

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR 8205**

DATE COMPLAINT FILED: 1/24/24

DATES OF NOTIFICATIONS: 2/1/24; 11/29/24

LAST RESPONSE RECEIVED: 12/2/24

DATE ACTIVATED: 10/30/24

[REDACTED]

STATUTE OF LIMITATIONS: 12/21/28-12/26/28

ELECTION CYCLE: 2024

**COMPLAINANT:**

Joanna Weiss for Congress

**RESPONDENTS:**

Dave Min for Congress and Jay Petterson in his  
official capacity as treasurer

Dave Min for Senate 2024

Dave Min

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)(3)

52 U.S.C. § 30125(e), (f)(1)

11 C.F.R. § 104.3

11 C.F.R. § 104.13(a)

11 C.F.R. § 110.3(d)

11 C.F.R. § 300.61

11 C.F.R. § 300.71

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that Dave Min, former California state senator and 2024 congressional candidate, Min's state committee, Dave Min for Senate 2024 (the "State Committee"), and Min's principal campaign committee, Dave Min for Congress and Jay Petterson in his official capacity as treasurer (the "Federal Committee"),<sup>1</sup> violated the Federal Election campaign Act of 1971, as amended (the "Act"), when the State Committee used non-

<sup>1</sup> Josie Olsen was the Federal Committee's treasurer at the time of the allegations in the Complaint. *See* Statement of Organization at 3 (Jan. 18, 2023), <https://docquery.fec.gov/pdf/036/202301189574820036/202301189574820036.pdf>.

1 federal funds to produce and distribute two mailers: a “holiday mailer” and a “legislative update  
2 mailer” promoting and supporting Min’s 2024 U.S. congressional candidacy, resulting in the  
3 State Committee making, and Min and the Federal Committee knowingly accepting, prohibited  
4 in-kind contributions. In addition, the Complaint alleges that the Federal Committee failed to  
5 disclose receipt of the alleged in-kind contributions from the State Committee.

6 Respondents acknowledge that the State Committee paid for both mailers; that Min was  
7 clearly identified in them; and that one of the mailers, *i.e.*, the holiday mailer, was distributed  
8 outside Min’s state senatorial district boundaries. However, Respondents assert that the mailers  
9 did not promote or support Min’s federal candidacy because they were distributed in association  
10 with his status as a state office holder. Accordingly, Respondents argue that the mailers were not  
11 in connection with a federal election and thus no in-kind contribution resulted and, further, the  
12 funds used to pay the costs of the holiday mailer were therefore not subject to the Act’s soft  
13 money provision.

14 As explained below, only the holiday mailer mentions Min’s federal candidacy, thus  
15 potentially subjecting it to the soft money provision. However, in light of the low cost of that  
16 mailer, we recommend that the Commission exercise its prosecutorial discretion and dismiss the  
17 allegations that Min, the State Committee, and the Federal Committee violated 52 U.S.C.  
18 § 30125(e)(1)(A), (f)(1) and 11 C.F.R. §§ 110.3(d), 300.61, 300.71 by spending and receiving  
19 funds in connection with a federal election not subject to the limitations, prohibitions and  
20 reporting requirements of the Act. We further recommend that the Commission exercise its  
21 prosecutorial discretion and dismiss the allegation that the Federal Committee violated 52 U.S.C.  
22 § 30104(b)(3) and 11 C.F.R. § 104.3 by failing to report receipt of an in-kind contribution from  
23 the State Committee in connection with the mailers.

## II. FACTUAL BACKGROUND

During the 2024 election cycle, Dave Min was a member of the California State Senate, representing the 37th District and Dave Min for Senate 2024 was his state campaign committee.<sup>2</sup> Min registered as a candidate for reelection for state office in January 2023.<sup>3</sup> Min was also a candidate for, and was elected to, the U.S. House of Representatives for California's 47th District.<sup>4</sup> Min's principal campaign committee is Dave Min for Congress.<sup>5</sup>

The Complaint alleges that Min, the State Committee, and the Federal Committee violated the soft money provisions of the Act when the State Committee distributed two mailers promoting and supporting Min's federal candidacy; further, the Complaint alleges that the Federal Committee failed to report the State Committee's expenses as in-kind contributions.<sup>6</sup> The Complaint alleges that the State Committee had no reason to send the mailers because Min was not running for re-election to state office, but does not point to any evidence to support this claim about his state candidacy.<sup>7</sup>

Regarding the first mailer (the "holiday mailer"), distributed in December 2023 in the form of a holiday card, the Complaint alleges that the holiday mailer contains "puffery"

<sup>2</sup> See Compl. at 2-3 (Jan. 25, 2024); *see also* Joint Resp. at 1 (Mar. 18, 2024). Due to an administrative oversight, the Federal Committee was notified late of the Complaint. See Compl. Notif. Letter at 1 (Nov. 29, 2024). The Federal Committee joined in the State Committee's Response. Email from Andrew Werbrock, Counsel, to Christal Dennis, CELA, FEC (Dec. 2, 2024, 2:58 PM EST). Accordingly, we are treating the State Committee's Response as a joint response from both committees.

<sup>3</sup> See California Secretary of State, Campaign Finance: Candidates and Elected Officials, 2024 Primary Election, (list of candidates filing a statement of intention to run for state office), <https://cal-access.sos.ca.gov/Campaign/Candidates/list.aspx?view=intention&electNav=124> (last visited Jan. 29, 2025).

<sup>4</sup> Dave Min, Statement of Candidacy at 1 (Jan. 18, 2023), <https://docquery.fec.gov/pdf/141/202301189574820141/202301189574820141.pdf>; *see also* California Secretary of State, November 2024 Gen. Election U.S. House of Representatives District 47, Unofficial Election Results, <https://admin.cdn.sos.ca.gov/elections/sov/2024-general/sov/25-us-rep-congress.pdf> (last visited Jan. 21, 2025).

<sup>5</sup> Dave Min for Congress, Amended Statement of Organization at 3 (Dec. 16, 2024), <https://docquery.fec.gov/pdf/588/202412169739923588/202412169739923588.pdf>.

<sup>6</sup> Compl. at 1-3. Copies of both mailers are attached to the Complaint.

<sup>7</sup> *Id.* at 3.

1 regarding Min's record in the state senate and refers to Min's congressional campaign and asks  
2 for the readers' support.<sup>8</sup> Specifically, the Complaint alleges that the following language is  
3 expressly federal campaign-related: "As you may have heard, earlier this year, we made the  
4 decision for Dave to run for California's 47th Congressional District. He's ready to take on the  
5 big fights in Washington, DC, to protect our basic rights and most cherished values. But that  
6 means he's been hard at work, including maybe calling you for help...sorry!"<sup>9</sup>

7 Regarding the second mailer (the "legislative update mailer"), the Complaint argues that  
8 it was designed "in significant part" to promote Min's federal congressional race because it  
9 features his image prominently, praises Min by using the words "championing," "standing up,"  
10 and "protecting" in relation to his state senate record, and claims that Min "secured" or "brought  
11 home" various state funding resources or "delivered for the 37th District."<sup>10</sup> Further, according  
12 to the Complaint, the bulk rate postage permit on the second mailer indicates that it was widely  
13 distributed outside of Min's district.<sup>11</sup>

14 In Response, Min, the State Committee, and the Federal Committee filed a Joint  
15 Response acknowledging that the State Committee paid for both mailers and that the cost of the  
16 holiday mailer was \$3,358.20 and the cost of the legislative update mailer was \$35,433.<sup>12</sup> They  
17 assert that the mailers were distributed in connection with Min's status as a state officeholder, as  
18 permissible by state law.<sup>13</sup> According to the Response, at the time the mailers were distributed,

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<sup>8</sup> Compl. at 2; *id.*, Ex. 1 (attaching copy of holiday mailer).

<sup>9</sup> *Id.*

<sup>10</sup> Compl. at 2-3; *id.*, Ex. 2 (attaching copy of legislative update mailer).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> Joint Resp. at 2.

<sup>13</sup> *Id.* at 1-2, 4-5.

Min was a registered candidate for reelection to the State Senate.<sup>14</sup> Regarding the holiday mailer, the Response states that at the time the State Committee paid for the mailer it had sufficient federal funds on hand to pay the cost of that mailer, when applying a first-in-first-out accounting method.<sup>15</sup> Specifically, the Response states that at the time the holiday mailer was paid for, the State Committee had approximately \$50,064.71 cash on hand, and at least \$21,316.63 of that amount was received from federally permissible funds.<sup>16</sup> The Response does not provide information about its funds when it sent the legislative update mailer.<sup>17</sup>

The Response argues that neither mailer is subject to the Act because they do not promote, attack, support or oppose Min or other federal candidate.<sup>18</sup> Regarding the holiday mailer, the Response acknowledges that it references Min's federal candidacy, but alleges that the reference was not for the purpose of influencing a federal election.<sup>19</sup> Instead, the Response argues that the reference to Min's federal candidacy was informational, did not solicit support for his federal candidacy or contain express advocacy, and comprised less than 5% of the holiday card.<sup>20</sup> The Response further states that while the holiday mailer was distributed outside of the

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<sup>14</sup> *Id.* at 1-2, 4 (citing Cal. Gov't Code § 82007, which defines a candidate as: (1) anyone listed on a ballot or qualified to receive write-in votes; (2) anyone who receives a contribution or makes an expenditure to bring about their nomination or election to an elective office; or (3) an elected officer. Cal. Gov't Code § 82007(a)(1) – (3). In addition, anyone who becomes a candidate retains candidate status until that status is terminated under section 84214. Cal. Gov't Code §§ 82007(b); 84214 (governing committee and candidate campaign statement filing requirements and termination reports). According to the Response, Min filed a 2024 Statement of Organization FPPC Form 410 and Candidate Intention Statement FPPC Form 501 with the California Secretary of State. *See* Joint Resp. at 1. California Secretary of State Filings show that his first 2024 State Committee disclosure report was filed on July 31, 2023, covering the period January 1 through June 30, 2023. Dave Min for State Senate 2024, FPPC Form 460, Recipient Committee Campaign Statement (July 31, 2023), <https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2833329&amendid=0>.

<sup>15</sup> Joint Resp. at 6-7.

<sup>16</sup> *Id.*

<sup>17</sup> *See generally* Joint Resp.

<sup>18</sup> *Id.* at 1-4, 6.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*

boundaries of his state senatorial district, it was intended to foster relationships with officials and supporters throughout the state.<sup>21</sup>

According to the Response, the second mailer was a “legislative update,” commonly sent by incumbent state officeholders to their constituents, and was sent to solely discuss Min’s legislative achievements and did not expressly advocate for Min, or any other federal candidate, solicit contributions, or seek information from voters to be used in the federal election.<sup>22</sup> The Response asserts that the legislative update falls under the “dual candidate” exception to the soft money ban because at the time it was distributed, Min was legally a candidate for state senate and had not terminated his state candidacy.<sup>23</sup> Lastly, the Response asserts that the legislative update mailer identified in the Complaint as being sent to the address in Aliso Viejo was not located within California’s 47th Congressional District, *i.e.*, the federal office Min was seeking, but was located within Min’s state senate district boundaries.<sup>24</sup>

### III. LEGAL ANALYSIS

#### A. The Commission Should Exercise its Prosecutorial Discretion and Dismiss the Allegations That Respondents Violated 52 U.S.C. § 30125(e)(1)(A) and (f)(1) and 11 C.F.R. §§ 110.3(d), 300.61, 300.71 in Connection With the Mailers

The Act and Commission regulations prohibit candidates, individuals holding Federal office, agents of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained, or controlled (“EFMC’d”) by or acting on behalf of one or more candidates or individuals holding Federal office from “solicit[ing], receiv[ing],

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> *Id.* at 4 (citing 11 C.F.R. § 300.72).

<sup>24</sup> *Id.* at 4-5 (stating that the Complaint was relying on an outdated districting map, and that due to redistricting, Min represented portions of Aliso Viejo in the state senate at the time the legislative update mailer was sent); *see also* Compl., Attach. 2 (attaching copy of legislative update mailer).

1 direct[ing], transfer[ing], or spend[ing] funds in connection with an election for Federal office,  
 2 including funds for any Federal election activity, unless the funds are subject to the limitations,  
 3 prohibitions, and reporting requirements of this Act.”<sup>25</sup> The Commission has determined that a  
 4 federal candidate’s state committee is, as a matter of law, an entity EFMC’d by the federal  
 5 candidate.<sup>26</sup> Accordingly, when Min became a federal candidate, the State Committee became  
 6 subject to the soft money provisions of the Act.

7 Transfers of funds or assets from a candidate’s campaign account for a nonfederal  
 8 election to his or her principal campaign committee for a federal election are also prohibited.<sup>27</sup>  
 9 The prohibition on transferring funds applies broadly and includes payment by the state  
 10 committee for expenses such as rent, salaries, and services for the benefit of the federal  
 11 committee.<sup>28</sup>

12 The Commission has provided guidance on the types of activities that are ‘in connection’  
 13 with an election under section 30125(e), which include expressly advocating the election or  
 14 defeat of a candidate and “federal election activity,” as defined by the Act, which includes public

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<sup>25</sup> 52 U.S.C § 30125(e)(1)(A); 11 C.F.R. § 300.61.

<sup>26</sup> See Factual & Legal Analysis (“F&LA”) at 7, MUR 7954 (Kevin Mullin for Congress, *et al.*) (when Mullin became a federal candidate, his state committee became subject to the soft money provisions of the Act); F&LA at 9, MUR 6601 (Oelrich for Congress) (same); Advisory Opinion (“AO”) 2009-26 at 5 (Coulson) (“Representative Coulson is a Federal candidate, and her State Campaign Committee is an entity that is directly established, financed, maintained, or controlled by her and is acting on her behalf.”).

<sup>27</sup> 11 C.F.R. § 110.3(d).

<sup>28</sup> F&LA at 7-11, MUR 7996 (Pat Dowell for Congress, *et al.*) (candidate’s state committee paid for federal committee expenses, including rent, services, and salaries in violation of 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d), 300.61)) [REDACTED] F&LA at 4-5, MUR 6267 (Paton For Senate, *et al.*) (by using non-federal funds to pay for a federal campaign’s polling and survey costs, the state committee transferred and/or spent, and the federal committee received non-federal funds) citing among others, F&LA at 4-5, MUR 5426 (Dale Schultz for Congress) (candidate’s federal committee “effectively received” prohibited transfer of funds in violation of [52 U.S.C. § 30125(e)] and 11 C.F.R. § 110.3(d) when the candidate’s state committee paid for expenses that were incurred in connection with his federal election.); F&LA at 12-16, MUR 5646 (Cohen for New Hampshire) (candidate’s federal committee received prohibited transfer of funds when he used state campaign funds to pay for federal campaign expenses); Conciliation Agreement at IV.11, V.1-2, MUR 4974 (Friends of Tiberi, *et al.*) (candidate’s federal and state committees violated 11 C.F.R. § 110.3(d) when his state committee paid for expenses incurred on behalf of his federal committee).

1 communications referring to a clearly identified federal candidate and that promote, support,  
 2 attack or oppose (“PASO”) a candidate for that office.<sup>29</sup>

3 The Act further prohibits a state committee, candidate for state office, or the agent of a  
 4 state candidate from spending funds on public communications that refer to a clearly identified  
 5 candidate<sup>30</sup> for federal office and that PASO a candidate for that office, unless the funds are  
 6 subject to the limitations, prohibitions, and reporting requirements of the Act.<sup>31</sup>

7 The Act provides an exception to the soft money prohibition in certain circumstances  
 8 where a federal candidate “is or was also a candidate for State or local office.”<sup>32</sup> Such a  
 9 candidate may solicit, receive, or spend nonfederal funds as long as that solicitation, receipt, or  
 10 spending: (1) is “solely in connection with such election for State or local office,” (2) “refers  
 11 only to that State or local candidate” or to other candidates for that same state or local office, and  
 12 (3) is permitted under state law.<sup>33</sup> Thus, a simultaneous state candidate and federal candidate  
 13 may spend otherwise impermissible funds in connection with their own state election.<sup>34</sup>

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<sup>29</sup> F&LA at 5-6, MUR 7954 (Kevin Mullin for Congress, *et al.*); F&LA at 2-3, MUR 7106 (Citizens for Maria Chappelle-Nadal for Congress, *et al.*); AO 2009-26 at 5.

<sup>30</sup> Commission regulations define “clearly identified” as the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference to the office held, or status as a candidate. 11 C.F.R. § 100.17; *see also* 52 U.S.C. § 30101(18) (defining “clearly identified”).

<sup>31</sup> 52 U.S.C. § 30125(f)(1), cross-referencing *id.* § 30101(20)(A)(iii) (including PASO communications in the definition of “federal election activity”); *see also* 11 C.F.R. §§ 100.24(b)(3), 300.71 (requiring that federal funds be used for PASO communications). The definition of “public communication” [52 U.S.C. § 30101(22); 11 C.F.R. § 100.26] includes “mass mailings,” which means a mailing by “United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.” 52 U.S.C. § 30101(23); *see also* 11 C.F.R. § 100.27.

<sup>32</sup> 52 U.S.C. § 30125(e)(2).

<sup>33</sup> *See id.*; 11 C.F.R. § 300.63.

<sup>34</sup> *See* F&LA at 16-17, MUR 8128 (Anthony D’Esposito, *et al.*) (dismissing the allegations that the candidate and his state committee did not violate the soft money ban given that the candidate met the criteria for a “dual candidate” and spent otherwise impermissible funds solely in connection with his state election) citing AO 2005-02 at 2, 4 (Corzine), AO 2003-32 at 5 (Tenenbaum).



1           Because Min was a state senator eligible to run for re-election to the California Senate  
 2   under California law and had filed his statement of intention to run for state office in 2024, he  
 3   was therefore a state candidate when the mailers were distributed and was permitted to spend  
 4   funds outside of the Act's amount and source limitations for a communication that referred only  
 5   to his state candidacy or for any other candidate for state or local office.<sup>35</sup> Therefore, the second  
 6   mailer was apparently permissible under the exception; it appeared to be a legislative update that  
 7   was directed to Min's state senatorial constituency as it discusses his state record and contains a  
 8   disclaimer that it was paid for by the State Committee: "Paid for by Dave Min State Senate  
 9   2024." That mailer did not identify Min as a federal candidate. In past matters, the Commission  
 10   has considered such legislative updates sent by candidates running simultaneously for state and  
 11   federal offices to fall under the dual candidate exception.<sup>36</sup> Therefore, the legislative update  
 12   mailer does not appear to constitute federal election activity.<sup>37</sup>

13           Regarding the holiday mailer, however, there is a question as to whether the text PASO'd  
 14   Min because it referred to his U.S. congressional campaign and goals and asked for the readers'  
 15   support. It states: "As you have heard, earlier this year, we made the decision for Dave to run for  
 16   California's 47th Congressional District. He's ready to take on the big fights in Washington,  
 17   DC, to protect our basic rights and most cherished values. But that means he's been hard at

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<sup>35</sup>       *See* 52 U.S.C. § 30125(e)(2).

<sup>36</sup>       F&LA at 8, MUR 7954 (Kevin Mullin for Congress, *et al.*) (finding no reason to believe respondents violated the soft money provisions of the Act where the legislative update mailer paid for with nonfederal funds, was sent to state candidate's constituency, discussed only the state record, and did not PASO any federal candidate, and therefore appeared to satisfy the dual candidate exception); *see also* F&LA at 16-17, MUR 8128 (Anthony D'Esposito, *et al.*) (dismissing the allegations that the candidate and his state committee did not violate the soft money ban given that the candidate met the criteria for a "dual candidate" and spent otherwise impermissible funds solely in connection with his state election).

<sup>37</sup>       "[T]he mere identification of an individual who is a Federal candidate does not, in and of itself, promote, support, attack or oppose that candidate." AO 2009-26 at 7. The Commission has also stated that "a statement of a federal candidate's previous or ongoing legislative efforts does not PASO that candidate." F&LA at 6, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*) (citing AO 2009-26 at 9)).

1 work, including maybe calling you for help...sorry!"<sup>38</sup> However, the cost of the holiday mailer  
 2 is small; Respondents assert that it cost \$3,358.20.<sup>39</sup> Accordingly, the further use of the  
 3 Commission's limited resources on this matter would not be warranted. We therefore  
 4 recommend that the Commission exercise its prosecutorial discretion and dismiss the allegations  
 5 that Min, the State Committee, and the Federal Committee violated 52 U.S.C. § 30125(e)(1)(A),  
 6 (f)(1) and 11 C.F.R. §§ 110.3(d), 300.61, 300.71 by spending federally impermissible funds not  
 7 subject to the Act's reporting provisions on federal election activity in connection with the  
 8 mailers.<sup>40</sup>

9 **B. The Commission Should Dismiss the Allegation That the Federal Committee**  
 10 **Violated 52 U.S.C. § 30104(b)(3) and 11 C.F.R. § 104.3 by Failing to Disclose**  
 11 **In-Kind Contributions from the State Committee**

12 The Act requires political committees to report contributions received, including in-kind  
 13 contributions, from each contributor who in the aggregate contributes in excess of \$200 per  
 14 election cycle.<sup>41</sup> Given that it appears that the legislative update mailer did not constitute federal  
 15 election activity and also satisfied the dual candidate exception, the Federal Committee would  
 16 not be required to report an in-kind contribution from the State Committee with respect to the  
 17 costs of that mailer.<sup>42</sup> Again, even if the Federal Committee should have disclosed the costs of  
 18 the holiday mailer as an in-kind contribution from the State Committee, the amount at issue is  
 19 small and not worth the use of further Commission resources.

20 Accordingly, we recommend that the Commission exercise its prosecutorial discretion

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<sup>38</sup> Compl. at 2; *id.*, Ex. 1.

<sup>39</sup> Joint Resp. at 2, 7.

<sup>40</sup> *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>41</sup> 52 U.S.C. § 30104(b)(3); 11 C.F.R. § 104.3; 104.13(a)(1).

<sup>42</sup> See F&LA at 8, MUR 7954 (Kevin Mullin for Congress, *et al.*) (finding no reason to believe the federal committee violated the reporting provisions of the Act in connection with the state committee's mailer).

and dismiss the allegation that the Federal Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to report receipt of in-kind contributions from the State Committee.

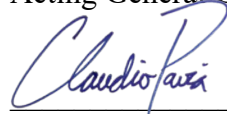
#### IV. RECOMMENDATIONS

1. Dismiss the allegation Dave Min for Congress and Jay Petterson in his official capacity as treasurer, Min for Senate 2024, and Dave Min, violated 52 U.S.C. § 30125(e)(1)(A), (f)(1) and 11 C.F.R. §§ 110.3(d), 300.61, 300.71;
2. Dismiss the allegation that Dave Min for Congress and Jay Petterson in his official capacity as treasurer violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3;
3. Approve the attached Factual and Legal Analysis;
4. Approve the appropriate letters; and
5. Close the file as to all Respondents effective 30 days after the date the certification of this vote is signed (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday).

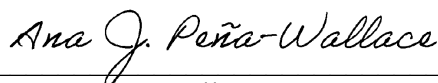
Lisa J. Stevenson  
Acting General Counsel

January 30, 2025

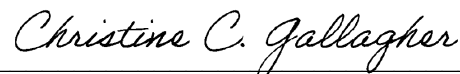
Date



Claudio J. Pavia  
Deputy Associate General Counsel for Enforcement



Ana J. Peña-Wallace  
Assistant General Counsel



Christine C. Gallagher  
Attorney

