

## JONES DAY

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March 13, 2024

VIA EMAIL TO CELA

Federal Election Commission  
 ATTN: Kathryn Ross, Paralegal  
 1050 First Street, N.E.  
 Washington, D.C. 20463

Re: Matter Under Review 8014 – Response of NJI Sales, Inc.

Dear Commissioners:

NJI Sales, Inc.,<sup>1</sup> by and through undersigned counsel, submits the following response in the above-referenced Matter Under Review. As explained below, there can be no reason to believe that NJI Sales, Inc. has violated any provision of the Federal Election Campaign Act (“FECA”) or Federal Election Commission regulations. We thus respectfully request that the Commission dismiss this matter and close the file as to NJI Sales, Inc. immediately.

### BACKGROUND

*The complaint.* In relevant part, the complaint alleges that a 2022 congressional candidate named Irene Armendariz-Jackson and her principal campaign committee may have violated FECA by “engaging in non-commercial air travel in relation to a campaign for House of Representatives, and accepting a prohibited in-kind contribution for that travel.” Compl. at 1. The complaint points to social-media posts from May 2021 that show Ms. Armendariz-Jackson (and others putatively traveling on behalf of her campaign) aboard a plane traveling “from El Paso, TX, to Phoenix, AZ or vice versa.” *Id.* at 2. The complaint contends that this trip violated FECA’s prohibition on House candidate travel aboard private aircraft under the Honest Leadership and Open Government Act of 2007 (“HLOGA”), codified at 52 U.S.C. § 30114(c). *Id.* at 4-6. The complaint alleges further that the cost of this air travel was “never disclosed” by Ms. Armendariz-Jackson’s campaign and may have resulted in a “prohibited in-kind contribution of that travel” from the flight’s provider. *Id.* at 2, 4, 6.

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<sup>1</sup> The notification from the Office of General Counsel in this Matter Under Review indicates that NJI Sales, Inc. may have violated certain Federal Election Campaign Act or Federal Election Commission regulations; however, NJI Sales, Inc. is solely a holding company with no employees or Federal Aviation Administration authorization to conduct flights and therefore is incapable of having committed the alleged violations. That said, the analysis provided herein applies equally to “NetJets” as more broadly defined below.

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*NetJets.* NetJets Inc. through its various subsidiaries (hereinafter referred to as “NetJets”) operates the largest, most diverse private aircraft fleet in the world, offering clients a full range of personalized private aviation solutions. A popular option among its offerings is the NetJets Card Program, which allows cardholders to prepay for occupied flight time in 25-hour increments on the specific aircraft of their choice, without a long-term lease commitment.<sup>2</sup> In return for their purchase of a NetJets card, cardholders receive a leasehold interest in their selected NetJets aircraft, allowing them to use those planes under their purchased time-allotment, subject to certain booking restrictions.<sup>3</sup> NetJets Aviation, Inc. – a certificated Part 135 carrier under the Federal Aviation Administration (“FAA”) regulations governing on-demand operations – operates all flights provided to cardholders under Part 135.<sup>4</sup> *See generally* 14 C.F.R. Part 135.

Flight records indicate that two flights at issue in the complaint were provided by NetJets to a prepaid cardholder in the NetJets Card Program. According to the records, Ms. Armendariz-Jackson and 13 other persons traveled from El Paso to Phoenix aboard a NetJets-operated aircraft on May 12, 2021 as guests of the prepaid cardholder, while Ms. Armendariz-Jackson and 12 other individuals took a return flight from Phoenix to El Paso aboard a NetJets plane on May 13, 2021.<sup>5</sup> As Card Program flights, both flights were operated pursuant to Part 135 of the FAA regulations at the direction of the prepaid cardholder.

## ANALYSIS

The Commission should immediately dismiss this matter as to NetJets. The complaint alone presents nothing that would provide the Commission reason to believe that NetJets violated any provision of FECA or Commission regulations as a result of Ms. Armendariz-Jackson’s travel aboard its aircraft as a guest of a prepaid cardholder – in fact, the complaint never even mentions NetJets. And the factual record before the Commission plainly shows that NetJets has not committed any violation based on Ms. Armendariz-Jackson’s travel.

As an initial matter, contrary to the complaint’s allegations, the two flights on NetJets planes would constitute *commercial travel* under Commission rules and do not implicate HLOGA’s prohibitions on *non-commercial travel* by House candidates and their campaigns. Commission regulations provide that “commercial travel” includes all travel aboard any “aircraft

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<sup>2</sup> *See generally* NetJets Card Program, <https://www.netjets.com/en-us/private-jet-card-program>.

<sup>3</sup> *See* NetJets Card Program Terms and Conditions ¶ B.1, [www.netjets.com/en-us/card-contracts-june-2021](https://www.netjets.com/en-us/card-contracts-june-2021).

<sup>4</sup> *See id.* ¶ C.1.b (“All flights under the Agreement will be conducted pursuant to 14 C.F.R. Part 135.”).

<sup>5</sup> The complaint mentions that Ms. Armendariz-Jackson may have been aboard a different flight on or about May 17, 2021. NetJets has no record of Ms. Armendariz-Jackson being on any other NetJets-operated aircraft in May 2021 other than those identified above.

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operated by an air carrier . . . certificated by the [FAA], provided that the flight is required to be conducted under [FAA] air carrier safety rules.” 11 C.F.R. § 100.93(a)(3)(iv)(A); *accord* 52 U.S.C. § 30114(c)(1)(A). Accordingly, the Commission has long recognized that flights certificated under Part 135 – like the two flights at issue here – constitute “commercial travel” for purposes of its rules. *See* Explanation and Justification, *Campaign Travel*, 74 Fed. Reg. 63,951, 63,953 (Dec. 7, 2009) (“The Federal Aviation Administration . . . air carrier safety rules are contained in 14 CFR parts 121 (large airplanes) *and* 135 (smaller airplanes and other aircraft).” (emphasis added)).

More importantly, NetJets could not have violated FECA or Commission regulations because it did not provide the flights to Ms. Armendariz-Jackson or make any contribution to Ms. Armendariz-Jackson or her campaign. A flight’s “service provider” is generally understood to be “the person who makes the aircraft or other conveyance available to the campaign traveler.” 11 C.F.R. § 100.93(a)(3)(ii). In this case, the provider of the flight was the prepaid cardholder with the right of access to the planes, and it was the prepaid cardholder who booked the flights for Ms. Armendariz-Jackson. *Id.* And nothing of value flowed from NetJets to Ms. Armendariz-Jackson or her campaign such that there could be an in-kind contribution from NetJets. 11 C.F.R. § 100.52(d). NetJets was fully compensated for the flights at its “usual and normal charge,” *id.*, by the cardholder under its prepaid Card Program.

### CONCLUSION

For the foregoing reasons, the Commission should dismiss this matter and close the file as to NetJets.

Respectfully,



E. Stewart Crosland

*Counsel to NJI Sales, Inc.*