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July 2, 2020

Mr. Jeff S. Jordan
 Assistant General Counsel
 Office of Complaints Examination and Legal Administration
 Federal Election Commission
 1050 First Street, N.E.
 Washington, D.C. 20463

Re: MUR 7747

Dear Mr. Jordan:

We are writing on behalf of Fresh Direct LLC (“Fresh Direct”), which is referred to in a complaint filed by Bronx United (the “Complaint”) alleging that the campaign of Ruben Diaz Sr. violated the Federal Election Campaign Act (“FECA”) and Federal Election Commission (“FEC”) regulations. In particular, the Complaint alleges that Rev. Diaz received prohibited corporate contributions from Fresh Direct in the form of food boxes in support of his election to Congress. We note that Fresh Direct is not named as a respondent in the complaint; however, we submit this response to address any implication that Fresh Direct may have violated federal law by providing the food boxes.

The Law

FECA prohibits corporations (and LLC’s that pass through to a corporation) from making contributions or expenditures in connection with a federal election. 52 U.S.C. § 30118(a), 11 C.F.R. § 110.1(g). FECA and FEC regulations define the term “contribution” to include a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office, including in-kind contributions. 11 C.F.R. § 100.52(a). Further, 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 is a contribution. § 100.52(d)(1). The usual and normal charge for goods means the price of those goods in the

Mr. Jeff S. Jordan
 July 2, 2020
 Page 2

market from which they ordinarily would have been purchased at the time of the contribution. § 100.52(d)(2).

Fresh Direct Is Selling Food Boxes Pursuant to a Contract with New York City, and Not in Connection with Any Election

Effective April 27, 2020, Fresh Direct is contracted to supply, for consideration, deliveries of food boxes on every weekday to locations across the five boroughs of New York. See enclosed Award Letter. These deliveries are part of the Adult Food Access Program (the "Program,") a city initiative intended to alleviate food insecurity as a result of the Covid-19 crisis. Fresh Direct and the New York City Sanitation Department entered into the contract for the sale of food boxes after the success of a Fresh Direct food donation campaign carried on in March. Pursuant to the contract, Fresh Direct is paid \$25 per box, and is required to supply boxes across all five boroughs of the city.

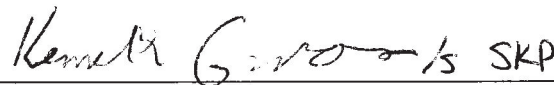
Under the Program, Fresh Direct assembles food boxes and delivers them to locations across New York City as directed by local elected officials and non-governmental organizations. Once a Fresh Direct driver delivers the boxes to the specified location, Fresh Direct has no input or control over the disposition of the food boxes. Deliveries are made across the city without reference to the political affiliation of any elected official involved in requesting a delivery or distributing the boxes.

Indeed, the boxes for events on May 8, 2020; May 28, 2020; and June 5, 2020 cited in the Complaint at paragraph 6 were requested and distributed by officials, including Rev. Diaz, and fulfilled by Fresh Direct in the ordinary course of completing its contracted work. The requests were made without reference to, and with no connection to, any federal election. Moreover, Fresh Direct made deliveries pursuant to partnerships with Councilman Ritchie Torres and Assemblyman Michael Blake, two of Rev. Diaz's opponents in the race.

Thus, Fresh Direct is providing goods for ordinary and usual compensation, as it is contracted to do, and is not making a contribution in connection with a federal election.

Given the facts and analysis above, we respectfully request that the Commission dismiss the Complaint with no further action. Please do not hesitate to contact us with any questions or requests for additional information.

Very truly yours,

 SKP

Kenneth A. Gross



Shayla K. Parker



sanitation

Kathryn Garcia
Commissioner

Kirk Eng

Agency Chief Contracting Officer

44 Beaver Street
Room 201
New York, NY 10004
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+ 212.437.5048

April 21, 2020

Fresh Direct, LLC
Larry Scott Blackmon
2 St. Ann's Avenue
Bronx, NY 10454

RE: Notice of Award / Work Commence Letter
Emergency COVID-19: Adult Food Access Program
PIN: 82720CV001

Dear Larry Scott Blackmon,

You will be awarded a contract for the Adult Food Access Program Emergency Solicitation for a maximum of \$5,000,000, subject to quantities ordered and delivered. The length of the contract is three months with a commence work date of April 27, 2020.

Fresh Direct will deliver 2,500 pantry boxes per day for five days a week. The rate of each box is \$25.

The Department also needs two points of contacts from your company with their emails and contact numbers. Please provide these. All invoices must be submitted to:

Ms. Shirley Lau, Manager of Audits and Accounts
NYC Department of Sanitation
59 Maiden Lane, Fifth Floor
New York, New York 10038

During the progress of the work, DSNY will appoint a point of contact that you are required to communicate with during the contract period.

Sincerely,

Kirk Eng



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

AR/MUR/RR/P-MUR# 7747

Name of Counsel: Kenneth A. Gross, Esq. and Shayla K. Parker, Esq.

Firm: Skadden, Arps, Slate, Meagher & Flom LLP

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E-mail: Kenneth.Gross@skadden.com; Shayla.Parker@skadden.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7/2/20
Date

[Signature]
(Signature - Respondent/Agent/Treasurer)

SVP / General Counsel
Title

TEEPoo RIAZ
(Name - Please Print)

RESPONDENT: FRESH DIRECT, LLC
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: % LEGAL DEPT, 2 St. Ann's Avenue
(Please Print) Bronx, NY 10454

Home#: _____ Mobile#: _____

Office#: 718 928 1234 Fax#: _____

E-mail: tria2@freshdirect.com

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.