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September 27, 2018

Federal Election Commission  
 Office of Complaints Examination  
 and Legal Administration  
 attn: Kathryn Ross  
 1050 First Street, NE  
 Washington, DC 20002

**Re: MUR 7454**

Dear Ms. Ross,

This response is submitted by the undersigned counsel on behalf of DefendArizona in the above-referenced matter. DefendArizona is registered with the Commission as an independent expenditure-only committee. The Complaint alleges that the Respondent received two contributions from persons and entities that “may have violated 52 U.S.C. § 30122.” DefendArizona has taken action to address both contributions. As explained in more detail below, one contribution has been attributed to the entity’s single member on the Respondent’s reports, and the other contribution was refunded within the time period specified in the Commission’s regulations.

Blue Magnolia Investments, LLC made a contribution to DefendArizona on May 30, 2018. This contribution did not “present genuine questions” as to its permissibility, as specified at 11 C.F.R. § 103.3(b)(1), and was deposited.<sup>1</sup> Following the receipt of “new evidence not available to the political committee at the time of receipt and deposit,” 11 C.F.R. § 103.3(b)(2), the Respondent sought further information from the contributor regarding the contributor’s status. By letter dated September 6, 2018, counsel for Blue Magnolia Investments, LLC informed DefendArizona that the entity is organized as a single-member LLC and requested that its contribution be attributed to that single-member pursuant to 11 C.F.R. § 110.1(g)(4). After receiving this information, DefendArizona’s Treasurer complied with this request and amended the committee’s July 2018 Quarterly Report. DefendArizona’s amended report includes a memo-entry that attributes the contribution to the single natural person member of Blue Magnolia Investments, LLC.

<sup>1</sup> Corporations and other business entities may permissibly contribute to independent expenditure-only committees, and DefendArizona had no reason to believe the contribution was from a foreign national or federal contractor.

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Shortly *after* DefendArizona amended its report as described, the Commission confirmed for the first time, in a controlling Statement of Reasons, that “the LLC attribution rules apply to contributions to Super PACs.”<sup>2</sup> Thus, even if a violation had occurred, dismissal on the grounds of prosecutorial discretion would be warranted and consistent with the Commission’s action in MURs 6969, 7031, and 7034.

Highway 76, LLC made a contribution to DefendArizona on June 30, 2018. This contribution did not “present genuine questions” as to its permissibility, as specified at 11 C.F.R. § 103.3(b)(1), and was deposited.<sup>3</sup> Following the receipt of “new evidence not available to the political committee at the time of receipt and deposit,” 11 C.F.R. § 103.3(b)(2), the Respondent sought further information regarding the contributor’s status. Respondent was unable to determine with certainty if the contribution could be retained within the applicable time period. Accordingly, the Respondent refunded the contribution made by Highway 76, LLC, on August 29, 2018, which was within the applicable period set forth at 11 C.F.R. § 103.3(b)(2).

Commissioners have issued Statements of Reasons in recent enforcement matters involving contributions from LLCs to independent expenditure-only committees. The Commission has not, however, provided the regulated community with any guidance regarding specific procedures that must be followed when a contribution is received from a LLC. Judge McFadden recently observed that in 2016, when the Commission considered the first set of LLC matters, “existing Commission regulations and precedent offered few helpful clues about how the straw donor prohibition applied in real life to closely held corporations and corporate LLCs.”<sup>4</sup> This situation is largely unchanged – the Commissioners have issued competing legal theories but no practical, “real life” guidance.

At the time DefendArizona received the contributions at issue here, the Commission had previously addressed the issue of *corporate* LLC contributions to independent expenditure-only committees and concluded, in a controlling Statement of Reasons, that a business entity organized as a LLC that elects corporate taxation may contribute to an independent expenditure-only committee, and that such contributions are presumptively lawful.<sup>5</sup> The controlling Statement of Reasons in MURs 6485, 6487, 6488, 6711, and 6930 indicates that a violation of 52

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<sup>2</sup> MURs 6969, 7031, 7034, Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Petersen (Sept. 13, 2018) at 5.

<sup>3</sup> Corporations and other business entities may permissibly contribute to independent expenditure-only committees, and DefendArizona had no reason to believe the contribution was from a foreign national or federal contractor.

<sup>4</sup> *Campaign Legal Ctr. v. FEC*, 312 F. Supp. 3d 153, 166 (D.D.C. 2018).

<sup>5</sup> See MURs 6485, 6487, 6488, 6711, and 6930, Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E Goodman at 12 (“Because closely held corporations and corporate LLCs are constitutionally entitled to make contributions to Super PACs, *such contributions shall be presumed lawful unless specific evidence demonstrates otherwise.*”) (emphasis added).

U.S.C. § 30122 hinges on whether the donor “intentionally funneled” a contribution through a LLC “for the purpose of making a contribution that evades the Act’s reporting requirements.”<sup>6</sup>

DefendArizona relied on this guidance and did not have “direct evidence” or “specific evidence” – or any reason to believe – that any funds had been “intentionally funneled” to evade reporting requirements when it received the contributions at issue and did not “knowingly accept a contribution made by one person in the name of another.”<sup>7</sup> (To be clear, as of the date of this Response, DefendArizona still has no evidence that either contribution was “intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act’s reporting requirements.”)

When the two contributions at issue were received, neither appeared to be improper on its face and DefendArizona had no information suggesting otherwise. DefendArizona adhered to the Commission’s prior guidance and the procedures set forth at 11 C.F.R. § 103.3 regarding the deposit of receipts. As detailed above, DefendArizona made inquiries into the contributions when questions were raised as to their propriety. Following these inquiries, one contribution was refunded and the other was re-attributed on an amended report. Shortly *after* DefendArizona amended its report, the Commission affirmed for the first time that “the LLC attribution rules apply to contributions to Super PACs” and acknowledged that prior to September 13, 2018 the applicable law was unclear.<sup>8</sup> The Commission has not established specific procedures to which independent expenditure-only committees must adhere when evaluating LLC contributions. If and when the Commission adopts new or different procedures, DefendArizona will adhere to those procedures.

For the reasons set forth above, we urge the Commission to dismiss this matter.

Sincerely,



Thomas J. Josefiak  
Michael Bayes  
*Counsel to DefendArizona*

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<sup>6</sup> *Id.* at 2, 12; *see also id.* at 12 n.68 (“At least when applied to corporate contributions to Super PACs, section 30122 does not guard against circumvention of amount limitations or certain source prohibitions but rather addresses only disclosure. Thus, determining whether there exists a purpose to evade disclosure is the relevant inquiry in these types of matters.”).

<sup>7</sup> 52 U.S.C. § 30122.

<sup>8</sup> *Id.* at 5; *see also id.* at 7 n.40 (“Given the apparent confusion, we thought it important to clarify the application of the Commission’s LLC attribution rules to contributions to Super PACs.”); *id.* at 7 n.44 (“Nor would prior Commission enforcement actions have provided clarity to respondents.”).