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April 30, 2024

*By email to cela@fec.gov*Ms. Wanda D. Brown
Assistant General Counsel
Complaints Examination &
Legal Administration
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463**Re: AR 24-01****1199 SEIU United Healthcare Workers East
Federal Political Action Fund**

Dear Ms. Brown:

I write on behalf of the respondents in this matter, which arises from a recently completed audit of the 1199 SEIU United Healthcare Workers East Federal Political Action Fund ("1199 SEIU PAF") for the 2019-2020 election cycle. As your letter states, at issue for possible enforcement action is the Federal Election Commission ("Commission") Final Audit Report's Finding 2, which concluded that during 2020 1199 SEIU PAF "fail[ed] to properly disclose apparent independent expenditures totaling \$1,075,248 on Schedule E," of which it also "fail[ed] to file 48/24-Hour Reports for apparent independent expenditures, totaling \$75,000." As the respondents forthrightly acknowledged during the audit, these failures did occur. In light of these reporting errors we do not contend that the Commission should take no further action. The respondents are ready and willing to enter into an appropriate settlement in order to remedy those errors and put this matter behind them, and we respectfully request that the Office of General Counsel (OGC) either send this matter to the Alternative Dispute Resolution Office (ADRO) for the purpose of reaching that result, or recommend to the Commission that it do so.

The essential facts of 1199 SEIU PAF's reporting errors are as follows; they are reflected in Finding 2, 1199 SEIU PAF's reports submitted during 2020 and its amendments since, and 1199 SEIU PAF's written communications with the Audit Division and the Commission during the audit. 1199 SEIU PAF reported substantially more than \$1 million of independent expenditures on 48/24

reports in multiple races during October and November 2020. These disclosures included significant estimates, primarily because most of the independent expenditures involved the work of a single digital advertising vendor, and the actual figures for such advertising were persistently difficult to ascertain due to the nature of that advertising, an impediment that was exacerbated by the vendor's inability to provide complete underlying documentation to 1199 SEIU PAF. 1199 SEIU PAF then inadvertently incorrectly failed to report independent expenditures on Schedule E of its Pre-General and Post-General Reports, instead disclosing them on Schedule B, Line 29. And, 1199 SEIU PAF inadvertently failed to disclose on 48/24-Hour Reports two independent expenditures to its phone vendor totaling \$75,500 that also occurred during the last month before the November 3 general election.

In the course of the Audit Division's review of the records provided by 1199 SEIU PAF and respondents' own review of those records, 1199 SEIU PAF amended both reports last year in order properly to convert its erroneous Line 29 entries to Schedule E entries; add the two previously undisclosed independent expenditures; and update the contemporary estimates that appeared on the various 2020 48/24-Hour Reports with finally ascertainable figures, adding \$253,327 to the total independent expenditures otherwise reported, which in the end totaled \$1,075,248. In sum, then, all but \$75,500 of 1199 SEIU PAF's independent expenditure communications were disclosed on 48/24-Hour Reports, albeit including incorrect figures that both overestimated and underestimated their amounts at the time, and 1199 PAF's two periodic reports – one before and one after the election – that should have repeated its independent expenditure disclosures more accurately, as more information became available when they were filed, failed to do so.

We understand that the Commission will consider this referral from the Audit Division pursuant to its recently adopted procedural policy statement, "Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process," 89 Fed. Reg. 19729 (March 20, 2024) ("Initial Stage Policy"), which officially took effect just 11 days ago. That policy simplified the Commission's asserted options for dealing early on with enforcement matters, including Audit Division referrals. We acknowledge that none of the examples warranting a vote to dismiss a matter that the Initial Stage Policy describes, see *id.* at 19730, are present in this matter, and such a vote is not otherwise warranted where a respondent, as here, essentially accepts an adverse audit finding of the nature of Finding 2. We submit that the most appropriate of the other Initial Stage Policy options is that OGC either send this matter to the ADRO or recommend that the Commission find reason to believe that the violations described in Finding 2 occurred and that the Commission then forgo an investigation and instead assign this matter to the ADRO for pre-probable cause conciliation.

Our request describes two possible paths to the ADRO because we do not understand the Initial Stage Policy to change OGC's prerogative to send an Audit Division referral directly to the ADRO for resolution. As described by the Commission's publication entitled "Alternative Dispute Resolution by the Federal Election Commission," which is provided to every respondent upon notification by the ADRO of a referral of a matter to it for resolution, "[t]he ADRO, which operates as part of the FEC's Compliance Division, receives cases from the Office of General Counsel, (OGC), the Reports Analysis Division (RAD), the Audit Division (Audit), or by assignment from the

Federal Election Commission
Page 3

Commission.” That process operated along with the Commission’s just-now superseded initial stage policy for 17 years, although that policy, like its current successor, did not itself refer to the ADRO. See FEC, “Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process,” 72 Fed. Reg. 12545 (March 16, 2007). Accordingly, we understand that either path to the ADRO – from OGC or from the Commission – is procedurally available, and, while we defer as to which of the two to take here, for the following reasons either one should be because referral to the ADRO is the most appropriate course for achieving a resolution with the respondents.

First, no OGC investigation is required in order to determine what occurred with respect to Finding 2. Under the new Initial Stage Policy, “an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.” See 89 Fed. Reg. at 19730. In this referral matter, the Audit Division has already fully undertaken a comparable investigation and determined the exact scope of the violations with the respondents’ cooperation and provision of all of their relevant records. And, as the Final Audit Report describes, 1199 SEIU PAF has amended its reports at issue both to reflect the auditors’ interim findings (which the Final Audit Report confirmed) and to correct 1199 SEIU PAF’s contemporaneously reported estimates of its independent expenditures submitted on 48/24-Hour Reports. “Conciliation [is] appropriate when the Commission is certain that a violation has occurred, and the seriousness of the violation warrants conciliation.” *Id.* That describes the situation here.

Second, the kinds of reporting violations here are particularly well-suited for resolution by the ADRO. They consist of failures to fully and accurately disclose independent expenditures on 48/24-Hour Reports and to reflect those same independent expenditures on the correct schedule of the subsequent Form 3X Reports. The amounts involved are comparable to those that the ADRO has handled, and nearly all of the independent expenditure communications in fact were reported on timely 48/24-Hour Reports, if not their correct amounts. No novel or complex legal or factual issues are involved, and there is a single respondent (the treasurer is a respondent only in her official capacity). Accordingly, the ADRO is capable of negotiating the appropriate penalty and remedial aspects of a settlement for recommendation to the Commission.

Accordingly, we respectfully request that this matter be sent to the ADRO for pre-probable cause conciliation. Thank you for your consideration.

Yours truly,

A handwritten signature in black ink that reads "Laurence E. Gold". The signature is written in a cursive, flowing style.

Laurence E. Gold
Counsel for Respondents

cc: Helen Schaub, Treasurer