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May 25, 2018

Marc Erik Elias
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Assistant General Counsel
Federal Election Commission
Complaints Examination & Legal Administration
1050 First Street, N.E.
Washington, DC 20463**Re: MUR 7358**2018 MAY 29 AM 11:29
OFFICE OF
GENERAL COUNSEL

Dear Mr. Jordan:

We write as counsel to Perkins Coie LLP (“Respondent”) in the above-referenced matter, in response to the complaint filed by Greg Bailor (“Complainant”) on March 30, 2018 (the “Complaint”). The Complaint incorrectly claims that “the public record demonstrates” that Respondent has not been “substantially paid for sixteen months of litigation on behalf of [Jacky] Rosen and Rosen for Nevada.”¹ However, a review of the *entire* public record proves that claim false: Respondent has been fully and substantially paid for the legal services at issue, and those payments have been disclosed to the Federal Election Commission (the “FEC” or the “Commission”) in accordance with the Federal Election Campaign Act of 1971, as amended (the “FECA”). The Complainant either misunderstands recent changes to the FECA,² or has intentionally limited his review of the public record to support his incorrect conclusions. Either way, because the Respondent has committed no violation of law, the Commission must find no reason to believe a violation has occurred and must immediately dismiss the Complaint.³

FACTUAL BACKGROUND

On December 16, 2014, President Obama signed into law the Consolidated and Further Continuing Appropriations Act of 2015.⁴ Among other things, the law amended the FECA to allow national party committees to create a new account “to defray expenses incurred with

¹ Compl. at 3.

² 52 U.S.C. § 30116(a)(9)(C); *see also* Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014).

³ *See* MUR 4960 (Hillary Rodham Clinton), Statement of Reasons (Dec. 21, 2000) (confirming that unwarranted legal conclusions from mere speculation will not be accepted as true, and do not provide an independent basis for investigation).

⁴ *See* Consolidated and Further Continuing Appropriations Act, 2015, 128 Stat. at 2772; 52 U.S.C. § 30116(a)(9)(C).

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respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.”⁵ The law took effect immediately, (i) increasing the applicable contribution limits for the legal proceedings account to 300 percent of the annual contribution limit for national party committees; and (ii) exempting disbursements from the legal proceedings account from the coordinated party expenditure limits imposed by the FECA.⁶ In terms of reporting disbursements from the legal proceedings account, the FEC instructed national party committees to “identify these disbursements by entering ‘Recount Account’ in the Purpose of Disbursement field along with the required purpose of the disbursement (e.g., ‘Recount Account – Legal Services’).”⁷

On November 8, 2016, Jacky Rosen was elected to the U.S. House of Representatives for Nevada’s 3rd District, defeating her opponent, Danny Tarkanian.⁸ On November 16, 2016, Mr. Tarkanian filed a lawsuit against Jacky Rosen in the Clark County District Court, alleging that one of her campaign advertisements contained false and defamatory statements about him.⁹ Respondent represented Jacky Rosen and her principal campaign committee, Rosen for Nevada,¹⁰ in the lawsuit, partnering with local counsel from Wolf Rifkin.¹¹

Respondent filed a motion to dismiss the lawsuit in January 2017, but the Clark County District Court denied the motion and allowed the lawsuit to proceed.¹² In June 2017, Respondent appealed the matter to the Nevada Supreme Court.¹³ The case is still ongoing, and both

⁵ 52 U.S.C. § 30116(a)(9)(C).

⁶ *Id.* § 30116(a)(1)(B), (d)(5) (“The limitations contained in paragraphs (2), (3), and (4) of this subsection shall not apply to expenditures made from any of the accounts described in subsection (a)(9).”); *see also* 11 C.F.R. §§ 109.30, 109.32; 160 Cong. Rec. S6814-04 (daily ed. Dec. 13, 2014) (statement of Sen. Reid) (“[I]t is the intent of the amendments contained herein that expenditures made from the accounts described . . . do not count against the coordinated party expenditure limits.”)

⁷ Press Release, Fed. Election Comm’n, FEC Issues Interim Reporting Guidance for National Party Committee Accounts (Feb. 13, 2015), <https://www.fec.gov/updates/fec-issues-interim-reporting-guidance-for-national-party-committee-accounts/> [hereinafter FEC Interim Reporting Guidance].

⁸ Bridget Bowman, *Democrat Jacky Rosen Wins in Nevada’s 3rd District*, Roll Call (Nov. 9, 2016), <https://www.rollcall.com/news/politics/party-winner-succeeds-heck-nevadas-3rd-district>; *see also* About, Congresswoman Jacky Rosen, <https://rosen.house.gov/about> (last visited May 21, 2018).

⁹ Complaint at 2, *Tarkanian v. Rosen*, No. A-16-746797-C (Nov. 16, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

¹⁰ FEC Statement of Organization, Rosen for Nevada (filed Jan. 26, 2016).

¹¹ Anti-SLAPP Special Motion to Dismiss Under N.R.S. 41.660 at 1, *Tarkanian v. Rosen*, No. A-16-746797-C (Jan. 25, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

¹² *Id.*; *see also* Order for Defendant’s Motion to Dismiss Under N.R.S. 41.660, *Tarkanian v. Rosen*, No. A-16746797-C (June 12, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

¹³ Case Appeal Statement, *Tarkanian v. Rosen*, No. A-16-746797-C (June 13, 2017), *appeal docketed*, No. 73274 (Nev. June 19, 2017).

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Respondent and Wolf Rifkin continue to represent Jacky Rosen and Rosen for Nevada in the lawsuit.¹⁴

Because the lawsuit stems from Representative Rosen's campaign for the U.S. House of Representatives, the Democratic Congressional Campaign Committee (the "DCCC") initially paid for legal fees associated with the lawsuit, using funds from its legal proceedings account.¹⁵ Specifically, since Mr. Tarkanian filed the lawsuit against Jacky Rosen on November 16, 2016, FEC reports indicate that the DCCC has paid Respondent \$570,833 for "Recount Legal Svcs."¹⁶ As is common practice for a national law firm when working with local counsel, Respondent paid Wolf Rifkin directly, then billed the DCCC for the total cost of all services rendered from both law firms.

Since Representative Rosen announced her candidacy for the U.S. Senate,¹⁷ FEC reports indicate that the Democratic Senatorial Campaign Committee ("DSCC") also began paying for legal costs associated with Mr. Tarkanian's lawsuit.¹⁸ For example, on January 18, 2018, the DSCC paid Wolf Rifkin \$25,438.78 for "Legal Services Recount."¹⁹ Since January 2018, the DSCC has paid Perkins Coie \$32,467.25 for "Legal Services Recount."²⁰

LEGAL ANALYSIS

The Complaint's sole allegation against Respondent is that it has not been "substantially paid for sixteen months of litigation," resulting in an excessive in-kind contribution to Representative Rosen's principal campaign committee.²¹ However, these allegations and conclusions are simply false—refuted not only by the public record but by a federal law that has been on the books since 2014.

What the Complaint characterizes as an illegal in-kind contribution is actually a series of lawful transactions that were properly disclosed in accordance with the FECA and Commission

¹⁴ *Id.*

¹⁵ See Exhibit A, Disbursements from Legal Proceedings Accounts; see also About Us, DCCC, <https://dccc.org/about/> (last visited May 21, 2018) (describing the DCCC as "the only political committee in the country whose principal mission is to support Democratic House candidates every step of the way to victory").

¹⁶ See Exhibit A, Disbursements from Legal Proceedings Accounts. Because federal law does not require national party committees to subitemize disbursements from its legal proceedings account or otherwise identify a benefitted candidate, the exact cost associated with the Tarkanian lawsuit is not specified on DCCC or DSCC FEC reports.

¹⁷ See FEC Statement of Candidacy (filed Jul. 1, 2017),

<http://docquery.fec.gov/pdf/301/201707050200164301/201707050200164301.pdf>.

¹⁸ See February Monthly Report at 1636, DSCC (filed Feb. 20, 2018); FEC Statement of Candidacy, Rosen for Nevada (filed July 1, 2017), <http://docquery.fec.gov/pdf/301/201707050200164301/201707050200164301.pdf>.

¹⁹ *Id.*

²⁰ See Exhibit A, Disbursements from Legal Proceedings Accounts.

²¹ Compl. at 3.

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regulations and indistinguishable from those regularly made by other national party committees.²² Under the misguided legal theory advanced by the Complaint, any time Respondent is paid out of a national party committee's legal proceedings account and such payment exceeds \$2,700, Respondent will be providing an illegal in-kind contribution to the Federal candidate benefiting from those legal services. That interpretation simply has no basis in federal campaign finance law.

The Consolidated and Further Continuing Appropriations Act of 2015 is quite clear in its application: it allows for a "separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) [to be] used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings."²³ Not only did the new law increase contribution limits for a legal proceedings account, it explicitly excluded from the coordinated party expenditure limit any disbursement from the legal proceedings account.²⁴

The Explanation of Congressional Intent accompanying the new law makes clear that Congress intended for national party committees to "use such funds for costs, fees, and disbursements associated with other legal proceedings."²⁵ Absent any specific limitations in the law, Congressional Record, legislative history, Commission regulations, or Commission guidance, a plain reading of the statute and Explanation of Congressional Intent affirms that a legal proceedings account may be used to pay for any and all litigation expenses incurred by a national party committee. Moreover, the fact that the new law explicitly exempts from the coordinated party expenditure limit any expenditure from the legal proceedings account confirms that a national party committee can make expenditures to defray such legal costs in full coordination with candidates and without being subject to limits applicable to such candidates.

Here, the Commission recognizes both the DCCC and the DSCC as a national party committee.²⁶ In full compliance with the FECA and Commission regulations, both the DCCC and the DSCC

²² Megan R. Wilson, *Lobbyists Reluctant to Fund Legal Defense of Trump Officials*, The Hill (Sept. 20, 2017), <http://thehill.com/business-a-lobbying/business-a-lobbying/351445-lobbyists-reluctant-to-fund-legal-defense-of-trump>; see also Jeremy Diamond, *RNC Covering More than \$230,000 in Trump Legal Fees*, CNN (Sept. 19, 2017), <https://www.cnn.com/2017/09/19/politics/donald-trump-legal-fees-rnc/index.html>.

²³ See Consolidated and Further Continuing Appropriations Act, 2015, 128 Stat. at 2773; 52 U.S.C. § 30116(a)(9)(C).

²⁴ 52 U.S.C. § 30116(d)(3); Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 83 Fed. Reg. 6,022 (Feb. 12, 2018) ("Based upon this formula, the expenditure limitation for 2018 general elections for House candidates in these states, districts, and territories is \$49,700.").

²⁵ 160 Cong. Rec. S6814-04 (daily ed. Dec. 13, 2014) (statement of Sen. Reid).

²⁶ 11 C.F.R. §§ 110.1(c)(2), 110.2(c)(2), 110.3(b)(2).

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have made payments to Respondent to defray legal costs associated with the lawsuit filed by Mr. Tarkanian against Jacky Rosen and her campaign committee.²⁷

Those payments were properly reported by both the DCCC and the DSCC, following specific guidance from the FEC to itemize such disbursements as made for the purpose of the "Recount Account."²⁸ In each instance, the DCCC identified the payments as made for the purpose of "Recount Legal Svcs," paying Respondent a total of \$570,833 since the date the lawsuit was filed.²⁹ Those payments covered not only legal services provided by Respondent and Wolf Rifkin in connection with the Tarkanian suit, but also other legal expenses incurred by the DCCC in connection with election recounts, contests and other legal proceedings. Additionally, since Representative Rosen became a candidate for the U.S. Senate and the DSCC began paying for legal fees in connection with the Tarkanian lawsuit, the DSCC has properly identified these payments as made for the purpose of "Legal Services Recount" and paid Respondent \$32,467.25.³⁰

CONCLUSION

As described herein, the Complaint has failed to identify a single excessive in-kind contribution from Respondent in connection with the legal services at issue. Respondent was fully and substantially paid by the DCCC and DSCC for all legal services rendered, meaning none of the services at issue even qualify as an in-kind contribution under federal law.³¹ Because expenditures by the DCCC and the DSCC are all exempt from the coordinated party expenditure limit, the payment for legal services by the DCCC and DSCC result in no excessive in-kind contribution to Representative Rosen or Rosen for Nevada. Accordingly, the Complaint in this instance should be immediately dismissed, as there is simply no violation of law presented by Complainant in this matter.

Very truly yours,



Marc E. Elias
Kate Sawyer Keane
Courtney T. Weisman
Counsel to Respondents

²⁷ See Exhibit A, Disbursements from Legal Proceedings Accounts.

²⁸ FEC Interim Reporting Guidance, *supra* note 7.

²⁹ *Id.*

³⁰ See Exhibit A, Disbursements from Legal Proceedings Accounts.

³¹ 11 C.F.R. § 100.52(d).

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Exhibit A: Disbursements from Legal Proceedings Accounts

Date of Disbursement	Committee	Recipient	Amount	Purpose of Disbursement	FEC Report
11/29/2016	DCCC	Perkins Coie LLP	\$6,000	Recount Legal Svcs	Link
1/10/2017	DCCC	Perkins Coie LLP	\$25,147.50	Recount Legal Svcs	Link
2/8/2017	DCCC	Perkins Coie LLP	\$9,770.82	Recount Legal Svcs	Link
2/8/2017	DCCC	Perkins Coie LLP	\$66,345.46	Recount Legal Svcs	Link
2/8/2017	DCCC	Perkins Coie LLP	\$9,677.50	Recount Legal Svcs	Link
3/23/2017	DCCC	Perkins Coie LLP	\$3,297.50	Recount Legal Svcs	Link
5/18/2017	DCCC	Perkins Coie LLP	\$4,947.62	Recount Legal Svcs	Link
5/18/2017	DCCC	Perkins Coie LLP	\$44,995.93	Recount Legal Svcs	Link
5/18/2017	DCCC	Perkins Coie LLP	\$73,200.02	Recount Legal Svcs	Link
6/22/2017	DCCC	Perkins Coie LLP	\$140,149.60	Recount Legal Svcs	Link
6/29/2017	DCCC	Perkins Coie LLP	\$15,526.72	Recount Legal Svcs	Link
7/12/2017	DCCC	Perkins Coie LLP	\$864.21	Recount Legal Svcs	Link
8/31/2017	DCCC	Perkins Coie LLP	\$2,215.41	Recount Legal Svcs	Link
8/31/2017	DCCC	Perkins Coie LLP	\$4,652.88	Recount Legal Svcs	Link
8/31/2017	DCCC	Perkins Coie LLP	\$17,280.00	Recount Legal Svcs	Link
10/5/2017	DCCC	Perkins Coie LLP	\$104,515.38	Recount Legal Svcs	Link
10/5/2017	DCCC	Perkins Coie LLP	\$675.00	Recount Legal Svcs	Link
10/26/2017	DCCC	Perkins Coie LLP	\$8,840.00	Recount Legal Svcs	Link
10/26/2017	DCCC	Perkins Coie LLP	\$2,516.00	Recount Legal Svcs	Link
10/26/2017	DCCC	Perkins Coie LLP	\$1,421.25	Recount Legal Svcs	Link
12/7/2017	DCCC	Perkins Coie LLP	\$5,775.18	Recount Legal Svcs	Link
12/7/2017	DCCC	Perkins Coie LLP	\$1,320.00	Recount Legal Svcs	Link
1/18/2018	DCCC	Perkins Coie LLP	\$9,053.59	Recount Legal Svcs	Link
1/25/2018	DCCC	Perkins Coie LLP	\$1,755.00	Recount Legal Svcs	Link
1/25/2018	DCCC	Perkins Coie LLP	\$10,889.99	Recount Legal Svcs	Link
1/25/2018	DSCC	Perkins Coie LLP	\$16,780.16	Legal Services Recount	Link
2/9/2018	DSCC	Perkins Coie LLP	\$15,687.09	Legal Services Recount	Link

Total from DCCC: \$570,833.00

Total from DSCC: \$32,467.25