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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

	)	
FEDERAL ELECTION COMMISSION,	)	
Plaintiff,	)	Case No. 2:15-cv-00439-DB
v.	)	
JEREMY JOHNSON, et al.,	)	<b>CROSS-MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS</b>
Defendants.	)	District Judge Dee Benson
	)	

**PLAINTIFF FEDERAL ELECTION COMMISSION’S  
CROSS-MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Pursuant to Federal Rule of Civil Procedure 12(c), plaintiff Federal Election Commission cross-moves for judgment on the pleadings against the third affirmative defense of defendant John Swallow’s answer. (See Def.’s Answer to Am. Compl. at 37-38 (Docket No. 45).)

On September 20, 2017, the Court stayed all proceedings in this case pending defendant Jeremy Johnson’s currently pending criminal appeal. (See Joint Stipulation and Order to Stay Proceedings ¶ 1 (Docket No. 91).) As an exception to that stay, the Court ordered that Swallow could file a motion under Rule 12(c) by October 23, 2017, and that in response the Commission could cross-move under Rule 12(c) “on any issues raised by defendant Swallow’s Rule 12(c) motion.” (*Id.*) On October 23, 2017, Swallow moved under Rule 12(c) against the Commission

in part on the basis of the third affirmative defense of his answer. (*See* Def. John Swallow’s Mot. to Dismiss, Mot. for J. on the Pleadings, and Mem. in Supp. at vi (Docket No. 98).) The Commission now cross-moves under Rule 12(c) against the third affirmative defense.

The Court should grant the Commission’s cross-motion. Judgment against a pleaded affirmative defense is warranted under Rule 12(c) where the “non-moving party can prove no set of facts which would form the basis for relief” and thus the defense is “insufficient as a matter of law.” *FDIC ex rel. Heritage Bank & Trust v. Lowe*, 809 F. Supp. 856, 858-59 (D. Utah 1992) (dismissing affirmative defenses under Rule 12(c)). This Court has previously entered judgment on the pleadings in this case against defendant Jeremy Johnson’s legally insufficient affirmative defenses. (*See* Order on Mot. for Partial J. on the Pleadings or to Strike Affirmative Defenses (Docket No. 34).) Here, Swallow’s third affirmative defense is insufficient as a matter of law for the reasons stated in the Commission’s contemporaneously filed Memorandum in Opposition to Defendant John Swallow’s Motions to Dismiss and for Judgment on the Pleadings and in Support of the Commission’s Cross-Motion for Judgment on the Pleadings. *See* DUCivR 7-1(b)(1)(A) (allowing a cross-movant to “incorporate the briefing contained in a memorandum in opposition”).

Respectfully submitted,

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November 20, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2017, I electronically filed plaintiff Federal Election Commission's Cross-Motion for Partial Judgment on the Pleadings with the Clerk of the United States District Court for the District of Utah by using the Court's CM/ECF system, which sent notification of such filing to the following:

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