



UTE PAC
P.O. Box 190
Fort Duchesne, Utah 84026

August 2, 2022

Via Email and U.S. Certified Mail

Federal Election Commission
Office of Complaints Examination
& Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, DC 20463
Email: cela@fec.gov

RE: UtePAC Response to Notification of Referral AR 22-03

Dear Federal Election Commission:

This letter is in response to the July 22, 2022, Federal Election Commission's (FEC or Commission) Notification of Referral AR 22-03. As outlined in the notification, UtePAC is afforded the opportunity to demonstrate in writing that no action should be taken against UtePAC or its current treasurer. In addition, any response may include, "factual or legal materials that you believe are relevant to the Commission's consideration of this matter." Accordingly, UtePAC timely provides the following response to the Notice of Referral AR 22-03.

In brief, the FEC should minimize any enforcement actions taken against UtePAC and instead seek enforcement against its former Treasurer and Director, Mr. Robert Lucero. As we now know, Mr. Lucero used deceptive financial management practices to take UtePAC funding for his personal use. He also failed to comply with a wide variety of basic FEC reporting requirements.

As soon as the Ute Indian Tribe began to have concerns about the management of UtePAC by Mr. Lucero, the Tribe initiated its own audit of UtePAC and took action to correct any issues. At the direction of the Tribe, UtePAC took every action to investigate Mr. Lucero's management of UtePAC finances, respond to the FEC audit, and correct the record before the FEC. UtePAC even filed its own complaint with the FEC against its former Director and Treasurer Mr. Lucero.

In the following sections and in the attached complaint, we provide further information about Mr. Lucero's deception and mismanagement of UtePAC funds. As a part of this effort, we request that the FEC clarify in its notification letter and in further proceedings that Mr. Skyler Massy, UtePAC's current Treasurer, has not violated the Finance Campaign Act of 1971. Mr. Massy was asked to serve as the Treasurer of UtePAC in the Spring of 2020. The period under audit by the FEC and the subject of this referral covered the two-year period from January 2017 to

December 2018. During this time period, Mr. Lucero was the sole Director and Treasurer of UtePAC and Committed all of the actions that are the subject of the audit.

Rigorous Tribal Controls Over UtePAC Funding

Almost all of the funding for UtePAC administration, operations, and political campaigns was provided by the Ute Indian Tribe. This funding came from the Tribe's overall government budget and not from public contributions. UtePAC received some contributions from the public, but these contributions were a small fraction of UtePAC's overall budget.

As with all its Tribal government funds, the Tribe followed a rigorous financial management process in providing funding to UtePAC. This process began with Mr. Lucero's presentation of proposed budgets for UtePAC activities on an annual or semi-annual basis. Once a proposed budget was approved, the Tribe would pass a resolution approving the budget and authorizing the funding. The Tribe's Constitution and By-Laws require that all expenditures be approved by a resolution of the Tribe's governing body. *Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation*, By-Laws Article I, Section 4 (Jan. 19, 1937) (as amended).

After funding resolutions were approved, several other controls and sign offs were required before funds were released to UtePAC. These controls include having a signed requisition request, an approved and signed resolution, an approved budget, invoice or signed contract, and supporting documentation such as a W-9. The Tribe's Executive Director and Tribal Comptroller also signed off on requisition requests. All of the funds provided to Mr. Lucero to operate UtePAC were approved according to this process and the Tribe is up to date on all of its annual audits.

The Tribe has further accounting requirements and controls that are used by each of its Departments, however, Mr. Lucero claimed that all UtePAC funding would be monitored and reported according to the FEC requirements. He claimed to have expertise working with the FEC's process and told the Tribe that all UtePAC disbursements would be documented as required by the FEC. Mr. Lucero also told the Tribe that he was in regular contact with the FEC to discuss the management of UtePAC finances and resolve any issues.

We now know that once the funds were transferred to UtePAC's bank account, Mr. Lucero did not institute any financial management practices and did not comply with FEC requirements. Even worse, Mr. Lucero made false, fictitious and fraudulent statements in reports to both the Tribe and the FEC. As the only signer on UtePAC's accounts, Mr. Lucero disbursed UtePAC funds with little or no explanation. Mr. Lucero also did not provide reports on how funding was used to fulfill specific budget requests and did not provide accounting of UtePAC disbursements.

Mr. Lucero's Failure to Comply with Tribal and FEC Requirements

The Tribe hired Mr. Lucero as the Director and Treasurer of UtePAC in September 2016. Mr. Lucero was working for another Political Action Committees (PAC) when he was hired by the Tribe, and Mr. Lucero represented to the Tribe that he had extensive experience managing PAC finances and complying with FEC laws and regulations. As established by Mr. Lucero's

engagement agreement as the Director and Treasurer of UtePAC, Mr. Lucero was solely and completely responsible for UtePAC's finances, operations, and reporting to the FEC.

Although the Tribe did everything within its power to ensure that Mr. Lucero operated UtePAC to the highest standards, the Tribe became concerned with Mr. Lucero's operation of UtePAC. In an attempt to review UtePAC finances and resolve any issues, on January 4, 2020, the Tribe engaged an independent accounting firm to conduct an audit of the UtePAC finances. Mr. Lucero provided almost no information in response to the Tribe's audit.

Within a month of the Tribe initiating its audit, Mr. Lucero became completely unresponsive, and the Tribe terminated Mr. Lucero's employment as UtePAC Director and Treasurer on February 26, 2020. Following his termination, the Tribe learned about the FEC's audit of UtePAC that was initiated on October 2, 2019. Mr. Lucero never informed the Tribe or anyone else at UtePAC that the FEC was auditing UtePAC.

Tribal Investment in the FEC Audit Process

As a sovereign Tribal government, the Ute Indian Tribe has the same serious concerns with Mr. Lucero's management of UtePAC as the FEC. The Tribe quickly replaced UtePAC's Treasurer, directed its General Counsel to assist in the administration of UtePAC, and sought full compliance with the FEC's audit process. This has been a significant expense for the Ute Indian Tribe. In response to a question from the Commission, the Tribe provided a letter dated February 25, 2022, also attached here, in which the Tribe estimated that it spent about \$100,809.50 responding to the audit.

These expenses include long hours that UtePAC worked with FEC audit staff to investigate the actions of Mr. Lucero and to correct hundreds of recordkeeping and reporting violations made by Mr. Lucero. As a result of these investigations, the Tribe uncovered a number of deceptive tactics he used to take UtePAC funding for his own personal gain. These tactics included his overall mismanagement of UtePAC funds as well as specific expenditures for personal benefit.

As the FEC notes in its audit findings, the investigations to date appear to only scratch the surface. In many cases, Mr. Lucero refused to assist in the Tribe's audit and resisted providing receipts and accurate reporting of his disbursements for the FEC audit. He also failed to make "best efforts" to correct his reporting during the audits and appears to be continuing to attempt to cover up his personal use of UtePAC funds. In addition, neither the Tribe's independent audit nor the FEC's audit were able to fully investigate the financial relationship between UtePAC and a limited liability company established by Mr. Lucero, American System Group, LLC (LLC), to funnel funds away from UtePAC for his personal benefit. Further investigation and enforcement is needed.

FEC Policy Calls for Mr. Lucero to be Held Liable as a Former Treasurer

In 2005, the FEC issued a policy statement affirming that it will hold former treasurers personally liable when necessary. This is needed because treasurers that commit the kinds of actions that would be subject to enforcement are often terminated prior to an enforcement action.

The actions of former UtePAC Director and Treasurer Mr. Lucero easily fall within the FEC policy providing for holding a past or present treasurer liable in their personal capacity. The FEC's "Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings" sets out three standards for which a past or present treasurer can be held liable in their personal capacity. *See* 70 Fed. Reg. 6 (Jan. 3, 2005). The FEC policy states:

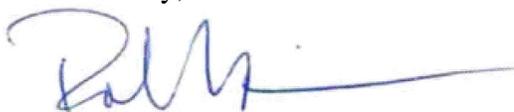
...where information indicates that a treasurer (past or present) of a political committee (a) knowingly and willfully violated the Act or regulations, (b) recklessly failed to fulfill duties specifically imposed by a provision of the Act or regulations that applies specifically to treasurers, or (c) intentionally deprived himself or herself of the operative facts giving rise to the violation, the treasurer may be subject to Commission action "in (his or her) personal capacity."

Id. Mr. Lucero easily meets all three standards for being held personally liable. He knowingly and willfully violated the FEC laws and regulations, recklessly failed to fulfill his duties, and deprived himself of the operative facts giving rise to multiple violations.

Indeed, Mr. Lucero's management of UtePAC and creation of an LLC to misappropriate UtePAC funds for his personal benefit is similar to another FEC case that was recently prosecuted by the FEC and the Department of Justice. In that case, Scott B. Mackenzie served as a Treasurer for multiple PACs and established an entity known as "Mackenzie & Company" to take PAC funding for his personal benefit. *Press Release: Treasurer of Multiple Political Action Committees Sentenced for Filing False Reports with the FEC*, U.S. Dept. of Justice (February 21, 2020). Like UtePAC's former Treasurer, Mackenzie transferred funds between PACs and used PAC funds to pay his company to do consulting and other work. The company would then pay Mackenzie and his friend for work that was never done.

Given these facts and numerous more examples provided in the attached complaint, UtePAC requests that the FEC minimize enforcement actions taken against UtePAC and Mr. Massey as its current Treasurer. Instead, the FEC should seek enforcement against Mr. Lucero for his knowing and willful violations of FEC laws and regulations as a part of a scheme to misuse and personally benefit from, almost exclusively, Tribal funding provided to operate UtePAC.

Sincerely,



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