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December 10, 2020

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Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
1050 First Street NE
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Re: MUR 7812 – Response of Agence France-Presse (AFP)

Dear Mr. Jordan:

This letter is submitted on behalf of Agence France-Presse (“AFP”)¹ in response to the complaint filed in the above-captioned matter.

The complaint alleges that AFP made a prohibited contribution to the Kamala Harris for Vice President campaign through an article posted on its blog and displayed on Facebook’s internet platform concerning the public policy views of then-candidate for Vice President, Kamala Harris. The alleged reporting falls squarely within the media exemption. As such, the complaint lacks substance and fails to state any cognizable violation of the Federal Election Campaign Act, as amended (the “Act”). Accordingly, the Commission should find no reason to believe that AFP violated the Act and dismiss the complaint.

I. Background Facts²

AFP’s Fact-Checking Operation

AFP traces its roots to 1835, when its precursor was founded as the world’s first international news agency. Today, AFP is a leading global news agency: its mission is to provide accurate, balanced, and impartial coverage of news wherever and whenever it happens in the world. AFP operates 201 bureaus in 151 countries around the world. AFP’s operations in the

¹ The Office of General Counsel sent notice of the complaint to AFP Fact Check, which is not a legal entity, but rather is a division of AFP. This response is filed on behalf of AFP.

² The factual background is based on publicly available sources cited herein.

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United States are coordinated by its North American regional headquarters located in Washington, D.C. AFP also operates bureaus in Los Angeles, New York, and San Francisco.

AFP journalists are committed to seeking the truth by questioning sources and verifying the facts. In this regard, fact-checking has been a core element of AFP's work as a global news agency for its entire history. In 2016, the proliferation of misinformation and disinformation online prompted AFP to launch a blog that focuses specifically on fact-checking claims made online or in other public forums, known as AFP Fact Check. The reporting work for the blog is carried out by fact-checking editors and a worldwide network of journalists, adhering to AFP's editorial standards and guiding principles.³ AFP's journalists monitor online content, taking into account local cultures, languages and politics. They also work with AFP's bureaus worldwide to investigate and disprove false information, focusing on items that can be harmful, impactful and manipulative.⁴ In short, AFP Fact Check covers the news "with an independent voice free of political, commercial or ideological influence."⁵

In addition to complying with AFP's rigorous editorial standards, AFP is also a signatory to the Code of Principles adopted by the International Fact-Checking Network, which requires a commitment to non-partisanship and fairness, transparency of sources, transparency of funding and organization, transparency of methodology and an open and honest corrections policy.⁶ AFP must renew its membership with IFCN each year, which requires it to demonstrate its operations have been consistent with IFCN's Code of Principle.

Without any supporting facts, the complaint accuses AFP of bias by "seeking to obscure unfortunate statements made by its favored candidate" and engaging in a "conspiracy to support the positions of Vice Presidential Candidate Kamala Harris." Many AFP blog posts, however, debunked false claims about Donald Trump, his family, and the Trump campaign.⁷ Indeed, in the

³ *Fact-Checking at AFP*, AFP FACT CHECK, <https://factcheck.afp.com/fact-checking-afp> (last visited Dec. 10, 2020).

⁴ *About Us*, AFP FACT CHECK, <https://factcheck.afp.com/about-us> (last visited Dec. 10, 2020).

⁵ *Fact-Checking at AFP*, AFP FACT CHECK, <https://factcheck.afp.com/fact-checking-afp> (last visited Dec. 10, 2020).

⁶ *The Commitments of the IFCN Code of Principles*, INT'L FACT-CHECKING NETWORK, POYNTER INST., <https://ifcncodeofprinciples.poynter.org/know-more/the-commitments-of-the-code-of-principles> (last visited Dec. 10, 2020).

⁷ See, e.g., *Altered Image of Hitler Used to Criticize Trump*, AFP FACT CHECK, (June 3, 2020), <https://factcheck.afp.com/altered-image-hitler-used-criticize-trump> (last visited Dec. 10, 2020); *Photo of 2018 Swiss Music Festival Falsely Shared as Florida Trump Rally*, AFP FACT CHECK, (Oct. 19, 2020), <https://factcheck.afp.com/photo-2018-swiss-music-festival-falsely-shared-florida-trump-rally> (last visited Dec. 10, 2020); *Video Misleadingly Edited to Make Trump Appear Disoriented*, AFP FACT CHECK, (Sept. 9, 2020), <https://factcheck.afp.com/video-misleadingly-edited-make-trump-appear-disoriented> (last visited Dec. 10, 2020); *Melania Trump Targeted with False Claims on White House Rose Garden Redesign*, AFP FACT CHECK, (Aug. 28, 2020), <https://factcheck.afp.com/melania-trump-targeted-false-claims-white-house-rose-garden-redesign> (last visited Dec. 10, 2020).

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days before the 2020 U.S. presidential election, AFP Fact Check published a story on its blog debunking misinformation from both the Trump and Biden campaigns.⁸

AFP's Relationship with Facebook

AFP is one of several global news agencies that participate in Facebook's third-party fact-checking program. As such, AFP Fact Check reviews content posted to Facebook that has been flagged by Facebook as potentially containing false or misleading information.

AFP maintains complete editorial discretion whether to review content posted to Facebook and identifies other content to review on its own. When AFP chooses to review Facebook content, it will independently rate the content's accuracy and independently write an article (or link to one of its prior articles) explaining how it arrived at its rating. If AFP rates content as "false or misleading," it is downgraded on Facebook users' news feeds so that fewer people see it.⁹ Facebook also shows more context by surfacing AFP's fact-check articles to users across its platform and showing labels on false stories.¹⁰ Facebook users whose posts or content have been rated as false or misleading may dispute AFP's rating.¹¹ If the author revises or edits the content of the post such that AFP concludes it is no longer false or misleading, AFP will remove its rating and edit its original story.¹²

Fact Check's Reporting on Claims Relating to Senator Harris's Record

Through its participation in Facebook's third-party fact-checking program, AFP made an independent editorial decision to investigate and report on the accuracy of claims in an article written by Cam Edwards for the website BearingArms.com (the "Edwards Article"). The Edwards Article was published originally with the titled, "Kamala Harris Doesn't Think You Have the Right to Own a Gun,"¹³ and certain Facebook users had linked to the article on their Facebook pages.

⁸ *Days from Presidential Election, Candidates' Misleading Claims Endure*, AFP FACT CHECK, (Oct. 30, 2020), <https://factcheck.afp.com/days-presidential-election-candidates-misleading-claims-endure> (last visited Dec. 10, 2020) ("As the US awaits election day on November 3, misleading claims from President Donald Trump and his opponent Joe Biden are circulating on hot-button issues from the Covid-19 pandemic to the economy, healthcare and housing.").

⁹ *How Our Fact-Checking Program Works*, FACEBOOK JOURNALISM PROJECT, <https://www.facebook.com/journalismproject/programs/third-party-fact-checking/how-it-works> (last visited Dec. 10, 2020).

¹⁰ *See Helping to Protect the 2020 US Elections*, FACEBOOK NEWSROOM, (Oct 21, 2019), <https://newsroom.fb.com/news/2019/10/update-on-election-integrity-efforts> (last visited Dec. 10, 2020).

¹¹ *Issue a Correction or Dispute a Rating*, FACEBOOK BUS. HELP CENTER, https://www.facebook.com/business/help/997484867366026?id=673052479947730&recommended_by=2593586717571940 (last visited Dec. 10, 2020).

¹² *Id.*

¹³ Cam Edwards, *Kamala Harris Doesn't Think You Have the Right to Own a Gun*, BEARING ARMS, (Aug. 11, 2020), <https://perma.cc/PV3Q-YGYJ?type=image>.

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AFP rated the Edwards article as “false or misleading” and reported on the claims on its fact-checking blog in a post titled “Kamala Harris Does Not Oppose Gun Ownership or the Second Amendment” (the “Fact Check Article”).¹⁴ Facebook displayed links to the Fact Check Article on reposts of the Edwards Article and articles containing similar claims.

II. AFP’s Coverage Falls Squarely Within the Media Exemption

The Act and Commission regulations generally exempt press activities from regulation.¹⁵ Specifically, 52 U.S.C. § 30101 provides that “any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication,” are exempt from the definition of regulated expenditures under the Act unless such facilities are owned or controlled by any political party, political committee, or candidate.¹⁶ Similarly, 11 C.F.R. § 100.73 exempts “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication” from the Act’s definition of contribution unless the facility is owned or controlled by any political party, political committee, or candidate.¹⁷

To determine whether activities are protected by the media exemption, the Commission applies the two-step “*Readers Digest*” analysis: First, it asks whether the entity engaging in the activity is a “press entity.” If so, the Commission then considers whether the press entity is owned or controlled by a political party, political committee, or candidate and whether the activity at issue is a “legitimate press function.”¹⁸

¹⁴ *Kamala Harris Does Not Oppose Gun Ownership or the Second Amendment*, AFP FACT CHECK, (Aug. 18, 2020), <https://factcheck.afp.com/kamala-harris-does-not-oppose-gun-ownership-or-second-amendment>.

¹⁵ Recognizing the “special and constitutionally recognized role” of the press “in informing and educating the public, offering criticism, and providing a forum for discussion and debate,” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 781 (1978), the press exemption was intended to ensure that enforcement of the Act would not “limit or burden in any way the first amendment freedom[] of the press” and would protect “the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.” Advisory Opinion 2019-05 (System73) (quoting H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. at 4 (1974)).

¹⁶ 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. § 100.132 (“Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate[.]”).

¹⁷ 11 C.F.R. § 100.73.

¹⁸ Advisory Opinion 2005-16 (Fired Up!) at 4 (citing *Reader’s Digest Assoc. v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981)); *see also* Advisory Opinion 2016-01 (Ethiq) at 2-3 (reaffirming two-step *Reader’s Digest* framework).

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AFP Is Unquestionably a “Press Entity”

When assessing whether an entity qualifies as a “press entity,” the Commission looks at “whether the entity in question is in the business of producing on a regular basis a program that disseminates news stories, commentary, and/or editorials.”¹⁹ As discussed above, there is no doubt that AFP is in the business of “the regular and continued production and distribution of news and political commentary” and that its “regular output is news and political commentary.”²⁰ Accordingly, AFP qualifies as a “press entity” under the two-step *Reader’s Digest* framework.

The Fact Check Article Falls Squarely Within AFP’s “Legitimate Press Function”

When assessing whether a given activity is a “legitimate press function,” the primary considerations are “whether the entity’s materials are available to the general public and are comparable in form to those ordinarily issued by the entity.”²¹

It is beyond dispute that AFP Fact Check is a form of investigative journalism that, broadly speaking, has been part of AFP’s DNA for 180 years. The AFP Fact Check blog may be read by anyone in the general public. And the Fact Check Article, which concerns the public policy views of then-candidate for Vice President Kamala Harris, is typical of AFP’s fact-checking work.

The complaint offers no basis for questioning AFP’s entitlement to the media exemption. Rather, the complaint disagrees with the Fact Check Article’s conclusions and characterizes AFP as biased. Complainant’s unhappiness with AFP’s reporting, however, has no bearing on the applicability of the media exemption. And even if there were merit to the complaint’s claim of bias – which there is not – this argument is also unavailing. The Commission has long held that a media entity does not forfeit entitlement to the media exemption because of a lack of objectivity.²² “Whether reporting and commentary are ‘balanced’ or ‘fair’ has no bearing on whether the activities are protected by the media exemption.”²³

The fact that AFP is a French corporation also does nothing to change the company’s entitlement to the media exemption. The Commission has long recognized that conduct that is exempt from the definition of “contribution” or “expenditure” does not become subject to

¹⁹ Advisory Opinion 2019-05 (System73) at 4 (quoting Advisory Opinion 2008-14 (Melothe) at 4); *see also* Advisory Opinion 2016-01 (Ethiq) at 3.

²⁰ Advisory Opinion 2016-01 (Ethiq) at 4; *see also* Factual & Legal Analysis, MUR 7237 (Reuters) (August 10, 2017) (finding Reuters was a press entity because it “produce[s] news-stories on a regular basis”).

²¹ Advisory Opinion 2005-16 (Fired Up!) at 4 (citing *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 251 (1986); Advisory Opinion 2000-13 (iNEXTV) (concluding that a website covered by the press exception was “viewable by the general public and akin to a periodical or news program distributed to the general public.”)).

²² *See, e.g.*, Advisory Opinion 2005-16 at 6 (Fired Up!).

²³ Statement of Reasons of Chairman McDonald, Vice Chairman Mason, and Commissioners Sandstrom, Smith, and Wold, MURs 5110 & 5162 at 3 (July 24, 2001).

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regulation simply because it is undertaken by a foreign national.²⁴ Here, if activity qualifying under the media exemption is not a contribution under the Act, it is not a contribution or expenditure when conducted by a foreign entity.

In sum, because AFP (1) is a “media entity” that is not owned or controlled by any candidate, political party, or political committee and (2) AFP Fact Check constitutes a legitimate press function, the costs of reporting on and publishing the Fact Check Article do not constitute an “expenditure” or “contribution” under the Act and Commission Regulations. Accordingly, there is no basis for finding that AFP made a prohibited corporate contribution to Kamala Harris or that AFP made a coordinated expenditure.²⁵

III. Conclusion

The Commission should find “no reason to believe” that a respondent has violated the Act or Commission regulations if “the complaint, any response filed by the respondent, and any publicly available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred.”²⁶ Here, as demonstrated above, the alleged conduct by AFP is subject to the media exemption and is not subject to Commission regulation. The Commission should find no reason to believe that AFP violated the Act and dismiss the complaint.

²⁴ See Advisory Opinion 2007-22 (Hurysz) (campaign-related activities by foreign nationals, including “telephone banking,” “lit drops,” and “door to door canvassing,” would not constitute prohibited contributions because they were covered by the volunteer services exemption); Factual & Legal Analysis, MUR 5987 et al. (Sir Elton John et al.) (Feb. 20, 2009) (foreign-national Sir Elton John’s uncompensated performance at a political event fit within the voluntary services exemption and did not violate the prohibition on foreign nationals’ contributions, expenditures, donations, or disbursements); Factual & Legal Analysis, MUR 5998 (Lord Jacob Rothschild) (finding that Spencer House’s provision of catering and event services and extension of short-term credit to cover the costs of the same at usual and customary rates did not violate the prohibition on foreign-national contributions because it fell within the commercial vendor exception to the definition of contribution).

²⁵ The complaint alleges that AFP made a prohibited in-kind contribution to, and a coordinated expenditure with, “Kamala Harris for Vice President.” There is no such committee. The complaint would be equally meritless, however, if it asserted that AFP made an in-kind contribution to Biden for President, the President-elect’s principal campaign committee. Moreover, the complaint is baseless because it concedes that there is “no direct evidence” that AFP coordinated its activities with any federal candidate. While the complaint suggests that there is “circumstantial evidence” of coordination, it cites no conduct whatsoever by AFP, and fails to satisfy either the “content” or “conduct” prong of the Commission’s coordinated communications regulation. See 11 C.F.R. § 109.21.

²⁶ Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007); see also Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas, MUR 4960 (Hillary Clinton for US Senate Exploratory Committee) at 1-2 (Dec. 21, 2000).

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Lawrence H. Norton", is written over a horizontal line.

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