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By email to CELA@fec.gov

January 12, 2022

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Trace Keeys, Paralegal
1050 First Street, N.E.
Washington, DC 20463

Re: MUR 7926

Dear Mr. Keeys:

I am writing on behalf of Congresswoman Katie Porter and the Katie Porter for Congress Committee, Alexander Warren, Treasurer, in regards to the above-referenced matter. We appreciate the opportunity to provide this preliminary response to the complaint, for we believe the complaint is frivolous and should be swiftly dismissed.

In the complaint, Richard Light alleges that he resides in Katy, Texas, but is not a U.S. citizen and is instead a citizen of Australia. Mr. Light alleges in that in July 2021, he received advertisements on his Facebook “timeline” from Congresswoman Porter and another Democratic Congresswoman, Alexandria Ocasio-Cortez, requesting donations to their respective Congressional campaign committees. Mr. Light asks the Commission to investigate whether this constitutes an offense under the Federal Election Campaign Act.

It does not. Commission regulations prohibit any person from *knowingly* soliciting a contribution or donation from a foreign national. 11 C.F.R. § 110.20(g); see also 52 U.S.C. § 30121(a)(2). For the purpose of this prohibition, the regulation defines “knowingly” as (i) having actual knowledge the person solicited is a foreign national, (ii) being aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the person solicited is a foreign national, or (iii) being aware of facts that would lead a reasonable person to inquire whether the person solicited is a foreign national, but failing to make such an inquiry. 11 C.F.R. § 110.20(a)(4). The regulation includes a non-exhaustive list of “pertinent facts” for purposes of determining whether a foreign national was “knowingly” solicited, including that the potential donor provides a foreign address or resides abroad. 11 C.F.R. § 110.20(a)(5)(ii) & (iv). See generally AO 2016-10 (Parker).

Under no interpretation of the pertinent regulation could Congresswoman Porter’s Facebook advertisement be considered a “knowing” solicitation of a foreign national. The

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advertisement that appeared on Mr. Light's Facebook timeline was, of course, not directed to him personally, but was part of a larger "media buy" made by Congresswoman Porter's campaign committee from Facebook. (Congresswoman Porter's "buy" itself constituted only a fraction of the more than \$1 billion spent on Facebook advertisements by political campaigns during the past election cycle.) The campaign committee is not even aware of the identities of the thousands of recipients of its advertisements, which are directed towards accountholders selected by Facebook pursuant to its own algorithm. Facebook does permit the campaign to choose to limit its advertisements to accounts located in certain countries, and in this instance the campaign directed Facebook to limit the advertisements to Facebook accounts with addresses within the United States (where Mr. Light admittedly resides). As the Commission noted in AO 2016-10, limiting solicitations to individuals who live in the U.S. and who have not, to the campaign committee's knowledge, lived abroad, would not obligate the committee to conduct further inquiry about citizenship status due to the residence of the individuals being solicited. *Id.*, p. 4.

To the campaign committee's knowledge, while Facebook does require accountholders to provide the address where they are located for purposes of targeting advertisements and other data collection purposes, it does not collect any information regarding an accountholder's citizenship or legal residency status. (The committee is not aware what Mr. Light is referring to when he states that "[i]t is clear from my settings in Facebook that I am not a US citizen and I am in fact an Australian citizen.") Certainly, no such citizenship or legal residency information is made available to potential advertisers, and no such information was offered to or otherwise made available to Congresswoman Porter's campaign committee for this advertisement purchase. Given that it was targeting the accounts of U.S. residents, the campaign committee had no reason to believe that any of its advertisements would appear on the Facebook accounts of foreign nationals.

Finally, it is not true, as Mr. Light alleges in his complaint, that "[i]t would be very easy for an ignorant person not familiar with US election laws to easily click the [Donate] button, donate and as such break federal law." Consistent with FEC regulations, clicking on the Donate button in the Facebook advertisement would take the viewer to a separate page that lays out the contribution limitations and requires donors to certify, among other things, that "I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder)." There is thus little, if any, likelihood that an unsuspecting foreign national would be misled into making a contribution to the campaign committee in violation of federal law.

We trust that this explanation makes clear that there is no merit to the complaint in MUR 7926 and that the complaint should be summarily dismissed without further action. If we can be of any further assistance, please let me know.

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Sincerely,

A handwritten signature in blue ink that reads "Fredric Woocher". The signature is written in a cursive style with a large initial 'F' and a long, sweeping underline.

Fredric D. Woocher