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May 29, 2020

By email to CELA@fec.govJeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463**Re: MUR 7708****Restaurant Opportunities Centers United, Inc.**

Dear Mr. Jordan:

I am responding on behalf of respondent Restaurant Opportunities Centers United, Inc. (“ROC United”) to the complaint (“Complaint”) filed with the Commission on February 7, 2020 by Employment Policies Institute. The Commission should find no reason to believe that ROC United violated the Federal Election Campaign Act (“the Act”) because the Complaint is predicated on speculation and the key speculated fact – that ROC United paid an employee to provide services to a federal candidate committee – is directly refuted by that employee’s sworn statement.

ROC United is a nonprofit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Founded in the wake of the September 11 attacks as a worker relief center for affected restaurant workers and their families, ROC United has since become a national organization dedicated to improving the wages and working conditions of restaurant workers, a disproportionately low-income, minority and immigrant workforce. It is currently spearheading a national relief effort to assist restaurant workers who have been adversely affected by the pandemic. See generally <https://rocunited.org/>.

ROC United’s employees include respondent Steven Piasecki, who was hired in September 2018 as a salaried communications coordinator and continues in that position today. During February through October 2019, the months when the Complaint alleges that violations occurred, Mr. Piasecki – entirely separately from his ROC United employment – also provided contract services to respondent Eva Putzova for Congress for a fee of \$600 per month. (The Arizona congressional primaries, including for CD-1, will

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take place on August 4, 2020, nine months after the alleged events.)

The Complaint claims that ROC United violated 52 U.S.C. § 30118(a) by “provid[ing] illegal in-kind contributions” to a federal candidate campaign¹ by “compensating [Mr. Piasecki] as he regularly engaged in candidate-related work during the course of a normal workday.”² But the Complaint, for all its claimed cyber-analysis, fails to provide supportive facts and conjecturally elaborates only that “digital evidence shows a blurry line between Mr. Piasecki’s work with ROC [United] and his work with [Eva Putzova for Congress] – such that ROC [United] is essentially subsidizing his campaign work and...he may be using corporate resources in his work for the campaign.” This purported “blurry line” is the product of speculation: that Mr. Piasecki personally undertook *all* of the Twitter activity attributable to ROC United, Eva Putzova for Congress and Ms. Putzova (in addition to Mr. Piasecki’s own account), and that his Twitter activity for Eva Putzova for Congress and Ms. Putzova personally (which could only be relevant insofar as it concerned her candidacy) occurred during ROC United-paid working time.

However, the central, speculative allegation here is directly refuted by Mr. Piasecki’s sworn statement in this matter affirming that he did *not* provide his contract services to Putzova for Congress during his ROC United working time: “At no time have I provided any work for [Eva Putzova for Congress] while being ‘on the clock’ for ROC [United]. ROC [United] has never compensated me for any work provided to [Eva Putzova for Congress].”³ When “an allegation is speculative, and Respondents have denied the allegation, including in a sworn affidavit,” a no-reason-to-believe finding is warranted.⁴

Moreover, none of the Complaint’s exhibits show who operated the Twitter accounts of ROC United, Eva Putzova for Congress or Ms. Putzova herself, and no facts are alleged or evidence attached to suggest that Mr. Piasecki has used ROC United resources for Eva Putzova for Congress. The only ROC United resources depicted by the Complaint (other than Exhibit B, the staff listing on its website) are five tweets by ROC United, none of which makes any reference to Eva Putzova for Congress, Ms. Putzova (except for one that retweets her *personal* tweet about restaurant workers) or the Arizona CD-1 (or any other) election. The Complaint pairs these tweets with one *personal* tweet by Mr. Piasecki with four *personal* tweets by Ms. Putzova, none of which refers to her candidacy or the CD-1 (or any other) election. See Exhibit F. The Complaint asserts that these tweets demonstrate “coordinat[ion],” but even if ROC

¹ The candidate, Eva Putzova, is also a ROC United employee, but the Complaint does not allege any violation regarding her employment relationship with ROC United other than Mr. Piasecki’s services to her campaign.

² The Complaint also cites several Federal Election Commission (“the Commission”) regulations, but it discusses none of them and fails to allege any conduct that would violate some of them. The Complaint’s sole allegation of an unlawful in-kind contribution evidently relies upon 11 C.F.R. §§ 100.52, 100.54 and 114.2(b) in addition to 52 U.S.C. § 30118(a). But the Complaint does not allege any facts pertaining to 11 C.F.R. §§ 114.2(f) (precluding a corporation from facilitating contributions by “using corporate...resources or facilities to engage in fundraising activities”; no facts are alleged indicating that Mr. Piasecki engaged in fundraising), 114.9(a)(3) (precluding a corporate employee’s more than “occasional, isolated and incidental use of a corporation’s facilities for individual volunteer activities”; no facts are alleged concerning Mr. Piasecki using ROC United facilities for Putzova for Congress, and he was not a volunteer for Putzova for Congress), or 114.9(b)(3) (same rule with respect to labor organization facilities; the Complaint acknowledges that ROC United is a corporation, and alleges no facts to support labor organization status).

³ “Declaration of Steven Piasecki,” paragraph 3, submitted by Torres Law Group, MUR 7708 (March 17, 2020).

⁴ MUR 7352, Factual and Legal Analysis 2, approved in Certification (July 11, 2018) by a 4-0 Commission vote.

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United and its employee, Ms. Putzova, collaborated on them, they do not satisfy the Commission's coordination content standard for two independently sufficient reasons: the tweets were not public communications and they contained neither express advocacy nor its functional equivalent.⁵ Yet these are the *only* tweets that the Complaint presents despite what it characterizes as a detailed review of *all* of the four Twitter accounts' innumerable tweets over a nine-month period. See Exhibits D and E.

All of this is plainly inadequate to provide reason to believe that Mr. Piasecki either used ROC United-compensated working time or deployed ROC United corporate resources on behalf of Eva Putzova for Congress. Because the Complaint offers only "unwarranted legal conclusions [drawn] from asserted facts" and "mere speculation" about such in-kind contributions, a reason-to-believe finding by the Commission is not warranted.⁶

Finally, it is worth pointing out that in this Internet age the Commission should be reluctant to embrace theories of in-kind contribution that rely on alleged tweeting and other social media use by corporate employees who lawfully wear multiple hats by also providing paid or volunteer services to federal candidates. Except in extreme cases, the inherent problems of quantification and proof would be significant, and the Commission's regulations have long recognized both safe harbors for a corporate employee's use of corporate facilities, including Internet facilities, in providing volunteer services for a campaign⁷, even with the employer's assent⁸, and that employees who use working time even at the behest of their employer to provide services to a campaign may make up that time.⁹ Although in this case the alleged uses of ROC United working time and resources simply did not occur, these considerations also counsel against finding reason to believe that a violation occurred here.

Conclusion

Accordingly, for the reasons set forth above, Respondent ROC United respectfully requests that the Commission find no reason to believe that ROC United violated the Act.

Respectfully submitted,



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Counsel to Respondent

Restaurant Opportunities Centers United, Inc.

⁵ See 11 C.F.R. § 109.21(c).

⁶ See *generally* Statement of Reasons of Commissioners David Mason, Karl J. Sandstorm, Bradley A Smith and Scott E. Thomas at 2, MUR 4960 (December 21, 2000).

⁷ See 11 C.F.R. § 114.9(a)(2).

⁸ See Advisory Opinion 2011-14.

⁹ See 11 C.F.R. § 100.54.