

OFFICE OF
GENERAL COUNSEL

2018 MAR 30 PM 2:13

Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

MUR # 7358

March 29, 2018

Re: Congresswoman Rosen and Rosen for Nevada have accepted improper and excessive in-kind contributions from two law firms.

Dear Ms. Stevenson:

This verified complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) upon information and belief that Congresswoman Jacky Rosen and her authorized campaign committee, Rosen for Nevada, illegally accepted improper and excessive in-kind contributions far beyond the limits set out by the Federal Election Campaign Act ("FECA").

FACTS

On November 17, 2016, Congresswoman Jacky Rosen and her campaign committee, Rosen for Nevada, became defendants in a defamation lawsuit alleging over \$8,000,000 in damages stemming from actions in the 2016 election for Nevada's 3rd Congressional District.¹

According to court filings, Rosen retained two law firms for the purpose of representing her and the campaign: (1) Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP ("Wolf Rifkin") and (2) Perkins Coie LLP. Between both law firms, a total of six attorneys are counsel of record for the matter.²

In June 2017, Clark County District Court denied Rosen's motion to dismiss and permitted the lawsuit to continue.³ Following this decision, Rosen and Rosen for Nevada appealed the matter to the Supreme Court of the State of Nevada, the highest state court in Nevada.⁴

Since the litigation began in November 2016, Rosen for Nevada has not made any disbursements to Wolf Rifkin. Since its creation as a political committee in January of 2016, Rosen for Nevada

¹ <https://www.reviewjournal.com/news/politics-and-government/tarkanian-accuses-rosen-of-defaming-him-in-campaign-ads/>.

² For Perkins Coie, this includes Marc Elias (Partner and Member of Firmwide Executive Committee), Graham Wilson (Partner), Elisabeth Frost (Partner), Amanda Callais (Associate). For Wolf Rifkin, this includes Bradley Schrager (Partner) and Daniel Bravo (Associate). See Docket Entries on the Nevada Supreme Court filing website: <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=43503>.

³ <https://www.reviewjournal.com/news/politics-and-government/nevada/clark-county-judge-refuses-to-toss-rosen-defamation-suit/>.

⁴ <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=43503>.

has made one disbursement to Perkins Coie for a small sum of approximately \$6,000.⁵ Because Perkins Coie is a commonly used vendor for Democratic campaigns, Complainant has no reason to believe that this disbursement was related to defending the defamation lawsuit.

LEGAL ANALYSIS

Federal law defines a contribution as “anything of value given, loaned or advanced to influence a federal election.”⁶ This includes “the provision of any goods or *services* without charge or at a charge that is less than the usual and normal charge for such goods or services.”⁷ Common examples of in-kind contributions include the use of a firm’s “facilities, equipment, supplies, [and] personnel.”⁸

Importantly, federal law prohibits candidates and political committees from knowingly accepting any contributions in excess of the contribution limits set out by law.⁹ As limited liability partnerships, Wolf Rifkin and Perkins Coie are limited to contributing no more than \$2,700 per election cycle to Rosen and Rosen for Nevada.¹⁰

Public court filings demonstrate that Wolf Rifkin and Perkins Coie have provided legal services to Jacky Rosen and Rosen for Nevada for sixteen months.¹¹ Court filings also show that Wolf Rifkin and Perkins Coie are the *lead counsel of record* for Rosen and Rosen for Nevada in this litigation.¹² This means that all aspects of sixteen months of litigation, both at the trial and appellate level, have been managed and controlled by Wolf Rifkin and Perkins Coie.

Based on information provided in the publicly reported aspects of the litigation, Wolf Rifkin and Perkins Coie have performed the following services for Rosen and her campaign, which surely resulted in significant cost incurred:¹³

- (1) Legal representation in all court proceedings in the Eighth Judicial District of Nevada.
- (2) Legal representation in all court proceedings related to an appeal in the Supreme Court of Nevada.

⁵ <https://www.fec.gov/data/committee/C00606939/?tab=spending#disbursement-transactions>.

⁶ <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-types/>.

⁷ 11 CFR 100.52(d)(1) (emphasis added).

⁸ *Id.*

⁹ 11 CFR 110.9 (“No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.”)

¹⁰ <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits-candidates/>.

¹¹ Rosen v. Tarkanian, Notice of Appeal, 6/19/17. See also:

<http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=43503>.

¹² *Id.*

¹³ See Exhibit A. See also: <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=43503>.

- (3) All motions filed for proceedings in the Eighth Judicial District and Supreme Court of Nevada.
- (4) Providing meeting space for two settlement meetings (October 20, 2017; January 26, 2018).
- (5) Preparation and legal representation involving both settlement meetings.
- (6) \$250 check submitted to the Clerk of the Supreme Court of Nevada.
- (7) Preparation and legal representation involving the parties' Opening Brief and Appendix due May 3, 2018.

Interestingly enough, since its creation in January of 2016, Rosen for Nevada has made *zero* disbursements to Wolf Rifkin.¹⁴ Indeed, Rosen for Nevada has only once made a disbursement generally related to legal services.¹⁵

Put simply, the public record demonstrates that neither Wolf Rifkin nor Perkins Coie have been substantially paid for sixteen months of litigation on behalf of Rosen and Rosen for Nevada. Under a plain reading of 11 CFR 100.52(d)(1), this amounts to an illegal in-kind contribution to Rosen and Rosen for Nevada from Wolf Rifkin and Perkins Coie. Through provision of sixteen months of legal representation, Wolf Rifkin and Perkins Coie have certainly exceeded federal contribution limits.

Specifically, in-kind contributions of services are “valued at the prevailing commercial rate at the time the services are rendered (i.e., the amount that was paid or would have been paid for the services).”¹⁶ While public records do not show the prevailing commercial rate of legal representation of this scope, Wolf Rifkin and Perkins Coie have certainly exceeded their respective \$2,700 contribution limit. Estimates of law firm billing rates show that the average billing rate for an eight-year associate is around \$785.¹⁷ Given that Wolf Rifkin and Perkins Coie have at least six experienced attorneys on the case, including four partners, and that the case has spanned sixteen months, it is likely that this representation has already amounted to hundreds of thousands of dollars in fees, and thus very excessive in-kind contributions.

From the public record alone, it appears that Rosen and Rosen for Nevada have violated the federal prohibition against accepting excessive contributions. As such, it is imperative for the Commission to investigate the amount to which Rosen and Rosen for Nevada have benefitted from excessive contributions from the two law firms.

¹⁴ <https://www.fec.gov/data/committee/C00606939/?tab=spending#disbursement-transactions>.

¹⁵ *Id.*

¹⁶ <https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/making-kind-contributions-candidates/>.

¹⁷ <http://www.lawjournalnewsletters.com/sites/lawjournalnewsletters/2017/11/01/read-this-before-you-set-your-2018-billing-rates/?slreturn=20180223115511>.

This federal prohibition is integral to ensuring fair and free elections—candidates must play by the same rules. When a campaign operates under an unlimited contribution limit, as is the case here, it is given a boundless and immeasurable advantage over its opponent. This deprives voters of fairly choosing their representative.

Complainant respectfully requests the Commission to investigate whether Congresswoman Rosen and Rosen for Nevada have violated the federal prohibition against accepting excessive contributions. If the Commission finds any wrongdoing, Complainant requests that Congresswoman Rosen and Rosen for Nevada be reprimanded appropriately.

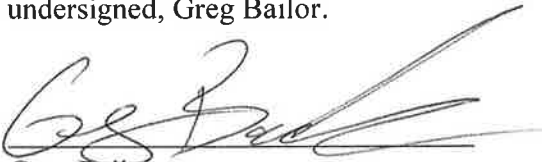
Sincerely,



Greg Bailor

Las Vegas, NV 89148

The above and foregoing is sworn to, and is based upon information and belief of the undersigned, Greg Bailor.



Greg Bailor

ACKNOWLEDGMENT

STATE OF NEVADA)

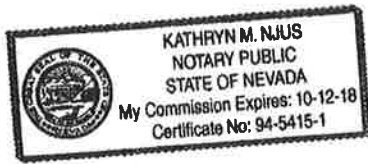
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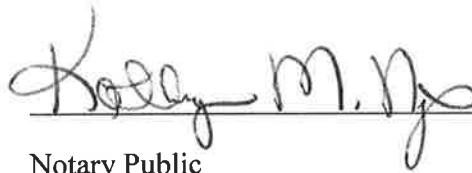
County of Clark)

On the 29th day of March, 2018, before me, the undersigned Notary Public, personally appeared Greg Bailor, known to me to be the person

whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.





Notary Public

Commission Expires: 10/12/18

EXHIBIT A

Images below were found in filings on the Supreme Court of Nevada case management website: <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=43503>.

1. Appellants filing this appeal statement: Jacky Rosen and Rosen for Nevada
2. Judge issuing decision, judgment, or order appealed from: Hon. Jerry A. Weise, II
3. Appellant: Defendants Jacky Rosen and Rosen for Nevada
 COUNSEL OF RECORD:
 Bradley S. Schrager, Esq.
 Daniel Bravo, Esq.
 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
 3556 E. Russell Road, Second Floor
 Las Vegas, Nevada 89120
bschrager@wrslawyers.com
dbravo@wrslawyers.com

 Marc E. Elias, Esq. (*Admitted Pro Hac Vice*)
 Graham Wilson, Esq. (*Admitted Pro Hac Vice*)
 Elisabeth C. Frost, Esq. (*Admitted Pro Hac Vice*)
 Amanda R. Callais, Esq. (*Admitted Pro Hac Vice*)
 Perkins Coie LLP
 700 13th Street, N.W., Suite 600
 Washington, D.C. 20005
melias@perkinscoie.com
gwilson@perkinscoie.com
efrost@perkinscoie.com
acallais@perkinscoie.com
4. Respondent: Plaintiff Danny Tarkanian
 COUNSEL OF RECORD:
 Samira C. Knight, Esq.
 Jenny L. Foley, Esq.
 Tarkanian & Knight Law Group, PLLC
 7220 S. Cimarron, Suite 110
 Las Vegas, Nevada 89113
samira@tklawgroupnv.com
jenny@tklawgroupnv.com
5. Out of State Counsel for Appellants were granted permission to appear by the

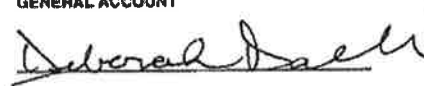

EXHIBIT A

25 This matter having come before this Court on April 25, 2017, at 9:00 a.m., for Defendants'
 26 Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660, and Plaintiff's Opposition to
 27 Defendants' Anti SLAPP Special Motion to Dismiss Under N.R.S. 41.660 and Plaintiff's request for
 28 Attorney's Fees and Costs. Plaintiff, Danny Tarkanian ("Danny"), being present with counsel

Case Number: A-16-746797-C

1 Samira C. Knight, Esq., and Jenny L. Foley, Esq. of Tarkanian & Knight Law Group, and
 2 Defendants, Jacky Rosen and Rosen for Nevada (collectively "Defendants"), not present with
 3 counsel Amanda Callais, Esq. of Perkins Coie appearing Pro Hac Vice, and Bradley Schrage of
 4 Wolf Rifkin Shapiro Schulman & Rabkin, LLP, appearing as local counsel. This Court having
 5 reviewed the papers and pleadings on file herein and having heard the arguments of counsel, the
 6 Court does hereby enter the following:

(Rosen v. Tarkanian, Notice of Appeal, 6/19/17)

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS		
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP OPERATING ACCOUNT 3556 E. RUSSELL ROAD, 2ND FLOOR LAS VEGAS, NV 89120 PHONE (702) 341-5200	Las Vegas Petty Cash Account 2320 E. Tropicana Avenue Las Vegas, NV 89119 18-1806/1220	5064
DATE:	06-13-2017	CHECK AMOUNT
TWO HUNDRED FIFTY AND 00/100 DOLLARS		\$250.00
PAY TO THE ORDER OF CLERK OF THE SUPREME COURT 201 S. CARSON STREET, NO. 201 LAS VEGAS, NV 89701	GENERAL ACCOUNT 	

(Rosen v. Tarkanian, Notice of Appeal, 6/19/17)

EXHIBIT A**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JACKY ROSEN, AN INDIVIDUAL; AND
 ROSEN FOR NEVADA, A 527
 ORGANIZATION,
 Appellants,
 vs.
 DANNY TARKANIAN,
 Respondent.

No. 73274

Electronically Filed
 Sep 13 2017 02:26 p.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

SETTLEMENT PROGRAM
EARLY CASE ASSESSMENT REPORT

After conducting a premediation conference with counsel pursuant to NRAP 16(b), I make the following recommendation to the court regarding this appeal:



This case is appropriate for the program and a mediation session will be scheduled/has been scheduled for:

Oct 20, 2017 @ 1:00 pm
Location: Wolf Ripkin, Shapiro, Schulman & Rabin
2556 East Russell Road, Las Vegas, NV



This case is not appropriate for mediation and should be removed from the settlement program.



The premediation conference has not been conducted or is continued because:



Settlement Judge

cc: All Counsel

(Rosen v. Tarkanian, Settlement Program Report, Filed 9/13/17)

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACKY ROSEN, AN INDIVIDUAL; AND
ROSEN FOR NEVADA, A 527
ORGANIZATION,
Appellants,
vs.
DANNY TARKANIAN,
Respondent.

No. 73274

Electronically Filed
Oct 23 2017 02:41 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SETTLEMENT PROGRAM STATUS REPORT

A mediation session was held in this matter on October 20, 2017.

I make the following report to the court:

(check one box)

- ☐ The parties have agreed to a settlement of this matter.
- ☐ The parties were unable to agree to a settlement of this matter.
- ☐ The settlement process is continued as follows:

Date: _____ Time: _____

Location: _____



Other: The parties met and worked in good faith with the Settlement Judge on October 20, 2017. The conference was productive but did not yield a settlement. The parties and the Settlement Judge agreed to continue working to resolve the case. The parties and the Settlement Judge further agreed to reconvene on December 21, 2017, setting aside that date and December 22, 2017 for further negotiations. The selection of this date was informed by the availability of respective counsel, the holidays, and the professional and personal commitments of the parties. The Court will recall that this is a high profile case in Nevada considering the circumstances of the two parties.



Settlement Judge
LARRY J. COHEN

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACKY ROSEN, AN INDIVIDUAL, AND
ROSEN FOR NEVADA, A 507
ORGANIZATION
Appellants.

vs.

DANNY TARKANIAN
Respondent

No. 73274

Electronically Filed
Jan 03 2018 09:02 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SETTLEMENT PROGRAM STATUS REPORT

A settlement conference was held in this matter on _____, 201__.

I file the following report of the proceedings:


- ☐ The parties have agreed to a settlement of this matter.
- ☐ The parties were unable to agree to a settlement of this matter.
- ☐ The settlement conference is continued as follows:

Date: _____ Time: _____

Location: _____

☒ Other: SEE ATTACHED

Additional Comments: _____


Settlement Judge

- The settlement judge shall file this report with the Supreme Court within 10 days from the date of any settlement conference. See NRAP 16(e)(2).
- A final status report is due within 180 days from the assignment date. See NRAP 16(f)(1).
- For cases involving child custody, visitation, relocation or guardianship, a final status report is due within 120 days from the assignment date. See NRAP 16(f)(1).

AT THE TIME OF FILING, THE CLERK'S OFFICE WILL MAIL THIS REPORT AND ANY ATTACHMENTS TO ALL COUNSEL AND TO THE SETTLEMENT JUDGE.

Docket 73274 Document 2018-00218

The circumstances of the parties, one being a sitting Congressperson, and the other being a prominent politician engaged in the electoral process, have created substantial challenges in scheduling the resumption of the settlement conference in this case. With the cooperation of counsel for the parties, the settlement conference has been scheduled to take place on January 26, 2018, commencing at 8:30 a.m. and scheduled to continue until 5:45 p.m., unless resolved in the interim. Counsel understanding that this is a firm setting. The Settlement Judge will submit what is expected to be the Final Report shortly after this conference.

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACKY ROSEN, an Individual; and ROSEN FOR NEVADA,
A 527 ORGANIZATION,
Appellants,
v.
DANNY TARKANIAN,
Respondent.

No. 73274

Electronically Filed
Jan 31 2018 03:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SETTLEMENT PROGRAM STATUS REPORT

A settlement conference was held in this matter on January 26, 2018.

I file the following report of the proceedings:

- ☐ The parties have agreed to a settlement of this matter.
- ☒ The parties were unable to agree to a settlement of this matter.
- ☐ The settlement conference is continued as follows:

Date: _____ Time: _____

Location: _____

☐ Other: _____

Additional Comments: _____


Settlement Judge

- The settlement judge shall file this report with the Supreme Court within 10 days from the date of any settlement conference. See NRAP 16(e)(3).
- A final status report is due within 180 days from the assignment date. See NRAP 16(f)(1).

(Rosen v. Tarkanian, Settlement Program Report, Filed 1/31/18)

Due Items			
Due Date	Status	Due Item	Due From
05/03/2018	Open	Opening Brief & Appendix	Appellant

(Appellate Case Management System, The Supreme Court Of Nevada, Accessed 3/19/18.
<http://casinfo.nvsupremecourt.us/public/caseView.do?csIID=43503>).