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Mr. Jeff S. Jordan, Assistant General Counsel
Attn: Christal Dennis, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7801

This office represents Richard Wimmer in the above-captioned matter. An executed Statement of Designation of Counsel was previously provided to the Federal Election Commission (“FEC” or “Commission”) in connection with this matter.

The Complaint alleges that “Louis DeJoy and XPO Logistics have violated the Federal Election Campaign Act” of 1971, as amended (“FECA”). Whatever the Complaint’s merits as to these respondents, the Commission had absolutely no basis forwarding this document to our client seeking a response. Indeed, the Commission’s Office of General Counsel (“OGC”) violated at least three legal requirements in sending this letter to Mr. Wimmer:

- 1) The Commission missed the statutorily mandated deadline for transmitting the Complaint to Mr. Wimmer;
- 2) The Complaint itself does not name Mr. Wimmer as a Respondent, indicating that OGC conducted an investigation prior to a Reason to Believe finding by the Commission; and
- 3) The Statute of Limitations has long since expired as to any alleged violation by Mr. Wimmer, of which there were none.

While we believe the Commission will – and indeed, must – dismiss the Complaint against our client should it come to that, we ask that OGC instead immediately remedy these violations by withdrawing its letter as to Mr. Wimmer.

1) The Commission missed the statutorily mandated deadline for transmitting the Complaint to Mr. Wimmer

FECA provides that “[w]ithin 5 days after receipt of a complaint, the Commission shall notify any person alleged in the complaint to have committed . . . a violation.” 52 U.S.C. § 30109(a)(1); *see also* 11 C.F.R. § 111.5(a). This “dictate,” *Level the Playing Field v. FEC*, 232 F. Supp. 3d 130, 142 (D.D.C. 2017), is “as specific a mandate as one can imagine” and is “purposely designed to ensure fairness not only to complainants but also to respondents.” *Perot v. FEC*, 97 F.3d 553,

Mr. Jeff Jordan
November 2, 2020
Page 2

559 (D.C. Cir. 1996). Accordingly, in order for a complaint to be valid as to a particular respondent, such respondent “had to be notified within five days.” *Id.* 558.

But that is not what happened here. The Commission received the Complaint in this matter on September 17, 2020, as evidenced by the date-stamp on the Complaint attached to the FEC’s transmittal letter. The Commission, however, did not forward this Complaint to Mr. Wimmer via mail until September 28, 2020, a full 11 days after its receipt – apparently to enable OGC to impermissibly conduct an investigation and name additional respondents (as discussed in the next section). As a law enforcement organization, the Commission should model respect for law and accept the consequences of its failure to comply with clear obligations. The September 28 letter should be withdrawn and the Complaint dismissed as to Mr. Wimmer.

2) The Complaint itself does not name Mr. Wimmer as a Respondent

The September 28 letter also violates other explicit and mandatory regulations. See 11 C.F.R. §§ 111.4 & 111.5. Section 111.4(d)(1) requires an administrative complaint to “clearly identify as a respondent each person or entity who is alleged to have committed a violation,” and Section 111.4(d)(3) requires “a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.” Section 111.5(a) mandates immediate staff review to determine whether the purported complaint substantially complies with these requirements, and Section 111.5(b) specifies that “no action shall be taken” on the filing except for notice to the complaining party.

In this case, the Complaint does not identify Mr. Wimmer as a respondent. In fact, the Complaint never once mentions the name Richard Wimmer. Instead, the Complaint has clearly identified the respondents as Louis DeJoy and XPO Logistics. This was not an oversight. To the contrary, the Complaint opens by identifying the respondents: “This complaint . . . is based on information and belief that Louis DeJoy and XPO Logistics have violated the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, et seq.”

Serving a complaint and notice to respond imposes serious burden, disruption, and expense on an entity. The regulations requiring the Commission to be sure a complaint contains explicit identification of respondents and clear factual allegations of violation before serving notice protect core First Amendment values. Moreover, the Commission is bound to follow its own regulations. Instead of following the law and Commission procedures, the FEC’s Office of Complaints Examination and Legal Administration (CELA) appears to have conducted its own mini-investigation to identify additional respondents like Mr. Wimmer. Conducting additional research is not CELA’s job. New respondents should only be added after the Commission has considered the matter. Because the Complaint here fails to meet the standards for service, the September 28 letter should be withdrawn and the Complaint dismissed as to Richard Wimmer.

Mr. Jeff Jordan
November 2, 2020
Page 3

3) The Statute of Limitations has expired as it relates to Mr. Wimmer

Finally, the substantive focus of this complaint is contributions made by XPO employees which were allegedly reimbursed by XPO or its predecessor under the direction of Mr. DeJoy. There is a foundational requirement that the individuals, (who, as indicated above, were not named in the Complaint), were employees of XPO within the last five years. Specifically, in order for the Complaint to come within the Statute of Limitations, the individual contributors had to have been employees of XPO within the past five years. Mr. Wimmer need not address the substance of this Complaint as he was last employed by XPO in January, 2015, more than five years ago.

Indeed, complainants admit that there is a five-year Statute of Limitations which states explicitly that:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced with five years from the date when the claim first accrued if, within the same period, the property is found within the United States in order that proper service may be made thereon.

28 U.S.C. § 2462. While there might be some question as to when the claim first accrued, there is no debate that, as it relates to Mr. Wimmer, it cannot be after he left the employ of XPO. Thus, even had he been identified in the Complaint in the first instance, the Statute of Limitations would have been the beginning and the end of the inquiry as it related to Mr. Wimmer. This is yet another reason why the CELA staff going beyond the Complaint's identity of respondents in order to unilaterally make Mr. Wimmer a respondent in this matter was an injustice which, in actuality, resulted in unnecessary costs to Mr. Wimmer.

While complainants attempt to devise a means by which the Commission can ignore the Statute of Limitations as it relates to Mr. DeJoy and XPO, this artificial construct does not apply to Mr. Wimmer. Any contributions made by Mr. Wimmer have always been fully disclosed on the public record. In fact, all of the contributions which complainant tries to bring under the umbrella of this Complaint were always on the public record. Therefore, we again ask the Commission to withdraw the September 28 letter treating Mr. Wimmer as a respondent or to dismiss this matter.

We would greatly appreciate your favorable consideration of this request.

Sincerely,



Carol A. Laham