UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-22643 COOKE/GOODMAN

FEDERAL ELECTION COMMISSION, Plaintiff, v. DAVID RIVERA, Defendant.	OPPOSITION TO MOTION TO DISMISS

PLAINTIFF FEDERAL ELECTION COMMISSION'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT

The Court should deny defendant David Rivera's motion to dismiss the Federal Election Commission's ("FEC" or "Commission") amended complaint. The amended complaint alleges in detail how, in 2012, then-U.S. Congressman Rivera directly violated the Federal Election Campaign Act ("FECA" or "Act") by making more than $55,000 of in-kind contributions in the name of another to the primary campaign of Justin Lamar Sternad. (Am. Comp. (Docket No. 41).) Rivera bears liability for directly violating FECA's prohibition on contributions in the name of another, 52 U.S.C. § 30122.

Rivera's motion fails to show that the complaint should be dismissed. It argues that (1) the amended complaint does not state a claim because it fails to allege that Rivera concealed his identity from the vendors involved and the Sternad campaign and (2) the FEC's claim is barred by the statute of limitations. (Def. Rivera's Mot. to Dismiss Am. Compl. at 3-8 (Docket

No. 42) ("Mot.").)[1] Both arguments are meritless. As explained below, concealment of Rivera's identity from intermediaries or the campaign itself is not required to state a claim for a violation of section 30122. In addition, because the date of filing the amended complaint, under controlling authority, relates back to the date the original complaint was filed, Rivera's statute of limitations argument fails as well. The Court should deny the motion to dismiss.

BACKGROUND

I. LEGAL BACKGROUND

A. The FEC and FECA

Plaintiff FEC is a six-member independent federal agency that is responsible for administering, interpreting, and civilly enforcing FECA. *See* 52 U.S.C. §§ 30101-46. Congress authorized the Commission "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [FECA]," *id.* §§ 30107(a)(8), 30111(a)(8); and to investigate possible violations of the Act, *id.* § 30109(a)(1)-(2). The FEC has exclusive jurisdiction to initiate civil enforcement actions for violations of FECA in the United States District Courts. *Id.* §§ 30106(b)(1), 30109(a)(6).

FECA was enacted in significant part to "limit the actuality and appearance of corruption resulting from large individual financial contributions." *Buckley v. Valeo*, 424 U.S. 1, 26 (1976) (per curiam). To that end, FECA requires candidates, political parties, and political committees to disclose publicly the amounts they spend and receive in reports filed with the FEC. *See* 52 U.S.C. § 30104. FECA's disclosure requirements help voters make informed decisions at the

[1] Rivera's response to the amended complaint was due on January 29, 2019. Fed. R. Civ. P. 15(a)(3). In contravention of that deadline, the motion to dismiss was filed late on February 1, 2019. Although the FEC continues to object to Rivera's untimely filings, this motion should be denied on the merits for the reasons set forth in this opposition.

ballot box, deter corruption and its appearance by publicizing large contributions, and allow the FEC and the Department of Justice to detect violations of FECA's other provisions. *Buckley*, 424 U.S. at 66-69.

Additionally, FECA limits the dollar amounts and permissible sources of contributions to candidates for federal office, political parties, and political committees. 52 U.S.C. §§ 30116(a), 30118-19, 30121. During the 2011-2012 election cycle that is at issue in this case, no person could contribute in excess of $2,500 per election to a federal candidate.[2] Additionally, certain sources, such as foreign nationals and corporations, may not contribute any sum to a federal candidate's committee. *See id.* §§ 30118-19, 30121.

FECA defines "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). Because this definition broadly includes "anything of value," the term "contribution" includes *in-kind* contributions. 11 C.F.R. § 100.52(d). In-kind contributions consist of "the provision of any goods or services," such as "supplies" or "advertising services," without charge or at a less than fair market value. *Id.*

B. FECA's Prohibition on Making a Contribution in the Name of Another

FECA provides that "[n]o person shall make a contribution in the name of another person[.]" 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).[3] One type of contribution made in the

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[2] The $2,500 limit on contributions to candidate committees is indexed for inflation. *See* 52 U.S.C. § 30116(a)(1)(A) (contribution limit), 30116(c)(1)(B)(i) (establishing that limit is indexed to inflation); *see* Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 76 Fed. Reg. 8368 (Feb. 14, 2011).

[3] Effective September 1, 2014, the provisions of FECA that were codified in Title 2 of the United States Code were recodified in a new title, Title 52. *See* Editorial Reclassification Table, http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html. As a result, many of the relevant authorities cited herein refer to 2 U.S.C. § 441f.

name of another is a "false name" contribution. False name contributions include, but are not limited to, the scenario of a person "[m]aking a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source." 11 C.F.R. § 110.4(b)(2)(ii) (describing an example of a contribution in the name of another).

FECA's ban on making contributions in the names of others prevents people from evading FECA's disclosure requirements and from circumventing FECA's contribution limits. For example, under section 30122, a prohibited contributor (such as a foreign national or corporation) may not make an illicit contribution by using a false name. The statute also prevents even legal contributors such as individuals from using a false name to hide that they contributed an excessive amount of money to a campaign or committee. As a result, courts have repeatedly held that section 30122 serves the government's important interests in promoting campaign finance disclosure and preventing the circumvention of FECA's contribution limits. *See, e.g.*, *United States v. Whittemore*, 776 F.3d 1074, 1079 (9th Cir. 2015); *United States v. O'Donnell*, 608 F.3d 546, 554 (9th Cir. 2010); *Mariani v. United States*, 212 F.3d 761 775 (3d Cir. 2000) (en banc); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990). Because making a contribution in the name of another is a common way for individuals to attempt to hide illicit contributions, section 30122 historically has been one of FECA's most "frequently violated prohibitions." *See* Department of Justice, Federal Prosecution of Election Offenses 166 (7th ed. May 2007).[4]

[4] *See* https://www.justice.gov/sites/default/files/criminal/legacy/2013/09/30/electbook-rvs0807.pdf.

Reflecting section 30122's importance to FECA's system of disclosure requirements and contributions limits, Congress authorized the courts to impose civil and criminal penalties for violations of section 30122 that are significantly enhanced relative to those for other FECA provisions. Civil penalties for knowing and willful violations of section 30122 are authorized to be at least five times greater than the penalties for other FECA violations. *See* 52 U.S.C. § 30109(a)(6)(C).

II. FACTUAL BACKGROUND

A. The Amended Complaint Alleges That Rivera Made More Than $55,000 in Contributions in the Name of Another to the Sternad Campaign

Rivera was a United States Congressman representing Florida's 25th Congressional District from January 2011 through January 2013. (*See* Am. Compl. ¶ 6.) In 2012, Rivera unsuccessfully ran for re-election as the Republican candidate to represent Florida's redrawn 26th Congressional District. (*Id.*) Rivera lost that election to Democrat Joe Garcia. (*Id.* ¶ 12.) Garcia became the Democratic nominee in the 2012 general election after defeating three other candidates in the Democratic primary, including Justin Lemar Sternad. (*Id.*)

During the Democratic primary, Rivera secretly provided more than $55,000 in funds to Sternad's campaign in an apparent attempt to oppose and weaken Garcia, who was likely to be Rivera's general election opponent. (*See, e.g.*, Am. Compl. ¶¶ 1, 24.) In April 2012, Rivera met with Ana Sol Alliegro to seek her assistance in providing financial support to Sternad's primary campaign through funds Rivera would supply, and directed Alliegro to approach Sternad with an offer of Rivera helping to fund Sternad's campaign. (*Id.* ¶¶ 14-15.) Alliegro spoke with Sternad and offered to transmit Rivera's funds to Sternad's campaign, to which Sternad agreed. (*Id.* ¶ 15.) At Rivera's direction, Alliegro then spent the next few months serving as an intermediary transmitting funds from Rivera to vendors providing services to the Sternad Committee. (*Id.*)

During the Democratic primary, Rivera provided more than $55,000 in in-kind contributions to Sternad in the form of campaign services. (Am. Compl. ¶¶ 13, 16.) Rivera coordinated and funded the production and distribution of campaign materials for the Sternad Committee. (*Id.* ¶ 16.) Rivera worked with the vendors, separately and with Alliegro, to design and distribute materials for the Sternad campaign. (*Id.* ¶ 17.)

Rivera also ensured that the vendors were paid for their services to Sternad's campaign while taking steps to ensure that his involvement in those payments would be concealed to those not involved in the arrangement. (*Id.* ¶¶ 17-19.) Rivera used cash to pay the vendors to conceal his involvement. (*Id.* ¶¶ 13, 16-19.) Alliegro delivered some of those cash payments to the vendors, while others were delivered by a courier service. (*Id.* ¶ 18.) In one instance, after the owner of Rapid Mail asked Rivera about an outstanding payment for its work for Sternad, Rivera instructed the owner to check his mailbox, where the owner found an envelope containing several thousand dollars in cash. (*Id.* ¶ 19.) In another example of Rivera's efforts to his hide his payments to the vendors, Rivera insisted that Expert Printing not use his name on its invoices for services to Sternad after an instance where Expert Printing had done so. (*Id.* ¶ 17.) These in-kind contributions to Sternad continued from July through August 2012. (*Id.* ¶¶ 13, 19-20.)

In the meantime, following instructions from Rivera conveyed by Alliegro that Rivera's contributions were made in the name of another, Sternad falsely reported the contributions as loans from his personal funds to the Sternad Committee. (Am. Compl. ¶ 20.) In multiple FEC reports from May to August 2012, Sternad falsely stated he had used his own personal funds to loan money to his campaign to pay for the more than $55,000 in services from Rivera. (*Id.*)

In 2013 and 2014, Sternad and Alliegro pleaded guilty to criminal charges relating to the scheme and served terms of imprisonment. *See* Am. Compl. ¶¶ 21-23; Judgment at 1-2, *United*

States v. Ana Alliegro, No. 14-20102 (S.D. Fla. Sept. 10, 2014) (Docket No. 118); Judgment at 1, *United States v. Justin Lamar Sternad*, No. 13-CR-20108 (S.D. Fla. July 11, 2014) (Docket No. 43). After his 2013 guilty plea, Sternad filed amended disclosure reports with the FEC attributing the in-kind contributions at issue to "Unknown Contributors" rather than himself. (Am. Compl. ¶ 22.)

B. Procedural History

In April 2013, the FEC notified Rivera that it had received information indicating that he may have violated FECA. (Am. Compl. ¶ 26.) After an investigation, the Commission unanimously concluded that there was probable cause to believe that Rivera knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). (*Id.* ¶¶ 29-30.) After attempts to reach a conciliation agreement failed, the Commission filed this lawsuit on July 14, 2017. (Am. Compl. ¶ 32; Comp. (Docket No. 1).) This Court granted the Commission additional time to serve the summons and Complaint upon Rivera after finding that "[w]hether through coincidence or by design" Rivera "has dodged service in this matter and has otherwise failed to respond" to the FEC and the United States Marshals Service's attempts to contact him. (Order Granting Mot. to Extend the Time for Service at 1 (Docket No. 11).) The FEC successfully served Rivera on October 20, 2017. (Docket No. 15.)

Rivera then moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). (Mot. to Dismiss Compl. (Docket No. 17).) Following the submission of the parties' briefing on Rivera's motion to dismiss, the United States District Court for the District of Utah issued an opinion in another case brought by the FEC. In that opinion, granting a motion to dismiss, the Utah district court enjoined the Commission from enforcing the helping or assisting portion of the FEC's regulation codified at 11 C.F.R. § 110.4(b)(1)(iii) and ordered that subsection stricken from the

Code of Federal Regulations. *FEC v. Swallow*, 304 F. Supp. 3d 1113, 1118 (D. Utah 2018). The Commission thereafter filed a notice of supplemental authority in this Court, informing the Court and Rivera of the decision in *Swallow*. (FEC's Notice of Suppl. Authority (Docket No. 30).)

The Court subsequently granted Rivera's motion to dismiss. (Order on Mot. to Dismiss at 1-5 (Docket No. 31).) After summarizing the Commission's original complaint, Rivera's dismissal motion, and the decision in *Swallow*, the Court determined that "*Swallow* is fatal to the FEC's claim against Rivera." (*Id.* at 4.) The Commission then sought leave to file an amended complaint focusing on Rivera's primary liability for violating FECA's prohibition on contributions in the name of another, 52 U.S.C. § 30122. (FEC's Mot. to Reopen and for Leave to File Am. Compl. (Docket No. 32).) The Court granted that motion (Order, January 5, 2019 (Docket No. 40)) and the Amended Complaint was filed on January 15, 2019. (Docket No. 41.)

ARGUMENT

I. STANDARD OF REVIEW

To survive a motion to dismiss, a complaint need only "contain sufficient factual allegations to 'state a claim to relief that is plausible on its face.'" *Moore v. Grady Mem'l Hosp. Corp.*, 834 F.3d 1168, 1171 (11th Cir. 2016) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint "does not need detailed factual allegations," but only factual allegations that are "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (same). When reviewing a motion to dismiss, a court must accept the plaintiff's allegations as true and evaluate all plausible inferences derived from those facts in favor of the plaintiff. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012) (per curiam). "The threshold of sufficiency that a complaint must meet to survive a motion to dismiss for failure to state a claim is . . .

'exceedingly low.'" *Corbett v. Transp. Sec. Admin.*, 968 F. Supp. 2d 1171, 1178 (S.D. Fla. 2012) (quoting *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 703 (11th Cir. 1985)).

II. THE AMENDED COMPLAINT STATES A CLAIM THAT RIVERA VIOLATED SECTION 30122

Rivera principally argues that he could have violated section 30122 only if his identity was concealed from Sternad and the vendors. (Mot. at 3-6.) But such a "'concealment element'" of the type Rivera refers to and describes (*id.* at 4) is unnecessary in order to state a claim under section 30122. Rivera's cramped theory of liability — which cites no authorities (Mot. at 3-6) — is incorrect. The violation alleged here takes place when the contribution is made in the name of another. That the five contributions at issue were (1) made in cash; (2) structured as in-kind contributions through vendors; (3) more than 22 times the legal limit; and (4) made to a candidate seeking the same office Rivera was seeking and to a candidate that was in a rival political party are all background facts that help explain the context of the contributions, including Rivera's efforts to conceal that he was the person making the contributions. Indeed, when Rivera's name was used by a vendor, Rivera insisted that the vendor not use his name on invoices because it contradicted his scheme. (Am Compl. ¶ 17.) The contributions violated section 30122 because they were made in the name of another.

The text of section 30122 itself demonstrates that the theory behind Rivera's motion is wrong. It plainly states that "[n]o person shall make a contribution in the name of another person." 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(1)(i) (same). That is exactly what is alleged and what occurred. (Am. Compl. ¶¶ 12-25, 34-35.) Such activity falls directly within the examples of "*contributions in the name of another*" that the FEC has codified, including the "[m]aking a contribution of money . . . and attributing as the source of the money . . . another person when in fact the contributor is the source." 11 C.F.R. § 110.4(b)(2)(ii). Nothing in

section 30122's text support's Rivera's notion that the recipient's knowledge of the identity of the contributor negates the contributor's liability. Had Congress intended to provide that "no person shall make a contribution in the name of another person *without the recipient's knowledge*," it would have so provided. It did not. On the contrary, in addition to contributors' liability, Congress provided liability for anyone who "*knowingly* permit[s] his name to be used to effect such a contribution" or who "*knowingly* accept[s] a contribution made by one person in the name of another person," 52 U.S.C. § 30122 (emphases added), thus confirming that knowing a true source does not remove liability. Indeed, knowledge of misattribution by a recipient or by a person knowingly allowing his name to be used extends FECA's name-of-another liability to other responsible persons, regardless of whether the identity of the true contributor is also known. The text of section 30122 thus itself illustrates the flaw in Rivera's argument.

Rivera's argument also misconceives the purpose of section 30122. The intent of that provision is not merely "to ensure the candidate on whose behalf the donation was being made [was] advised as to the true identity of the donor" (Mot. at 6), but also serves Congress's more foundational purposes in making voters aware of the sources of campaign financing and establishing base contribution limits to "limit the actuality and appearance of corruption resulting from large individual financial contributions." *Buckley*, 424 U.S. at 26. Section 30122 "prevent[s] the circumvention of the ban on corporate and union contributions," "prevent[s] circumvention of the limits on contributions by individuals and groups . . . and the prohibition on contributions by foreign nationals," and "ensures that proper disclosure of the actual sources of campaign contributions occurs in federal elections." *Mariani v. United States*, 80 F. Supp. 2d 352, 368 (M.D. Pa. 1999) (certifying constitutional questions to *en banc* Third Circuit); *see also Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (explaining that section 30122

prevents "circumvent[ion]" of other FECA restrictions); *id.* at 1261 (explaining that a "major purpose behind the disclosure provision is to deter or expose corruption, 'and therefore to minimize the influence that unaccountable . . . individuals can have on elected federal officials'" (quoting *FEC v. Furgatch*, 807 F.2d 857, 862 (9th Cir. 1987))); FEC Advisory Op. 1986-41, http://saos.fec.gov/aodocs/1986-41.pdf (last visited Feb. 13, 2019) (explaining that section 30122 "serves to insure disclosure of the source of contributions to Federal candidates and political committees as well as compliance with the Act's limitations and prohibitions").

Limiting the size of contributions and requiring their disclosure to the public serves Congress's interest in the "avoidance of the appearance of improper influence" and preventing the erosion of public "confidence in the system of representative Government." *Buckley*, 424 U.S. at 27 (internal quotation marks omitted). Thus, when Congress was passing FECA, the concerns that animated the debates included concerns that previously existing limitations such as the $5,000 limit imposed by the Hatch Act of 1939 were being "routinely circumvented"; that "parties and candidates alike" were "rely[ing] extensively on a few big givers to meet their expanded needs"; and that the best estimates were "that 90 percent of the money raised for political campaigns c[ame] from 1 percent of the contributors." 117 Cong. Rec. 43,410 (1971) (statement of Rep. Abzug).[5] It was these concerns of improper quid pro quo arrangements, and the appearance of such arrangements, that led to the contribution limits that Rivera's $55,000 contributions here breached by a factor of twenty. *See Buckley*, 424 U.S. at 26-27 ("To the extent that large contributions are given to secure a political quid pro quo from current and

[5] *See also* David W. Adamany & George E. Agree, *Political Money: A Strategy for Campaign Financing in America* 45 (Johns Hopkins University Press 1975) (twenty-one members of a single family contributed more than $1.8 million in the 1968 elections, an average of more than $85,000 each).

potential office holders, the integrity of our system of representative democracy is undermined."). Rivera's attempt to conceal his contributions by making them in the name of another directly violated section 30122, which in turn supports FECA's other provisions limiting contributions and requiring disclosure of who is funding campaigns and political messages. *See Goland*, 903 F.2d at 1261 (explaining that the "Congressional goal furthered by disclosure and reporting was to keep the electorate fully informed of the sources of campaign funding and how the candidate spends the money" and "to gather the data necessary to detect violations of the contribution limits" (citing *Buckley*, 424 U.S. 1, 67-68)).

Accordingly, courts analyzing violations of section 30122 have not hesitated to enforce that provision in circumstances such as these where the campaign or committee had knowledge of the sources of funds. *See, e.g.*, *United States v. Boender*, 649 F.3d 650, 659-61 (7th Cir. 2011) (sustaining contributor's section 30122 liability for use of straw donor in case involving alleged quid pro quo scheme in which candidate was aware of the contributor's identity); *United States v. Smukler*, 330 F. Supp.3d 1050, 1061 (E.D. Pa. 2018) (denying motion to dismiss and finding that the "indictment properly charges that defendant made a conduit contribution"); *United States v. Smukler*, No. CR 17-563-02, 2018 WL 3416401, at *3 (E.D. Pa. July 13, 2018) (explaining factual context of a violation where "defendant sent a check for $25,000 [to candidate] and instructed [candidate] to transfer $23,750 from her personal account to the campaign account"); Judgement, *United States v. Smukler*, No. CR 17-563-02 (E.D. Pa. Dec. 7, 2018) (Docket No. 176) (jury verdict finding defendant guilty of section 30122 violation).

And the FEC itself has regularly enforced section 30122 in accordance with its plain terms. *See, e.g.*, Matter Under Review ("MUR") 4322/4650 (Waldholtz) (where the campaign knowingly accepted approximately $1.8 million in false name contributions from candidate's

father and attributed contributions to the candidate);[6] MUR 6922 (ACA International) (where, in an effort to address a perceived shortfall in a political action committee's bank account, a corporate officer authorized a transfer of $23,419 to committee's account where the committee was aware of the true source).[7]

The facts alleged in the FEC's amended complaint themselves demonstrate why section 30122 liability is not negated by the recipient's knowledge of the contributor's identity. The contributions at issue here only had value to Rivera and Sternad so long as they were not publicly disclosed to be Rivera's. If Rivera had been shown to be attempting to support a candidate in order to have an easier general election opponent, the inauthentic nature of that support could have made it less valuable to Sternad. And if Rivera had been revealed to have been supporting a democratic candidate and potential future opponent, he would have undermined his own campaign. Rivera's provision of excess contributions, made in the name of another in violation of FECA, triggers liability under section 30122 regardless of whether Sternad or others also violated that provision.

II. RIVERA'S LIMITATIONS ARGUMENT FAILS

Rivera's argument that the Commission's amended complaint is barred by the statute of limitations (Mot. at 6-9) fails because the cause of action in the FEC's amended complaint relates back to the date the original complaint was filed under controlling authority. The Federal Rules of Civil procedure provide that an amended pleading relates back to the date of the original pleading when it arises "out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). This disjunctive standard is

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6 https://www.fec.gov/files/legal/murs/current/93382.pdf.

7 https://www.fec.gov/files/legal/murs/current/111951.pdf.

easily satisfied in this case where both the original and amended complaint are based on the same in-kind contributions, involving the same parties, and the same specific transactions and conduct, on the same specific dates.

Both the Commission's original and amended complaint allege a violation of 52 U.S.C. § 30122 through Rivera's provision of in-kind cash contributions through certain vendors. (*Compare* Compl. ¶ 1 (Docket No.1), *with* Am. Compl. ¶ 1 (Docket No. 41) ¶ 1 ("Am. Compl.").) The FEC's amended complaint more specifically identifies how Rivera's conduct primarily violated section 30122, including for the reasons that he "delivered" or "arranged for cash . . . to be delivered," instead of more general prior allegations regarding Rivera's involvement in the scheme. (Comp. ¶¶ 1, 18; Am. Comp. ¶¶ 1, 18.) It is entirely appropriate for "an amended claim . . . to fill in facts missing from the original claim" or "expand the facts" or "further specify [the] original claims," which is "precisely the sort of amendment contemplated by Rule 15(c)" and is what the FEC's amended complaint accomplished. *Dean v. United States*, 278 F.3d 1218, 1222 (11th Cir. 2002) (per curiam) (concluding that amendment should have been permitted and explaining that "[t]he key consideration is that the amended claim arises from the same conduct and occurrences upon which the original claim was based"). The fact that the amended complaint's damage claim is reduced, focusing on a subset of the transactions included in the original complaint, further supports the coextensive nature between the original and amended complaint. (*Compare* Compl. ¶¶ 13, 19-20, Prayer for Relief C.1 (requesting $486,000), *with* Am. Compl. ¶ 13, Prayer for Relief C.1 (requesting $389,209).)

Additionally, the "critical issue in determining whether an amendment relates back to the original complaint is whether the original complaint gave the defendant notice of the claim asserted in the amendment." *Duberry v. Postmaster Gen.*, 652 F. App'x 770, 772 (11th Cir.

2016) (per curiam) (citing *Moore v. Baker*, 989 F.2d 1129, 1131 (11th Cir. 1993)). Here, there is no question that Rivera was on notice of the FEC's claim, including the particular dates, amounts, and vendors involved — all tellingly undisputed in Rivera's filings — in the Commission's allegation that he violated FECA's prohibition on making contributions in the names of others. (*Compare* Chart, Compl. ¶ 13, *with* Chart, Am. Compl. ¶ 13 (showing the amended complaint is limited to five of the same six transactions alleged in the original complaint).) Rivera's own recitations of the similarities between the complaint and amended complaint (Mot. at 8-9 (listing paragraphs)) demonstrate the close relationship between those pleadings and establish that Rivera had notice of the Commission's claim that he violated FECA's prohibition on making contributions in the name of another. *Cf. United States v. Whittemore*, No. 12-CR-0058, 2013 WL 5236278, at *2-*3 (D. Nev. Sept. 16, 2013), *aff'd*, 776 F.3d 1074 (9th Cir. 2015) (rejecting argument that indictment failed to put defendant on notice of charge of violating FECA's ban on contributions in the name of another). And if he were correct that the differences between the way in which the complaints describe Rivera's use of cash and concealment efforts mean that the complaints do not involve the "same conduct, transaction, or occurrences" as those from the original complaint (Mot. at 9), then hardly any amended pleading could meet the standard. That is not the law, however. This is not a situation in which "the [FEC] would have to prove 'completely different facts' than required to recover on the claims in the original complaint," in which case "the new claims [would] not relate back." *Caron v. Norwegian Cruise Line*, 910 F.3d 1359, 1368 (11th Cir. 2018) (quoting *Moore*, 989 F.2d at 1132). Rather, the amended complaint reiterates and expands upon the factual allegations that were included in the original complaint and Rivera unquestionably had notice of the FEC's claim

that he violated section 30122. *Duberry*, 652 F. App'x at 772. Accordingly, the amended complaint relates back and Rivera's limitations argument should be rejected.

CONCLUSION

For the foregoing reasons, the Court should deny Rivera's Motion to Dismiss the Amended Complaint.

Respectfully submitted,

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