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By E-mail

Mr. Jeff S. Jordan
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Federal Election Commission
Attn: Christal Dennis, Paralegal
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Re: MURs 7793 & 7801 - Response of XPO Logistics, Inc.

Dear Mr. Jordan:

We submit this letter on behalf of our client, XPO Logistics, Inc. ("XPO Logistics"), in response to the complaints filed in the above-captioned matters under review.

The complainants' allegations of "straw donations" fail to establish a reason to believe that Respondent XPO Logistics violated the Federal Election Campaign Act ("FECA" or "the Act"). By their own terms, the complaints concern conduct alleged to have occurred: (i) almost entirely outside the five-year statute of limitations period; (ii) at a corporation that ceased to operate as an independent entity in 2014; and (iii) under the leadership of an individual (Louis DeJoy) who ceased having an executive role within XPO Logistics in 2015, and who has had no affiliation with the company whatsoever since 2018. The complaints are based entirely on second-hand information drawn from news reports, without any supporting affidavits or witness statements, and they contain no allegations specific to XPO Logistics. Indeed, the complaints do not actually allege (even on information and belief) that XPO Logistics reimbursed employees for political contributions. Any allegations regarding improper political activity at XPO Logistics are based on mere speculation by the complainants drawn from "patterns" they see in public contribution data, without support even from the news articles they cite.

The reality is that employee bonuses at XPO Logistics are awarded annually in accordance with an established formula—and the employees in question were all senior personnel who were very well compensated via their base salaries irrespective of any annual bonuses. The complaints do not allege any discretionary bonuses that were awarded close in either time or amount to any political contributions, nor have we uncovered any in preparing our response. To the contrary, we have not identified any bonuses that were awarded as reimbursement for campaign contributions. In addition, XPO Logistics understands that several individuals contacted by the Commission have expressly denied the essential allegations in the complaints and made clear that they contributed to candidates based on their personal political interests, without any expectation or receipt of reimbursement by their employer. XPO Logistics is not aware of any individuals who have substantiated the allegations.

For all of these reasons, the Commission should find no reason to believe that XPO Logistics violated FECA and dispose of the complaints accordingly. Even if the Commission were unable to conclude the complaints supported a no reason to believe finding, the Commission should nonetheless exercise its discretion to dismiss the complaints as to XPO Logistics, rather than expend Commission resources on an investigation into time-barred claims for which no relief is available.

FACTUAL BACKGROUND

A. XPO Logistics

XPO Logistics is a Connecticut-based, Delaware corporation that is a top ten global provider of transportation and logistics services with over $16 billion in annual revenue, more than 1,500 locations, and approximately 100,000 employees.

Over the past ten years, XPO Logistics has made numerous acquisitions, including that of New Breed Holding Company ("New Breed") on September 2, 2014. New Breed was acquired in a reverse subsidiary merger through which it became a wholly owned subsidiary of XPO Logistics. XPO Logistics currently maintains approximately 260 subsidiaries in the United States and Europe.

Louis DeJoy was New Breed's chairman and chief executive officer from 1983 to 2014. Upon New Breed's acquisition by XPO Logistics, he became chief executive officer of the XPO Logistics subsidiary that operated the company's supply chain business in North America. A little over a year later, on December 7, 2015, Mr. DeJoy stepped down from that role and joined the XPO Logistics board of directors. Mr. DeJoy served on the board until May 2018.

B. Summary Of Allegations

As relevant to Respondent XPO Logistics, the complaints filed by Citizens for Responsibility and Ethics in Washington ("CREW") and the Campaign Legal Center ("CLC") ask the Commission to conclude that XPO Logistics used its bonus program to make contributions in the name of another in violation of 52 U.S.C. § 30122.[1] The CLC complaint additionally asserts a violation of the corporate contribution ban in 52 U.S.C. § 30118.

[1] The CREW complaint additionally alleges a violation of 11 C.F.R. § 110.4(b)(1)(iii) for knowingly helping or assisting any person in making a contribution in the name of another, but concedes that the Commission is enjoined from enforcing that provision under *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1119 (D. Utah 2018). *See* CREW Compl. ¶ 28 & n.1.

MUR 7793. CREW relies almost entirely on a September 6, 2020 Washington Post article to support its complaint, which is confined to conduct alleged to have occurred "between 2000 and 2014."[2] The article and complaint discuss five anonymous employees who contend they were urged by DeJoy to make donations, two anonymous employees who contend that DeJoy would reimburse employees for donations with bonuses, one former employee named David Young who allegedly confirmed this conduct, and another anonymous employee who also allegedly confirmed the conduct. The CREW complaint does not allege any political activity whatsoever that occurred after XPO Logistics acquired New Breed in 2014, let alone any contributions alleged to have been reimbursed by XPO Logistics since then.

MUR 7801. The CLC complaint similarly relies on the Washington Post article but also includes several citations to FEC records and a discussion of a New York Times article citing three anonymous employees and describing conduct allegedly occurring up until October 2014.[3] While the overwhelming majority of the allegations in the CLC Complaint in MUR 7801 also concern conduct before 2014, the complaint includes two allegations regarding conduct by XPO Logistics employees within the past five years: (i) an alleged "pattern" of contributions by individuals identifying XPO Logistics as their employer in June 2016, and (ii) another alleged "pattern" of contributions in September 2017.[4] Critically, however, while CLC alleges that XPO Logistics employees *made* the foregoing political contributions (which are reflected the FEC's public contributions database), the complaint does not allege—even on information and belief—that XPO Logistics *reimbursed* them for doing so.

LEGAL STANDARD

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit," a FECA violation as a precondition to opening an investigation into the alleged violation.[5] As the Commission has explained: "The Commission may find 'reason to believe' *only if* a complaint sets forth sufficient specific facts, which, if

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[2] CREW Compl. ¶ 15; *see* Aaron C. Davis, Amy Gardner & Jon Swaine, *Louis DeJoy's Rise as GOP Fundraiser Was Powered by Contributions from Company Workers Who Were Later Reimbursed, Former Employees Say*, WASH. POST (Sept. 6, 2020), https://www.washingtonpost.com/investigations/louis-dejoy-campaign-contributions/2020/09/06/1187bc2c-e3fe-11ea-8181-606e603bb1c4_story.html.

[3] *See* Catie Edmondson, Jessica Silver-Greenberg & Luke Broadwater, *DeJoy Pressured Workers to Donate to G.O.P. Candidates, Former Employees Say*, N.Y. TIMES (Sept. 6, 2020), https://www.nytimes.com/2020/09/06/us/politics/dejoy-political-donations.html.

[4] CLC Compl. ¶¶ 12.c-d. CLC also alleges contributions by Mr. DeJoy, his family, and individuals affiliated with a DeJoy company (i.e., not XPO Logistics) in March 2018. *See* CLC Compl. ¶ 12.e.

[5] 52 U.S.C. § 30109(a)(2).

proven true, would constitute a violation of the FECA."[6] The Commission has repeatedly found no reason to believe FECA violations occurred to dispose of complaints that do not allege specific facts sufficient to establish a violation.[7]

The Commission has further clarified that "[u]nwarranted legal conclusions from asserted facts, … or mere speculation, … will not be accepted as true."[8] The Commission has suggested that "vague" complaints are insufficient to meet the "reason to believe" standard.[9]

A "no reason to believe" finding is appropriate where "the respondent's response or other evidence convincingly demonstrates that no violation has occurred," or where the allegation "is either not credible or is so vague that an investigation would be effectively impossible" or where the complaint "fails to describe a violation of the Act."[10]

In addition, the Commission has discretion to dismiss complaints that do not warrant further expenditure of Commission resources.[11] In particular, where investigation or

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[6] MUR 4960 (Hillary Rodham Clinton For U.S. Senate Exploratory Committee, *et al*.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas, at 1-2 (emphasis added); *see also* MUR 5467 (Michael Moore), First General Counsel's Report, at 5 (citing MUR 4960) ("Purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find a reason to believe that a violation of the FECA has occurred.").

[7] *See, e.g*., MUR 7169 (Democratic Congressional Campaign Committee, *et al*.), Factual and Legal Analysis, at 11 (rejecting complaints alleging an excessive in-kind contribution where "the Complaints do not allege specific facts that are sufficient to provide reason to believe that the conduct prong has been satisfied."); MUR 6821 (Shaheen for Senate, *et al*.), Factual and Legal Analysis, at 7-8 (finding no reason to believe there had been a "coordinated communication" where the Complaint "fails to identify any communication" between the relevant parties); MUR 5754 (MoveOn.org Voter Fund), Factual and Legal Analysis, at 3 (finding "the complaint does not contain sufficient information on which to base an investigation" into whether the conduct standard was met where it does not "even specifically identify which 'conduct' standard would apply to the activity complained of" and "does not connect any such discussions" to any alleged coordinated communications).

[8] MUR 4960, Statement of Reasons, at 2.

[9] MUR 3534 (Bibleway Church of Atlas Road, Inc., *et al*.), Statement of Reasons of Chairman Scott E. Thomas, Vice Chairman Trevor Potter, and Commissioners Joan D. Aikens, Lee Ann Elliott, Danny Lee McDonald, and John W. McGany, at 2.

[10] *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12,545 (Mar. 16, 2007), https://www.fec.gov/resources/cms-content/documents/notice_2007-6.pdf.

[11] *See Heckler v. Chaney*, 470 U.S. 821 (1985); MUR 6794 (Emmer for Congress, *et al*.), Factual and Legal Analysis, at 4 (dismissing a complaint alleging that an advertisement was an in-kind contribution as a matter of prosecutorial discretion "in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket").

enforcement "would be frustrated by problems of proof as well as expiration of the applicable statute of limitations," the Commission will decline to proceed because it "would not be an appropriate use of the Commission's limited resources."[12]

ARGUMENT

A. The Statute Of Limitations Bars All Relief Based On Conduct Prior To September 2015

The five-year statute of limitations in 28 U.S.C. § 2462 bars any legal relief available under FECA for claims based on conduct prior to September 2015, and the relevant caselaw bars the Commission from seeking equitable relief where, as here, there is no imminent risk of future harm. Contrary to the assertions in the complaints, the doctrine of fraudulent concealment does not apply to the circumstances under review.

The Supreme Court has unanimously understood 28 U.S.C. § 2462 to "advanc[e] the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty," and explained that statutes of limitations "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli v. SEC*, 568 U.S. 442, 448 (2013) (citations and internal quotation marks omitted). The Court has further explained that "set[ting] a fixed date when exposure to … specified Government enforcement efforts ends" is "vital to the welfare of society." *Id.* at 448-449; *see also Kokesh v. SEC*, 137 S.Ct. 1635, 1641-1642 (2017) (similar).

The Commission has, in turn, embraced these principles in the exercise of its own enforcement discretion—dismissing cases where § 2462 would make any investigation futile and the pursuit of stale claims would disserve the interests in repose, fairness, and certainty the Supreme Court has emphasized. *See* FEC's Mot. Summ. J. at 40, *CREW v. FEC*, 236 F. Supp. 3d 378 (D.D.C. 2017) (No. 15-2038 (RC)), ECF No. 20 (embracing the "basic policies" the Supreme Court articulated in *Gabelli* to defend its authority to decline enforcement actions in light of statute of limitations); *see also Akins*, 736 F. Supp. 2d at 21 (granting summary judgment to the Commission and holding that its dismissal of complaints was reasonable, explaining: "The

[12] MUR 5272 (American Israel Public Affairs Committee), Statement of Reasons of Chair Ellen L. Weintraub, Vice-Chairman Bradley A. Smith, and Commissioners David M. Mason, Danny L. McDonald, Scott E. Thomas, and Michael E. Toner, at 6 (exercising discretion and dismissing complaint because further investigation would not be an appropriate use of FEC resources due to "problems of proof as well as expiration of the applicable statute of limitations"); *see Akins v. FEC*, 736 F. Supp. 2d 9, 16 (D.D.C. 2010) (reviewing MUR 5272 and granting summary judgment to FEC, noting that "[t]he Commission reasoned that any further investigation would be frustrated by problems of proof and the expiration of the applicable statute of limitations and concluded that it would not be an appropriate use of the FEC's limited resources").

FEC has broad discretionary power in determining whether to investigate a claim, and how, and whether to pursue civil enforcement under the Act. Plaintiffs' speculation based on twenty-year-old evidence about what may have turned up in further investigation falls far short of proving an abuse of discretion."); *Nader v. FEC*, 823 F. Supp. 2d 53, 66 (D.D.C. 2011) (granting summary judgment to the Commission and holding that its dismissal of complaint was not contrary to law, explaining: "[T]he statute of limitations only provides a hard limit on when such actions can be brought. The passage of time, even within the period, will obviously impair investigations, and the FEC's conclusion that [the complainant's] delay would impact the difficulty of any investigation is not contrary to law.").

There is no reason to depart from that practice here to expend public resources investigating time-barred claims, which constitute the entirety of those in MUR 7793 and the overwhelming majority of those in MUR 7801. Complainants' arguments to the contrary—that the statute of limitations in § 2462 is equitably tolled, or that the Commission may seek equitable relief despite the statutory limitation on legal remedies—are squarely foreclosed by the relevant caselaw.[13]

1. The Statute Of Limitations Was Not Equitably Tolled

As the Commission has explained in prior litigation brought by one of the complainants: "In order to establish fraudulent concealment in this context, 'the plaintiff must show that the defendant engaged in an act of concealment *separate from the wrong itself*.'" *See* FEC's Mot. Summ. J. at 44, *CREW*, 236 F. Supp. 3d 378 (No. 15-2038 (RC)), ECF No. 20 (quoting *Sprint Comm. Co., LP v. FCC*, 76 F.3d 1221, 1226 (D.C. Cir. 1996) (emphasis added)). The district court in that case agreed with the Commission: "[T]he statute of limitations may be tolled when a defendant fraudulently conceals its wrongdoing through deception that is *separate from the wrongful act itself*." *CREW*, 236 F. Supp. 3d at 392-393 (emphasis added), *aff'd on alt. grounds*, 892 F.3d 434 (D.C. Cir. 2018). And the Supreme Court has embraced that understanding of the

[13] Beyond the time bar, the complaints also fail to establish conduct attributable to XPO Logistics under basic principles of corporate law. As the Supreme Court has explained, "a general principle of corporate law deeply ingrained in our economic and legal systems" is that "a parent corporation … is not liable for the acts of its subsidiaries." *United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (citations omitted). In turn, the Commission's Office of General Counsel has explained that a "parent corporation may be held responsible for the activities of its subsidiary only under certain circumstances" and that "[i]n the context of federal enforcement actions, the corporate parent's liability must be based on its involvement in the subsidiary's activities, and not merely on the fact that the subsidiary corporation is wholly owned by, or maintains overlapping officers and directors with, its parent." MUR 5628 (AMEC Construction Management, Inc.), First General Counsel's Report, at 12-13. The complaints do not allege *any* conduct by XPO Logistics itself and instead ask the Commission to hold the company liable as "the successor to New Breed Logistics" because, they contend, "XPO agreed to accept New Breed Logistics's liabilities." CREW Compl. ¶ 30; *see also* CLC Compl. ¶ 24. This conclusory allegation is insufficient to establish corporate liability for XPO Logistics.

doctrine. *See Gabelli*, 568 U.S. at 447 n.2 (describing the fraudulent concealment doctrine as tolling the applicable limitations period "when the defendant takes steps *beyond the challenged conduct itself* to conceal that conduct from the plaintiff" (emphasis added)).

The complaints do not allege a single act of concealment separate from the alleged wrong itself—in fact, the complainants argue just the opposite, asserting that § 2462 is equitably tolled because straw donations are "self-concealing" frauds such that, under the so-called "discovery rule," the statute of limitations does not begin to run until the Commission discovered (or reasonably should have discovered) them. *See* CREW Compl. ¶ 26; CLC Compl. ¶ 28.[14] The Supreme Court's decision in *Gabelli* forecloses their argument. The Court in *Gabelli* held that government enforcement actions (even in cases of alleged fraud) are not subject to the discovery rule, which applies only to private plaintiffs seeking private recompense for an injury. 568 U.S. at 454 ("Given the lack of textual, historical, or equitable reasons to graft a discovery rule onto the statute of limitations of § 2462, we decline to do so."). The Court's decision rests on both the societal importance of setting "a fixed date when exposure to the specified Government enforcement efforts ends," as well as practical difficulties of determining "when the Government, as opposed to an individual, knew or reasonably should have known of a fraud," particularly in light of the many tools available to the government to investigate potential violations of the law. 568 U.S. at 448, 451-452.[15]

As the complaints allege no acts of concealment separate from the alleged "straw donations" themselves—and the "discovery rule" that complainants invoke does not apply to government enforcement actions—there is no basis for tolling the five-year statute of limitations in 28 U.S.C. § 2462. Accordingly, any claims related to conduct prior to September 2015 are time-barred as a matter of law.

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[14] CREW also argues (Compl. ¶ 26) that the statute of limitations may be tolled where the defendant "has an affirmative duty to disclose the relevant information," but acknowledges that only the *recipients* of campaign contributions have an affirmative duty to report them, making the rule inapplicable to Respondent XPO Logistics. CLC suggests (Compl. ¶ 28) that the duty to disclose extends to "XPO Logistics/New Breed," but effectively concedes there is no statutory authority to support such a duty by citing only to the generic "congressional purpose behind" FECA's affirmative disclosure obligations, which do not extend to the employers of individual donors.

[15] Tellingly, complainants fail even to acknowledge *Gabelli*, let alone try to distinguish it. Instead, they rely on *Fitzgerald v. Seamans*, 553 F.2d 220 (D.C. Cir. 1977), as support for the "discovery rule." *See* CLC Compl. ¶ 28. But *Fitzgerald* involved a claim by a private plaintiff for damages and plainly does not apply to government enforcement actions after *Gabelli*.

2. The Complaints Do Not Allege Any Risk Of Future Harm, As Required For The Commission To Seek Equitable Relief

The Commission has acknowledged "the rule that equitable relief is only available upon a showing of 'future risk of harm.'" *See* FEC's Mot. Summ. J. at 46, *CREW*, 236 F. Supp. 3d 378 (No. 15-2038 (RC)), ECF No. 20 (citing *SEC v. Brown*, 740 F. Supp. 2d 148, 157 (D.D.C. 2010) and *FEC v. Nat'l Right to Work Comm., Inc.*, 916 F. Supp. 10, 15 (D.D.C. 1996)). And, once again, the U.S. District Court for the District of Columbia has agreed with the Commission's statement of the law. *See CREW*, 236 F. Supp. 3d at 392 ("[I]n cases where there is *a significant risk of future harm*, the law may allow the FEC to grant equitable relief notwithstanding the expiration of the statute of limitations." (emphasis added)).

Complainants do not even purport to satisfy this standard. They seek only "an order to correct the false disclosures" (that is, purely retrospective relief) and "to enjoin DeJoy from future violations" (relief having nothing to do with Respondent XPO Logistics), as well as a declaration that respondents have violated FECA and FEC regulations (another form of retrospective relief). CLC Compl. ¶ 28; CREW Compl. at 13-14. And even if their complaints could be construed generously to *seek* prospective relief as to XPO Logistics, they do nothing to establish that such relief would be warranted. They do not contain a single allegation that XPO Logistics is currently engaged in any federal election-related activity whatsoever—let alone any activity that would violate FECA.

Moreover, even if the complaints established a risk of future harm (which, again, they do not even purport to do), equitable relief would be foreclosed under the concurrent remedies doctrine, under which "equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy." *Cope v. Anderson*, 331 U.S. 461, 464 (1947). Indeed, in the only appellate decision to consider the doctrine with respect to the Commission's authority, the Ninth Circuit has squarely rejected the Commission's efforts to seek equitable relief where the concurrent legal relief would be time-barred. *See FEC v. Williams*, 104 F.3d 237, 240 (9th Cir. 1996) ("[B]ecause the claim for injunctive relief is connected to the claim for legal relief, the statute of limitations applies to both."); *see also Nat'l Right to Work Committee, Inc.*, 916 F. Supp. at 14-15 (holding that concurrent remedies doctrine bars Commission from seeking declaratory and injunctive relief once statute of limitations has lapsed).[16]

[16] Complainants cite two district court decisions that reached a contrary view, holding that Commission requests for declaratory and injunctive relief are not subject to the five-year statute of limitations in § 2462. *See FEC v. Christian Coalition*, 965 F. Supp. 66, 71-72 (1997); *FEC v. Nat'l Republican Senatorial Committee*, 877 F. Supp. 15, 20-21 (1995). While XPO Logistics preserves its position that those decisions are incorrect, it suffices here to observe that the Commission could pursue such relief in litigation only by inviting a circuit split with the Ninth Circuit—and that the Commission itself has argued that the existing body of adverse authority supports the exercise of its discretion to decline to pursue enforcement in the first instance. *See* FEC's Mot. Summ. J. at 47, *CREW*, 236

B. The Allegations Regarding XPO Logistics Are Too Conclusory To Support A Reason To Believe Finding—And Are Refuted By Both FEC Contribution Data And Internal XPO Bonus Data

Taken together, the CREW and CLC complaints contain only *two subparagraphs* that allege conduct within the limitations period that occurred following the merger of New Breed Logistics with a subsidiary of XPO Logistics in September 2014. But even those paragraphs allege only that individuals employed by XPO Logistics gave similar amounts to the Trump Victory fund in close proximity to one another—once on June 16, 2016, and then 15 months later, during the final two weeks of September 2017.[17] They do not *actually allege* any corporate reimbursement for those contributions. Accordingly, the complaints fail on their own terms and may be disposed of on that basis alone. Stated otherwise, where the complaints themselves do not allege any corporate reimbursements by XPO Logistics, they (quite literally) do not provide the Commission with a "reason to believe" that such reimbursements occurred.

Moreover, while CLC asserts that these contributions reflect a "pattern" that supports a reason to believe finding, any such pattern washes away under a moment's scrutiny. For example, CLC counts $29,000 in contributions to Trump Victory from nine individuals affiliated with XPO Logistics on June 16, 2016. CLC Compl. ¶ 12.c. But the very FEC records upon which CLC relies indicate that 39 individuals *not* affiliated with XPO donated $551,900 to Trump Victory on that same day—including 19 individuals in North Carolina, where eight of the nine individuals affiliated with XPO reside.[18] These public records show there were clusters of

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F. Supp. 3d 378 (No. 15-2038 (RC)), ECF No. 20 (arguing that Commission reasonably declined to pursue enforcement because, *inter alia* "the Commission would face considerable litigation risk pursuing equitable remedies for conduct outside the statute of limitations given a split of authority on the question."); *see also id.*, FEC's Summ. J. Reply at 9, ECF No. 24 ("The Ninth Circuit's decision in *FEC v. Williams*, which held that the FEC could not pursue equitable relief after the expiration of the statute of limitations, would alone be a reasonable basis to give the controlling group pause in pursuing such relief.").

[17] *See* CLC Compl. ¶ 12.c-d. The CLC Complaint also contains a third subparagraph (¶ 12.e) alleging contributions in 2018 by members of the DeJoy family and employees of a DeJoy company not affiliated with XPO Logistics. The CREW complaint in MUR 7793 alleges "a straw donor scheme at New Breed Logistics" that operated "between 2010 and 2014." CREW Compl. ¶ 15. It contains no allegations regarding XPO Logistics at all, let alone conduct within the five-year limitations period. By its terms, the complaint therefore provides no reason to believe that XPO Logistics violated FECA.

[18] According to FEC records, of the nine XPO employees who donated to Trump Victory on June 16, 2016, seven gave $2,000, one gave $5,000, and one gave $10,000. Non-XPO employees from North Carolina donated some of the same amounts on the same day to Trump Victory – three donated $5,000 and another gave $10,000. Fourteen more non-XPO employees from North Carolina gave Trump Victory $12,500 or $25,000 on this day. *See* Individual Contributions from North Carolina to Trump Victory Fund from June 16, 2016, https://www.fec.gov/data/receipts/?committee_id=C00618389&two_year_transaction_period=2016&data_type=processed.

donations throughout the state of North Carolina on June 16, 2016, not just among XPO employees.

The fact that so many individuals from North Carolina donated to the Trump Victory fund that day is hardly surprising, as Trump held a massive rally in Greensboro that week "before a crowd of thousands in Greensboro Coliseum," accompanied by numerous North Carolina political and cultural luminaries.[19] One can see similar clusters of contributions from donors in connection with other major Trump campaign events around the country over the course of that week. For example:

- Trump held an event in Atlanta on June 15, 2016;[20] FEC records show 150 donations ($991,950 total) from Georgia between June 14 and 22, including 86 donations ($538,250 total) from Atlanta alone.[21]

- Trump held events in Dallas on June 16, 2016 as well as events in San Antonio and Houston on June 17, 2016;[22] FEC records show 212 donations ($3,002,300 total) from Texas between June 14 and 22, including 66 donations ($1,006,600 total) from

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[19] Lynn Bonner & Bryan Anderson, *In Greensboro, Trump Takes on Obama, Clinton, Immigrants*, THE NEWS & OBSERVER (June 14, 2016), https://www.newsobserver.com/news/politics-government/election/article83795262.html; *see also* Cole Stanley, *Trump Rallies in Greensboro*, THE DAILY TAR HEEL (June 16, 2016), https://www.dailytarheel.com/article/2016/06/trump-rallies-in-greensboro (noting that the rally featured "many prominent figures in North Carolina politics and included an in-person endorsement for Trump by former NASCAR legend and North Carolina native Richard Petty").

[20] Phil W. Hudson, *Donald Trump to Hold Atlanta Rally at Fox Center*, ATLANTA BUS. CHRON. (June 14, 2016), https://www.bizjournals.com/atlanta/news/2016/06/14/donald-trump-to-hold-atlanta-rally-at-fox-theatre.html; Richard Elliot et al., *Atlanta Donald Trump Rally Brings Out Protesters, Supporters*, WSB-TV (June 15, 2016), https://www.wsbtv.com/news/local/atlanta/protesters-supporters-gather-ahead-of-donald-trump-rally/344503482/.

[21] *See* Individual Contributions from Georgia to Trump Victory Fund from June 14-22, 2016, https://www.fec.gov/data/receipts/?committee_id=C00618389&two_year_transaction_period=2016&data_type=processed.

[22] NBC5 Staff, *Donald Trump Speaks at Campaign Rally in Dallas*, NBC 5 (last updated June 17, 2016), https://www.nbcdfw.com/news/local/trump-to-host-dallas-rally/2018987/; Sergio Chapa, *Donald Trump Fundraiser Draws San Antonio Business Community, Protesters (SLIDESHOW)*, SAN ANTONIO BUS. J. (June 17, 2016), https://www.bizjournals.com/sanantonio/news/2016/06/17/trump-fundraiser-draws-san-antonio-business-crowd.html; Olivia Pulsinelli, *Donald Trump Rally to be Held in The Woodlands*, HOUS. BUS. J. (June 15, 2016), https://www.bizjournals.com/houston/morning_call/2016/06/donald-trump-rally-to-be-held-in-the-woodlands.html; Patrick Svitek, *Trump to Blitz Texas on Two-Day Trip*, TEXAS TRIBUNE (June 15, 2016), https://www.texastribune.org/2016/06/15/texas-braces-trumps-first-visit-republican-nominee/ (stating Donald Trump will attend and hold events in Dallas, San Antonio, and Houston).

Dallas, 40 donations ($111,700 total) from San Antonio, and 22 donations ($289,600 total) from Houston.[23]

- Trump held an event in Phoenix on June 18, 2016;[24] FEC records show 33 donations ($281,000 total) from Arizona between June 14 and June 22, including 7 donations ($95,400 total) from Phoenix.[25]

Rather than evidencing any sort of "pattern" that would support a reason to believe finding, these clusters can be easily explained by the enthusiasm that Trump's supporters felt for him in the weeks after he had clinched the Republican nomination for President in 2016, particularly as he held major campaign events in their home towns.

The contributions CLC identifies in the last two weeks of September 2017 (totaling $18,700) from five individuals who identified XPO Logistics or New Breed as their employer can be similarly explained. CLC Compl. ¶ 12.d. Louis DeJoy held a private fundraiser in Greensboro—featuring President Trump in person—on October 7, 2017. It would be hard to overstate the significance of an event featuring *the President of the United States* hosted by a local business leader, particularly in a town like Greensboro, North Carolina, where such events are comparatively rare. That individuals affiliated with the company that Mr. DeJoy founded would support and/or attend such an event makes perfect sense—and does not in any way support (or even invite) the inference that they were somehow reimbursed for their contributions. Indeed, 167 individuals *not* affiliated with XPO donated $3,632,900 to Trump Victory during this same period, including 84 contributions (totaling $622,400) from North Carolina and 36 donations (totaling $226,800) from Greensboro alone.[26]

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[23] *See* Individual Contributions from Texas to Trump Victory Fund from June 14-22, 2016, https://www.fec.gov/data/receipts/?committee_id=C00618389&two_year_transaction_period=2016&data_type=processed.

[24] Vaughn Hillyard, *Trump Tells Phoenix Crowd: 'I Feel Like a Supermodel,'* NBC NEWS (June 19, 2016), https://www.nbcnews.com/politics/2016-election/trump-tells-phoenix-crowd-i-feel-supermodel-n595081; David Marino Jr., *Adoring Supporters, Staunch Protesters Turn Up the Arizona Heat at Donald Trump Rally*, CRONKITE NEWS (June 18, 2016), https://cronkitenews.azpbs.org/2016/06/18/arizona-heat-at-trump-rally/.

[25] *See* Individual Contributions from Arizona to Trump Victory Fund from June 14-22, 2016, https://www.fec.gov/data/receipts/?committee_id=C00618389&two_year_transaction_period=2016&data_type=processed.

[26] *See* Individual Contributions from North Carolina to Trump Victory Fund from September 15-29, 2017, https://www.fec.gov/data/receipts/?committee_id=C00618389&two_year_transaction_period=2018&data_type=processed.

Similar to the contributions of June 16, 2016, the specific donation amounts from XPO Logistics employees are not unique—a far greater number of non-XPO Logistics employees donated the same amounts during this time period.[27] The broader data shows contribution clusters among XPO Logistics employees and non-employees alike, undermining any inference of coordination or reimbursement by the company. The donations from XPO Logistics employees are simply a small part of the larger contribution patterns seen across the state of North Carolina during this time period.

Further, we have found no correlation whatsoever between the annual bonuses of the employees at issue and their federal political contributions (or lack thereof). On the contrary, XPO Logistics pays annual bonuses pursuant to company policy and its employment agreements. Under the policy, bonuses are calculated based on a formula that includes three factors: (1) business unit performance, (2) site performance, and (3) individual employee performance. Although uncommon, discretionary adjustments may be factored into the calculation (e.g., to avoid penalizing a productive employee who is moved to a location with a lower site performance in order to make necessary improvements). Once calculated, annual bonus recommendations are subject to multiple levels of review before they are approved and ultimately paid to employees in March of the following calendar year.

As relevant here, the CLC complaint concerns political contributions made in June 2016 and September 2017; the bonuses for those years were paid in March 2017 and March 2018, respectively—well after the contributions were made. And while the bonuses for the relevant individuals were substantial (as high as $225,000), they came on top of substantial base salaries. In particular, the individuals alleged to have made contributions in June 2016 (CLC Compl. ¶ 12(c)) and September 2017 (CLC Compl. ¶ 12(d)) had base salaries in those years ranging from $160,000 to $401,700. Any political contributions paled in comparison and were well within the employees' ordinary ability to contribute to causes or candidates they supported. Taken as a whole, the facts provide no reason to believe that XPO Logistics bonuses were used to reimburse employees for their political contributions.

In sum, the CREW and CLC complaints do not support a reason to believe finding that XPO Logistics violated FECA. They fail on their own terms and the public record—and the complaints' central allegations are conclusively refuted by the declarations that we understand

[27] According to FEC records, of the five XPO Logistics employees who donated to Trump Victory between September 15 and September 29, 2017, three gave $2,000, one gave $2,700, and one gave $10,000. During the same two-week period, 84 individuals from North Carolina *not* associated with XPO Logistics also donated to Trump Victory in the same amounts, with 14 giving $2,000 and 37 giving $2,700. *See* Individual Contributions from North Carolina to Trump Victory Fund from September 15-29, 2017, https://www.fec.gov/data/receipts/?committee_id=C00618389&two_year_transaction_period=2018&data_type=processed.

individual employees have submitted (or are submitting) in their own responses to the Commission. At bottom, the complaints contain nothing but speculation about the circumstances of the contributions from XPO Logistics personnel in June 2016 and September 2017, which the Commission has made clear is insufficient to support a reason to believe finding. *See* MUR 4960, Statement of Reasons, at 2 ("Unwarranted legal conclusions from asserted facts, … or mere speculation, … will not be accepted as true.").

CONCLUSION

XPO Logistics takes the allegations in the complaints with utmost seriousness, as the company is deeply committed to compliance. While it has corporate policies in place to prevent the type of conduct alleged in the complaints, it will undertake to reiterate the prohibitions on corporate political activity in future trainings for company employees to ensure that corporate resources are not misused for political purposes.

For all of the reasons set forth herein, the Commission should find no reason to believe that XPO Logistics violated FECA or, in the alternative, exercise its discretion to dismiss the complaints with no further action.

Respectfully submitted,

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