulal Bera plead guilty to making contributions in the name of another, there has never been any allegation, as far as Respondents are aware, that Babulal Bera acted as a straw donor himself. Accordingly, there is no basis to find reason to believe that Respondents accepted a contribution in the name of another.

3. **Respondents Complied with the Act's Reporting Requirements**

Lastly, the Complaint alleges that Respondents violated the Act's reporting requirements by failing to file complete and accurate reports identifying Babulal Bera as the true source of the contribution that was made to Bera for Congress.³² But as described above, the Committee was the true source of the funds used to make the contribution to Bera for Congress. Accordingly, Respondents did not violate the Act's reporting requirements.

III. **CONCLUSION**

While the Complaint is heavy on rhetoric and hyperbole, it does not identify a single fact that shows an agreement or understanding between the parties that would support a finding that the Act was violated – and, in fact, no such understanding existed. For these reasons, the Commission should find no reason to believe that Respondents violated the Act and close the file.

Sincerely,



Thomas A. Willis
Andrew Harris Werbrock
Counsel to Respondents

AHW:PS
Attachment
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³² Complaint at 4.

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Attachment A

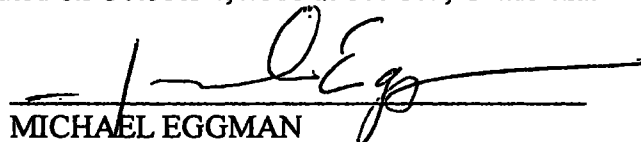
States House of Representatives in California's Tenth Congressional District. I was also a candidate for the same office during the 2013-2014 election cycle. My principal campaign committee is Eggman for Congress.

2. In 2013, shortly after I became a candidate, I attended the California Democratic Party's convention in Sacramento, CA. At that event, I met Congressman Ami Bera, who was a recently elected Member of Congress from the nearby Seventh Congressional District. I enjoyed meeting Congressman Bera and thought highly of him, and decided that I wanted to help support his reelection campaign with a financial contribution. Accordingly, I asked my campaign to make a donation to Congressman Bera's campaign committee.

3. During the 2013-2014 election cycle, I found that I was locked in a highly competitive and expensive campaign against my opponent, a two-term incumbent. Thus, after making the initial contribution to Bera for Congress, I decided that, going forward, I needed to spend all of my campaign funds on my own election. Accordingly, my campaign has not made any more contributions to other candidates for federal office.

4. I did not, at any time, reach an agreement or understanding with Congressman Bera, Congressman Bera's campaign, or Congressman Bera's father that the contribution made by Eggman for Congress to Bera for Congress would be reimbursed by Congressman Bera's father, or any other donor to Bera for Congress. I did not authorize any of my campaign staff to make any such agreement, nor am I aware of anybody doing so.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed on October 4, 2016 at Turlock, California.


MICHAEL EGGMAN

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