UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FEDERAL ELECTION COMMISSION,
999 E Street, N.W.
Washington, DC 20463

Plaintiff.

v.

EDWARD J. LYNCH. Sr.,
10269 Trianon Pl.
Wellington, FL 33449,

LYNCH FOR CONGRESS,
P.O. Box 210544,
Royal Palm Beach, FL 33421,

and

EDWARD J. LYNCH, Sr.,
In his official capacity as Treasurer of
Lynch for Congress,
c/o Lynch for Congress
P.O. Box 210544,
Royal Palm Beach, FL 33421,

Defendants.

Civil Action No. 15-81732-civ-Marra

AMENDED MOTION TO DISMISS

MOTION 1 TO DISMISS BASED ON LACK OF JURISDICTION

1. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009), citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2008). The United States Supreme Court in Iqbal clarified that the decision in Twombly "expounded

the pleading standard for 'all civil actions.'" Id. at 1953. The Court explained that although a court must accept as true all of the factual allegations contained in a complaint, that requirement does not apply to legal conclusions; therefore, the pleadings must include factual allegations to support the legal claims asserted. Id. at 1949, 1953. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 1949, citing Twombly, 550 U.S. at 555. Ere a can

2. In its Iqbal decision, the Supreme Court dictated that "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. at 1949. It further clarified: First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation.). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . .[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not shown—that the pleader is entitled to relief.

3. The determination of whether a plaintiff has sufficiently pled a claim "is a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Iqbal, 129 S.Ct. at 1950, citing Twombly, 550 U.S. at 556. The Supreme Court set forth a three-step process for courts to apply in considering a motion to dismiss. First, the court must identify the elements of the cause of action in light of interpreting case authority. Id. at 1947. Second, the court should begin "by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1949-50. Essentially, the court should ignore all conclusory allegations in the pleading. Third, the court must consider any remaining factual allegations to "determine whether they plausibly give rise to an entitlement of relief." Id. at 1950.

4. Ultimately, to survive a motion to dismiss, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct."
5. On June 10, 2016, the Plaintiff served on the Defendant their first Request of Discovery.
6. In the Request of Discovery, the Plaintiff acknowledged that the Defendant did not file the requisite paperwork after the April 2010 Special Election to become a candidate or establish a committee. Federal regulations requires that a candidate file a new Form 1 and Form 2 in order to establish a new candidacy for each election cycle.
7. The Plaintiff does not list dates when the Defendant was a candidate as dates specifically covering the dates in the suit. The Plaintiff merely incorrectly states

that the Defendant was a candidate, contrary to the Plaintiff's requests for discovery admissions.

8. In the complaint, the Plaintiff states, "This complaint seeks relief for each of the following expenditures, made on or after August 20, 2010 – **months after Mr. Lynch lost the April 2010 special election for Florida's 19th Congressional District in the United States House of Representatives** –of personal expenses of M. Lynch with the Lynch Committee's campaign funds:" (emphasis added)
9. The Plaintiff admits that the Defendant was, indeed, not a candidate for office.
10. The Defendant was not a candidate for office on or after August 20, 2010. As such, the FEC had no jurisdiction and there is no basis for any legal conclusion that the Defendant was a candidate therefore, he did not fall under the jurisdiction of the FEC.
11. There are no factual allegations made by the Plaintiff that the Defendant was, indeed, a candidate on or after August 20, 2010 and, as such, the FEC had no jurisdiction with regard to the Defendant being a candidate with regard to reporting requirements and there are no reporting requirements for testing the waters if the individual does not ultimately file the necessary paperwork to become a candidate.
12. Under the Federal Election Campaign Act, an individual who seeks nomination for election or election to federal office becomes a "candidate", and thereby triggers registration and reporting requirements if he or she receives contributions or makes expenditures in excess of $5,000 or consents to another person's doing

so in excess of $5,000 on the individuals behalf. 52 U.S.C. § 30101(2)(A); 11 CFR 100.3(a).

13. Under FEC regulations, an individual who raises or spends money only to "test the waters" does not become a candidate. 11CFR 100.72, 100.131
14. The Plaintiff adequately asserts that the Defendant was a candidate, acted in the capacity of Treasurer and there was a Committee during the November 2008 election and the April 2010 election only and never asserts that the Defendant was a candidate or there was a committee on or after August 20, 2010.
15. The Plaintiff misstates that the Defendant spent "campaign funds" on personal expenses as there was no campaign, he was not a candidate for any office (as the Plaintiff admits in their discovery request), there was no Committee and he was not acting in the capacity of Treasurer and the previous committee bank account had no money. As such, the FEC has no jurisdiction or basis to file a claim based on the Defendant acting in the capacity of a candidate or treasurer or that there was a committee.
16. The Defendant could not have spent "campaign funds" as the Plaintiff claims as there was neither a campaign nor a candidate after August 20, 2010, in fact the Defendant ceased being a candidat after the April 2010 Special Election.
17. The Defendant did file a Statement of Candidacy and Statement of Organization for the 2008 election and, subsequently for the April 2010 Special Election, only, as the Plaintiff admits.
18. After the Defendant's loss in the April 2010 Special Election he did not file a Statement of Candidacy nor a Statement of Organization for any subsequent

election after April 2010 and, as such, he ceased being a candidate, he ceased acting as the Treasurer and the Committee was no longer an entity, active or otherwise.

19. The Defendant took no actions to qualify for the ballot under Florida State Law after the April 2010 Special Election.

20. According to The Federal Election Commission, candidates MUST register for each election cycle by filing a "new" FEC Form 2 in order to be considered a candidate and to establish a committee.

21. After the loss in the April 2010 Special Election, the Defendant decided not to become a candidate in the August 2010 Primary Election or the November 2010 General Election.

22. Before deciding whether or not to campaign for the 2012 election, the Defendant decided to "test the waters", and explore the feasibility of becoming a candidate by ascertaining information such as opinions regarding his feasibility, popularity and the outcome of the November 2010 General Election. As such the Defendant traveled around the district for several months prior to and shortly after the 2010 General Election. All of this "testing the waters" resulted in the Defendant deciding not to run for office again.

23. According to The Federal Election Commission regulations, an individual who merely conducts selected testing the waters activities that fall within the exemptions in FEC regulations does to have to register or report as a candidate even if the individual raises or spends more than $5,000 on those activities. In the

complaint, the Plaintiff admits that the amount allegedly spent by the Defendant was $1,374.12, significantly less than the $5,000 threshold.

24. Under FEC regulations, an individual who raises or spends money only to "test the waters" (but not to campaign for office) does not become a candidate. 11 CFR 100.72, 100.131.

25. According to the civil complaint, the Defendant spent no more than $1,374.12, significantly below the $5,000 threshold.

26. According to The Federal Election Commission regulations, an individual who tests the waters must keep financial records and IF he later becomes a candidate, the money raised and spent to test the waters must be reported by the campaign as contributions and expenditures.

27. According to The Federal Election Commission regulations, "If an individual decides not to run for federal office, **there is no obligation to report these finances**, and the donations used in testing-the-waters (if any) will not count as contributions." As the Defendant decided not to run for federal office he was not obligated to report these finances and, as such, did not. Further, these monies did not count as contributions.

28. Whereas, the Defendant was not obligated to report the expenditures and he did not expend any amount close to the $5,000 threshold, the FEC had no jurisdiction over the Defendant to warrant filing of a claim.

29. According to The Federal Election Commission regulations, "another consideration, **though not a requirement**, is the segregation of testing-the-waters

funds from personal funds." Since the Defendant was not a candidate there was no requirement to segregate personal funds from funds used to test the waters.

30. Under the Federal Election Campaign Act, an individual who seeks nomination for election or election to federal office becomes a "candidate" (and thereby triggers registration and reporting requirements) if he or she receives contributions or makes expenditures in excess of $5,000 or consents to another person's doing so in excess of $5,000 on the individual's behalf. 52 U.S.C. § 30101(2)(A); 11 CFR 100.3(a).

31. The Defendant spent significantly less that $5,000 when testing the waters to decide whether or not to run for office.

32. All of the funds used to test the waters came from the Defendant's personal funds and since the Defendant ultimately decided to not run for office prior to reaching any financial threshold there was no obligation to report any finances to the FEC and the Defendant never became a candidate. Thus, the FEC did not have jurisdiction over the Defendant, as such, there was no authority to file a claim against the Defendant.

33. No action taken prior to August 20, 2010 could be at issue because it is prior to the applicable Statue of Limitations.

34. WHEREFORE, there is no factual content that allows the court to draw the reasonable inference that the Defendant is liable for any misconduct since he was not under the jurisdiction of the FEC as he was not a candidate, he was not Treasurer and there was no longer any committee as the Defendant did not file the requisite forms if he were to become a candidate and that the Defendant followed

the FEC regulations regarding the "testing the waters" period, the Defendant prays the court to dismiss the complaint with prejudice and award sanctions.

35. WHEREFORE, Defendant prays that sanctions be imposed, as the claim is frivolous as the Plaintiff knew or should have known that the pursuit of litigation was without any reasonable basis in law or equity. (See, e.g., Denman v. Public Service Electric & Gas Co., No. A-3025-10T4 This is a bad faith attempt at imposing undue financial burden on the Defendant by knowingly and willfully filing a claim in violation of U. S Code and Federal Election Commission rules and regulations.

36. WHEREFORE, Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable and sanctions be levied against them as Counsel may also be criminally liable if they demand settlement for a clearly frivolous lawsuit. In an October 14, 2015 letter from the OGC, the OGC states, "Please make the check for the **civil penalty** payable to the Federal Elections Commission." (Emphasis added) The FEC counsel knew full well, and/or should have known that they were demanding settlement and conciliation for a time when the Defendant was not even a candidate. See, e.g., State of New Hampshire v. Hynes, 978 A.2d 264, 268 (N.H. 2009)

37. WHEREFORE, Defendant prays that sanctions be imposed, as the claim is a bad faith attempt to besmirch the reputation of the Defendant by including in the claim allegations, which are not at issue because they are prior to the applicable Statute of Limitations.

MOTION 2 TO DISMISS BASED ON FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

38. On June 10, 2016, the Plaintiff served on the Defendant their first Request of Discovery.

39. Under the Federal Election Campaign Act, an individual who seeks nomination for election or election to federal office becomes a "candidate", and thereby triggers registration and reporting requirements if he or she receives contributions or makes expenditures in excess of $5,000 or consents to another person's doing so in excess of $5,000 on the individuals behalf. 52 U.S.C. § 30101(2)(A); 11 CFR 100.3(a).

40. Under FEC regulations, an individual who raises or spends money only to "test the waters" does not become a candidate. 11CFR 100.72, 100.131

41. The Defendant was not a candidate after the April 2010 Special Election, therefore he did not trigger any reporting requirements and did not fall under the jurisdiction of the FEC as a candidate.

42. In the Request of Discovery, the Plaintiff acknowledged that the Defendant did not file the requisite paperwork after the April 2010 Special Election to become a candidate or establish a committee. Federal regulations requires that a candidate file a new Form 1 and Form 2 in order to establish a new candidacy for each election cycle.

43. The Plaintiff does not list dates when the Defendant was a candidate as dates specifically covering the dates in the suit. The Plaintiff merely incorrectly states that the Defendant was a candidate.

44. In the complaint, the Plaintiff states, "This complaint seeks relief for each of the following expenditures, made on or after August 20, 2010 – **months after Mr. Lynch lost the April 2010 special election for Florida's 19th Congressional District in the United States House of Representatives** –of personal expenses of M. Lynch with the Lynch Committee's campaign funds:" (emphasis added)

45. The Plaintiff admits that the Defendant was, indeed, not a candidate for office, could not have acted as treasurer and did not have a committee.

46. The Defendant was not a candidate for office on or after August 20, 2010. As such, the FEC had no jurisdiction and there is no basis for any legal conclusion that the Defendant was a candidate therefore, he did not fall under the jurisdiction of the FEC.

47. There are no factual allegations made by the Plaintiff that the Defendant was, indeed, a candidate on or after August 20, 2010 and, as such, the FEC had no jurisdiction with regard to the Defendant being a candidate.

48. The Plaintiff adequately asserts that the Defendant was a candidate during the November 2008 election and the April 2010 election only and never asserts that the Defendant was a candidate on or after August 20, 2010.

49. The Plaintiff misstates that the Defendant spent "campaign funds" on personal expenses as there was no campaign, he was not a candidate for any office (as the Plaintiff admits in their discovery request), there was no Committee and he was not acting in the capacity of Treasurer. As such, the FEC has no jurisdiction or basis to file a claim based on the Defendant acting in the capacity of a candidate or treasurer or that there was a committee.

50. The Defendant could not have spent "campaign funds" as the Plaintiff claims as there was neither a campaign nor a candidate.

51. The Defendant did file a Statement of Candidacy and Statement of Organization for the 2008 election and, subsequently for the April 2010 Special Election, only.

52. After the Defendant's loss in the April 2010 Special Election he did not file a Statement of Candidacy nor a Statement of Organization for any subsequent election after April 2010 and, as such, he ceased being a candidate, he ceased acting as the Treasurer and the Committee was no longer an entity, active or otherwise.

53. The Defendant took no actions to qualify for the ballot under Florida State Law after the April 2010 Special Election.

54. According to The Federal Election Commission, candidates MUST register for each election cycle by filing a "new" FEC Form 2 in order to be considered a candidate and to establish a committee.

55. After the loss in the April 2010 Special Election, the Defendant decided not to become a candidate in the August 2010 Primary Election or the November 2010 General Election.

56. Before deciding whether or not to campaign for the 2012 election, the Defendant decided to "test the waters", and explore the feasibility of becoming a candidate by ascertaining information such as opinions regarding his feasibility, popularity and the outcome of the November 2010 General Election. As such the Defendant traveled around the district for several months prior to and shortly after the 2010

General Election. All of this "testing the waters" resulted in the Defendant deciding not to run for office again.

57. According to The Federal Election Commission regulations, an individual who merely conducts selected testing the waters activities that fall within the exemptions in FEC regulations does to have to register or report as a candidate even if the individual raises or spends more than $5,000 on those activities. In the complaint, the Plaintiff admits that the amount allegedly spent by the Defendant was $1,374.12, significantly less than the $5,000 threshold.

58. Under FEC regulations, an individual who raises or spends money only to "test the waters" (but not to campaign for office) does not become a candidate. 11 CFR 100.72, 100.131.

59. According to the civil complaint, the Defendant spent no more than $1,374.12, significantly below the $5,000 threshold.

60. According to The Federal Election Commission regulations, an individual who tests the waters must keep financial records and IF he later becomes a candidate, the money raised and spent to test the waters must be reported by the campaign as contributions and expenditures.

61. According to The Federal Election Commission regulations, "If an individual decides not to run for federal office, there is no obligation to report these finances, and the donations made to the testing-the-waters committee will not count as contributions." As the Defendant decided not to run for federal office he was not obligated to report these finances and, as such, did not. Further, these monies did not count as contributions.

62. According to The Federal Election Commission regulations, "another consideration, **though not a requirement**, is the segregation of testing-the-waters funds from personal funds." Since the Defendant was not a candidate, was not Treasurer of any committee and there was no committee, there was no requirement to segregate personal funds from funds used to test the waters.

63. Under the Federal Election Campaign Act, an individual who seeks nomination for election or election to federal office becomes a "candidate" (and thereby triggers registration and reporting requirements) if he or she receives contributions or makes expenditures in excess of $5,000 or consents to another person's doing so in excess of $5,000 on the individual's behalf. 52 U.S.C. § 30101(2)(A); 11 CFR 100.3(a).

64. The Defendant spent significantly less that $5,000 when testing the waters to decide whether or not to run for office.

65. All of the funds used to test the waters came from the Defendant's personal funds and since the Defendant ultimately decided to not run for office prior to reaching any financial threshold there was no obligation to report any finances to The FEC and the Defendant never became a candidate. Thus, the FEC did not have jurisdiction over the Defendant.

66. No action taken prior to August 20, 2010 could be at issue because it is prior to the applicable Statue of Limitations.

67. WHEREFORE, the Plaintiff has failed to present sufficient facts which, if taken as true, would indicate that a violation of law had occurred as the Plaintiff's claim is based on legally allowed expenditures while the Defendant was testing the

waters and there is no factual content that allows the court to draw the reasonable inference that the Defendant is liable for any misconduct since he was not under the jurisdiction of the FEC as he was not a candidate, he was not Treasurer and there was no longer any committee as the Defendant did not file the requisite forms and that the Defendant followed the FEC regulations regarding the "testing the waters" period. While the court is not to strain to find inferences favorable to the plaintiff and is not to accept conculsory allegations, unwarranted deductions or legal conclusions R2 Invs. LDC v. Phillips, 401 F.3d 638, 642 (5th Cir. 2005), the Plaintiff does not make a claim that the Defendant was a candidate, in fact, to the contrary, the Plaintiff admits that the Defendant was not a candidate in their requests for discovery and was not required to abide by reporting requirements as if he was a candidate. The Defendant prays the court to dismiss the complaint with prejudice and award sanctions.

68. WHEREFORE, Defendant prays that sanctions be imposed, as the claim is frivolous as the Plaintiff knew or should have known that the pursuit of litigation was without any reasonable basis in law or equity. (See, e.g., Denman v. Public Service Electric & Gas Co., No. A-3025-10T4 This is a bad faith attempt at imposing undue financial burden on the Defendant by knowingly and willfully filing a claim in violation of U. S Code and Federal Election Commission rules and regulations.

69. WHEREFORE, Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable and sanctions be levied against them as Counsel may

also be criminally liable if they demand settlement for a clearly frivolous lawsuit. In an October 14, 2015 letter from the OGC, the OGC states, "Please make the check for the **civil penalty** payable to the Federal Elections Commission." (Emphasis added) The FEC counsel knew full well, and/or should have known that they were demanding settlement and conciliation for a time when the Defendant was not even a candidate. See, e.g., State of New Hampshire v. Hynes, 978 A.2d 264, 268 (N.H. 2009)

70. WHEREFORE, Defendant prays that sanctions be imposed, as the claim is a bad faith attempt to besmirch the reputation of the Defendant by including in the claim allegations, which are not at issue because they are prior to the applicable Statute of Limitations.

MOTION 3 TO DISMISS BASED ON THE EXPIRATION OF THE STATUTE OF LIMITATIONS

71. In the Office of General Counsel's (OGC) own Conciliation Agreement, statements and complaint, there are no specific dates of any particular alleged violations other than "From 2008 through 2010" despite me asking for same. The reason that there are no specific dates is that any and all alleged violations occurred outside of the five (5) year statute of limitations. By the OGC's own admission, no violations occurred after 2010 which is five (5) years and nine (9) months since the Defendant was even a candidate for office. The complaint lists items that were never previously discussed and outside the statute of limitations with regard to the FEC having jurisdiction over the Defendant as a candidate or treasurer.

72. For the purposes of the discussion of the statute of limitations the following factual dates need to be established. The Defendant was a candidate for US Congress in November of 2008 and once again in a special election having an election date of April 13, 2010. Therefore, again, over five years and nine months has elapsed since the time that the Defendant was a candidate, having never filed any subsequent paperwork which would make the Defendant a candidate.

73. The OGC's conciliation agreement calls for paying "civil penalties" for personal use violations and reporting violations "still remaining within the statute of limitations", This is patently false as there is nothing "still remaining within the statute of limitations" as it has been over five (5) years and nine (9) months since the Defendant was even a candidate. Once again, the OGC references alleged violations "from 2008 through 2010" with no specific dates for specific alleged violations although previous conciliation agreements reference alleged violations from the earliest part of the timeline.

74. The statute of limitations is based on the FEC's own "Guidebook for Complainants and Respondents on the FEC Enforcement Process" (May 2012 edition) ("FEC Guidebook"), federal law, previous FEC Commission rulings and case law.

75. The FEC Guidebook states on Page six (6), "Complaints should be filed as soon as possible after the alleged violation becomes known to the complainant in order to preserve evidence and the Commission's ability to seek civil penalties in federal district court within the five-year statutes of limitations period (measured from the time of the violation) provided by 28 U.S.C. § 2462 (civil) and 2 U.S.C.

§ (criminal)." Based on the FEC's own guidebook, the Commission only has the ability to seek civil penalties within the five-year statute of limitations period measured from the time of the violation. This citing of federal code and interpretation of federal law indicates that, due to the amount of time being over the five year statute of limitations, it is unlawful and in bad faith for the FEC to seek civil penalty.

76. Additionally, the FEC Guidebook, on page eighteen (18) states, "Because the Commissions' ability to seek civil penalties in federal district court is subject to a five-year statute of limitation, *see* 28 U.S.C. § 2462, OGC may request at any stage in the enforcement process that the respondent agree to toll the statue of limitations, including during the pendency of the pre-probable cause conciliation process." Any alleged violations as a candidate are well outside of the five-year statute of limitations.

77. U.S.C. § 2462, Time for commencing proceedings clearly states, in part, "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued…". Due to the fact that it is more than five (5) years and nine (9) months since the Defendant was even a candidate, it would be significantly longer than that since any of the alleged violations occurred and the statute of limitations has long been exceeded.

78. In *FEC v. National Republican Senatorial Committee* (93-1612) the court ruled, "In applying U.S.C. § 2462, the court determined that the statue of limitations

started running from the date of the alleged violations-the period between November 1985 and November 1986. **Since the time between the dates of the violations and the date the FEC filed this case with the court exceeded the 5-year statute of limitations, the FEC could not pursue the imposition of civil penalties.**" (Emphasis added) Since the court established that the statute of limitations begins running "from the date of the alleged violations", it is clear that any alleged violations would have occurred outside of the five (5) year statute of limitations and pursuing the imposition of civil penalties would be contrary to federal law. The OGC's insistence that failure to sign a patently false conciliation agreement is meant as a bad faith, intimidation factor and a blatant threat that the OGC, based on their own FEC Guidebook and interpretation of federal law, knows that it is bad faith and unlawful to, as the OGC states, "institute a civil suit in United States District Court and seek payment of a civil penalty" (letter dated October 14, 2015).

79. The court ruled that it is contrary to U.S.C. § 2462, to seek civil penalties after the statute of limitations has run. In an October 14, 2015 letter from the OGC, the OGC states, "Please make the check for the **civil penalty** payable to the Federal Elections Commission." (Emphasis added) Therefore, since the court ruled in *FEC v. NRSC* (93-1612), "the FEC could not pursue the imposition of civil penalties." Clearly, the OGC is wrongly seeking a "civil penalty" as part of their conciliation agreement.

80. In *FEC v. National Right To Work Committee* (90-0571), the court ruled, "In general, federal government agencies must initiate proceeding to assess civil

penalties, fines and forfeitures within 5 years from "the date when the claim first accrued." 28 U.S.C. § 2462. Again, in *FEC v. National Republican Senate Committee*, the court ruled that this statue of limitations applied to the FEC and that the statue of limitations began to run when the alleged offense was committed. The FEC is barred from filing a suit as the date of any alleged violation is well outside of the five (5) year statute of limitations.

81. In the Matter of PBS&J Corporation, *et al,* MUR 5903, the Commission ruled, "More importantly, by the time this matter was first brought before us in September 2009, the five-year statue of limitations had already expired on all violations…Therefore, because we could not conclude that the five-year statue of limitations could be tolled under the facts in this matter, we voted against pursuing this matter further."

82. The Ninth Circuit Court of Appeals held that FEC enforcement actions are subject to the default five-year statute of limitations in 28 U.S.C. § 2462. According to the *Williams* court, the limitations period began running at the time the activities occurred and, as a result, the FEC's complaint was time-barred. All of the occurrences of the alleged activities that the FEC claims are well outside the five (5) year statute of limitations. NONE of the occurrences of the alleged activities are within the five (5) year statute of limitations.

83. In The Matter of the Paul Broun Committee, Mur 6556, although the Commission did find that there were reporting violations, they ruled, in part, "these alleged reporting violations occurred more than five years ago and thus are outside the five-year statue of limitations period. *See* 28 U.S.C. § 2462; *see also, FEC v.*

Nat'l Repub. Senatorial Comm., 877 F. Supp. 15, 19 (D.D.C 1995). Because the original activity fell outside the five-year statute of limitations within approximately two months of the Complaint being filed, the Committee has substantially corrected the record, and there are no other violations at issue in this matter, the Commission dismisses the allegations in MUR 6556 that the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4) by failing to accurately report loans and disbursements and closes the file. *See Heckler v. Chaney,* 470 U.S. 821 (1985)."

84. It was well within the rights of and incumbent upon the FEC Commission (*See Heckler v. Chaney)* based on well-documented precedents and clear and concise federal law to dismiss the allegations. The FEC's overreach in filing suit is a clear case of bad faith and prejudice.

85. WHEREFORE, based on U.S.C. § 2462, the court ruling in *FEC v. National Republican Senatorial Committee* (93-1612), the court ruling in *FEC v. National Right To Work Committee* (90-0571), PBS&J Corporation, Paul Broun Committee, the ruling of The Ninth Circuit Court of Appeals, and the FEC Guidebook; since there is no additional tolling of the statute of limitations and it is, at a minimum, five (5) years and nine (9) months since the Defendant was even a candidate for office, Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable and sanctions be levied against them as Counsel may also be criminally liable if they demand settlement for a clearly frivolous lawsuit as the FEC counsel knew full well that they were demanding settlement and

conciliation for a time when the Defendant was not even a candidate. See, e.g., State of New Hampshire v. Hynes, 978 A.2d 264, 268 (N.H. 2009)

MOTION 4 TO DISMISS BASED ON BREACH OF 52 U. S. C. §30109(a)(4)(A) REQUIRING THE COMMISSION TO SEEK TO CORRECT ANY VIOLATIONS THROUGH INFORMAL METHODS OF CONFERENCE, CONCILIATION AND PERSUASION FOR AT LEAST 30 DAYS AND NO MORE THAN 90 DAYS

86. On October 14, 2015, a letter was sent by the OGC which attempted to allow for conciliation. The letter clearly allowed for, "no more than 90 days". Additionally, 52 U. S. C. §30109(a)(4)(A) **requires** The Commission to seek to correct any violations through informal methods of conference, conciliation and persuasion for at least 30 days and no more than 90 days and the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation. The Defendant was not provided the particulars of the alleged violations until December 15, 2015, despite the Defenant's several requests for same.

87. During the week of October 26, 2015 the Defendant had a conversation with OGC, Ana Pena-Wallace going over what could be done to conciliate this matter and put this matter to rest once and for all despite not having the work papers depicting the extent of the claims.

88. On November 6, 2015, the Defendant received a follow up email from Ana Pena-Wallace regarding the conversation the previous week.

89. On November 6, 2015, the defendant responded asking for the OGC work papers as the Defendant disagreed with the claims that the OGC was making and the Defendant wanted a chance to refute their claims of alleged violations in order to eliminate or mitigate any civil penalty.

90. On November 9, 2015, Ana Pena-Wallace responded via email that she wanted to schedule another phone call.

91. On November 9, 2015, the Defendant responded via email that the Defendant felt that the best course of action would be for the OGC to send him their work papers so that our phone conversation would be more fruitful. The Defendant once again, requested the backup documentation substantiating their claim so that he may refute their claims as necessary and work towards a resolution eliminating or mitigating any civil penalty fine.

92. On November 10, 2015, Ana Pena-Wallace stated, "We are unable to provide you with any attorney work product…" and the Defendant was told to "review bank statements". It makes it impossible to refute any claim when the defendant has no knowledge of the extent of an alleged claim and the Defendant was not able to adequately address any sort of conciliation agreement although, in good faith, the Defendant attempted.

93. The only way that the Defendant received the numbers that he sought was when the Defendant was forwarded a draft of the civil suit, despite his repeated requests for same. Reviewing the complaint allowed the Defendant the first opportunity to even know what the OGC was alleging.

94. The Defendant was also told, several times that the period for entering into a

conciliation agreement would end on November 15, 2015, to which he vehemently disagreed with due to the aforementioned letter and not being provided with the documentation that he requested providing the extent of the alleged violations claimed by the OGC.

95. On December 14, 2015 in an email to Mr. Blumberg, the Defendant emphasized his willingness to enter into a conciliation agreement to put this matter finally to rest and that he wanted to mitigate any financial burden which is why he was requesting the work papers as he disagreed with the assertions of the OGC regarding the alleged violations..

96. On December 15, 2015 the Defendant received a draft of the civil complaint, which mirrors this civil suit. It was at this point that, for the **first time,** the Defendant received what the OGC was claiming was in violation and it was significantly less than what they originally claimed as well as being for a time when the Defendant was not even a candidate. The Defendant was not even given a chance to review the information adequately disputing the OGC's claim that this was a personal use violation as the items in question were not personal.

97. Based on 52 U. S. C. §30109(a)(4)(A) The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days.

98. On December 16, 2015, the Defendant sent an email to OGC, Mr. Deeley, in an attempt to enter into a conciliation agreement negotiation utilizing the percentages of alleged penalties sent to him by the OGC previously despite disagreeing with the amount the OGC was claiming and the FEC not having jurisdiction over the

Defendant, in order to mitigate this matter and finally put it to rest.

99. On December 17, 2015 OGC, Erin Chlopak sent the Defendant an email declining to accept the offer that he sent and he was told that the amount that he derived, utilizing the FEC's own mathematical formulas, was "not nearly commensurate with the extent of the violations at issue in this matter" despite not even having been a candidate during this time. The OGC was using the extent of civil violations as a measure, NOT the amount of the alleged violations, contrary to their ordinary and previous practice. She indicated that the 10% of the potential penalties was not enough however, the 10% of civil penalties sought is nearly 96% of the alleged violations, which is significantly higher than any percentages that were offered or used as a basis previously.

100. On December 17, 2015 the Defendant responded that he did not even know what they consider "commensurate with the extent of the violations at issue in this matter". According to the FEC's own suit, that the Defendant received the day before, the "extent of the violations at issue in this matter" and still remaining within the statute of limitations is $1,622.49 (ultimately amended to $1,374.12). This was an amount and for items that the Defendant never had information on, was ultimately changed in the Amended Complaint and was for during a time that the Defendant was not even a candidate and not under the jurisdiction of the FEC.

101. Given the delay in getting the information that the Defendant requested almost 6 weeks prior to receiving the actual alleged violations in the claim and the OGC not accepting the EXACT percentage offered of the higher percentages in the

government's conciliation agreement, it is a clear breach of the covenant of good faith and, in fact, bad faith to have not allowed the Defendant the opportunity for the full amount of time allotted by the government's own handbook and more specifically the October 14, 2015 letter sent by the OGC to him all governed by 52 U. S. C. §30109(a)(4)(A). Especially given the fact that the amount in question is quite minimal and for a time that the Defendant was not even a candidate and not under the jurisdiction of the FEC regarding reporting.

102. Additionally, the OGC would not discuss anything further unless the Defendant agreed to sign a tolling agreement yet there was no language in the tolling agreement so as not to resuscitate claims for which the limitations period has already passed despite his request for same. Based on the government's blatantly false claims of what was the actual amount of alleged violations still remaining within the statute of limitations and the "requirement" to provide an inadequate tolling statement or face civil suit violating the government's own timeline, there is clear and convincing evidence that the government is engaged in a blatant breach of its duty of good faith and fair dealing despite the government's **requirement** to do so as per 52 U. S. C. §30109(a)(4)(A). Contrarily, the Defendant ahs acted in good faith, without the assistance of counsel, as the continued costs of tens of thousands of dollars made it prohibitive to continue to engage outside counsel, in order to resolve this issue and enter into a conciliation agreement based on the alleged items still remaining within the statute of limitations and utilizing the OGC's very own percentages to do so, despite disagreeing with the OGC's assertions of a violation as the Defendant was not

even a candidate and not under the jurisdiction of the FEC for reporting purposes.

103. The Defendant continued to endeavor to avoid a civil suit, as he has this entire time, and he was still hopeful that this issue could be resolved in a timely manner. He could not imagine that a reasonable conciliation agreement could not be agreed to quickly based on the $1,622.49 (ultimately amended to $1,374.12) of alleged violations still remaining within the statute of limitations, which the Defendant disagreed with. He would not have engaged in this strenuous exercise if he was not interested in seriously attempting to conciliate this matter and to infer such is wrong.

104. According to 52 U. S. C. §30109(a)(4)(A), The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. The OGC, by refusing to provide any work papers until 2 days prior to the filing of a suit, despite the Defendnat's repeated requests for same, violated 52 U. S. C. §30109(a)(4)(A) by only allowing 2 days, violating their obligation to allow at least 30 days. Additionally, the Defendant responded, in good faith, immediately upon receipt of correspondence from the OGC in an attempt to enter into a conciliation agreement negotiation and resolve this matter despite not being under the jurisdiction of the FEC regarding reporting as he was not a candidate.

105. Any claim that the FEC allowed for the requisite amount of time is patently false. It is impossible to enter into any settlement conciliation agreement without knowing what the alleged violations are or for what time period. Additionally, it is impossible to know what to even correct if the FEC does not provide what the

alleged violations are that would need to be corrected. Finally, it is impossible to enter into conciliation negotiations without benefit of the knowledge of what the extent of the alleged violations are considering that most conciliation agreements and, for that matter, all settlements are based upon a percentage of the alleged violations. The Defendant did not even know that the alleged violations that the FEC stated were for a time period when he was not even a candidate and therefore, falling under different regulations for testing the waters.

106. The Plaintiff did not even know what the amount of alleged violations was as they lowered the amount from $1,622.49 to $1,374.12, a reduction of 15.3%. Given that the Plaintiff could not come up with a definitive amount of alleged violations to the point where they had to amend their civil complaint, it would be literally impossible to negotiate any kind of settlement since any settlement would be based on the extent to the alleged violations. This in addition to the fact that the Plaintiff would not disclose to the Defendant that the alleged violations in question were for a time period when he was not even a candidate.

107. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation agreement as well as intentionally lied as the alleged violations occurred when the Defendant was not even a candidate. Additionally, the OGC refused to provide the Defendant with **any** work papers substantiating their claim until 2 days prior to initiating this claim. When their bad faith and misdeeds were discovered, they immediately tried to strong arm the Defendant into a settlement which is higher than the amount sought in this complaint and, when he would not acquiesce, they

immediately filed suit despite their legal obligation to correct the alleged violations through informal methods. They would not even attempt to enter into negotiations based on the actual alleged violations as is required under 52 U. S. C. §30109(a)(4)(A).

108. Counsel may also be criminally liable if they demand settlement for a clearly frivolous lawsuit as the FEC counsel knew full well that hey were demanding settlement and conciliation for a time when the Defendant was not even a candidate. See, e.g., State of New Hampshire v. Hynes, 978 A.2d 264, 268 (N.H. 2009)

109. As a matter of fact, given that the FEC has, once again, failed to provide an accurate amount due changing the amount that they claim in alleged violations proves that they continue to make it impossible to enter into any realistic settlement or conciliation discussions as any settlement or conciliation or civil penalty would be based on the extent of the alleged violations and would be greatly impacted as to the status of whether or not the Defendant was a candidate. By continuing to fail to provide accurate information, they continued to violate their requisite duty to act in good faith to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days.

110. WHEREFORE, based on direct violation of 52 U. S. C. §30109(a)(4)(A), Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable and sanctions be levied against them as Counsel may also be criminally liable if

they demand settlement for a clearly frivolous lawsuit. In an October 14, 2015 letter from the OGC, the OGC states, "Please make the check for the **civil penalty** payable to the Federal Elections Commission." (Emphasis added) The FEC counsel knew full well and/or should have known that they were demanding settlement and conciliation for a time when the Defendant was not even a candidate. See, e.g., State of New Hampshire v. Hynes, 978 A.2d 264, 268 (N.H. 2009)

MOTION 5 TO DISMISS BASED ON BREACH OF FEC GUIDELINES

111. On October 14, 2015, a letter was sent by the OGC which attempted to allow for conciliation. The letter clearly allowed for, "no more than 90 days". Additionally, the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation.

112. During the week of October 26, 2015 the Defendant had a conversation with OGC, Ana Pena-Wallace going over what could be done to conciliate this matter and put this matter to rest once and for all.

113. On November 6, 2015, the Defendant received a follow up email from Ana Pena-Wallace regarding our conversation the previous week.

114. On November 6, 2015, the Defendant responded asking for the OGC work papers as the Defendant disagreed with the claims that the OGC was making.

115. On November 9, 2015, Ana Pena-Wallace responded that she wanted to schedule another phone call.

116. On November 9, 2015, the Defendant responded that he felt that the best course of action would be for the OGC to send me their work papers so that the phone conversation would be more fruitful. The Defendant once again, requested the backup documentation substantiating their claim.

117. On November 10, 2015, Ana Pena-Wallace stated, "We are unable to provide you with any attorney work product…" and the Defendant was told to review bank statements.

118. The only way that The Defendant received the numbers that he sought was when he was forwarded a draft of the civil suit, despite the Defendant's repeated requests for same.

119. The Defendant was also told, several times, that the period for entering into a conciliation agreement would end on November 15, 2015, to which he vehemently disagreed due to the aforementioned letter and not being provided with the documentation that he requested. The time to enter into a conciliation agreement, which the Defendant was more than willing to do, did not end and it should not have ended until January 12, 2016.

120. Based on 52 U. S. C. §30109(a)(4)(A) The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. Therefore, it is the Defendant's right to have more than 2 days to negotiate a conciliation agreement without having to waive his civil rights and enter into a tolling agreement. The government has frustrated his ability to make an adequate counter offer due to

refusing to provide him with the information that he requested until December 15, 2015 and is acting in bad faith demanding that the Defendant sign another tolling agreement by 9:00 AM by the next day or face a civil suit when the government's own letter allowed until January 12, 2016 (90 days), not the two (2) days that he was provided, especially considering the civil suit was for a period of time when the Defendant was not even a candidate and the reporting requirements are significantly different for candidates versus non-candidates.

121. On December 14, 2015 in an email to Mr. Blumberg, the Defendant emphasized his willingness to enter into a conciliation agreement and that he wanted to mitigate any financial burden which is why he was requesting the work papers as he disagreed with the assertions of the OGC and the FEC told the Defendant that the complaint was for a time period when he was a candidate, which is not the case.

122. On December 15, 2015 the Defendant received a draft of the civil complaint, which mirrors this civil suit. It was at this point that, for the **first time,** that the Defendant received what the OGC was claiming was in violation and it was significantly less than what they originally claimed and it was for a time period for when the Defendant was not even a candidate, which requires different reporting, if any. The Defendant was not even given a chance to review the information adequately disputing the OGC's claim that this was a personal use violation.

123. The Defendant asked several times for the "work papers" which he was told, in the November 10, 2015 email, that the OGC would not be willing to

provide. Finally, the Defendant was provided the documentation that he sought on December 15, for the first time, and given less than 2 days to conciliate this matter, utilizing the actual numbers, when the October 14, 2015 letter allows for "no more than 90 days" and the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation. This is despite me making a good faith effort and providing a counter to the OGC conciliation agreement the very same day that the Defendant was provided the actual amounts still remaining within the statute of limitations and finding out, for the first time, that this was for a time that he was not even a candidate and was testing the waters. Both the letter and the Guidebook would allow until January 12, 2016 to enter into a conciliation agreement.

124. On December 16, 2015, the defendant sent an email to OGC, Mr. Deeley, in an attempt to enter into a conciliation agreement utilizing the percentages of alleged penalties sent to me by the OGC previously. He did this in good faith, as he disagreed with the assertion of the OGC that the items in question were for personal use and that it was for time that the Defendant was not even a candidate and for a time that he was testing the waters.

125. On December 17, 2015 OGC, Erin Chlopak sent me an email declining to accept the offer that the Defendant sent and was told that the amount that he derived, utilizing the FEC's own mathematical formulas, was "not nearly commensurate with the extent of the violations at issue in this matter". The OGC was using the extent of civil violations as a measure, NOT the amount of the alleged violations, contrary to their ordinary and previous practice. She indicated that the 10% of the

potential penalties was not enough however, the 10% of civil penalties sought is nearly 96% of the alleged violations, which is significantly higher than any percentages that were offered or used as a basis previously.

126. On December 17, 2015 the Defendant responded that he did not even know what they consider "commensurate with the extent of the violations at issue in this matter" and the civil suit is for time that the Defendant was not even a candidate. According to the FEC's own suit, that the Defendant received the day before, the "extent of the violations at issue in this matter" and still remaining within the statute of limitations was $1,622.49 (ultimately amended to $1,374.12) and for a time period when he was not even a candidate. After all these years and the tens of thousands of dollars in paid attorney fees and undue stress, the extent of the alleged violations at issue in this matter came down to $1,622.49 (ultimately amended to $1,374.12) and for a time period when the Defendant was not even a candidate and was testing the waters. This is an amount based on alleged violations that the Defendant was given, for the first time on December 15, 2015. He was given 2 days to review the information provided in this suit, contrary to the legal obligation stated in 52 U. S. C. §30109(a)(4)(A). The Defendant, in a good faith effort to resolve this matter, offered the EXACT same percentage that the OGC sought which is higher than every other conciliation agreement that he has researched. In good faith, the Defendant even offered if 100% of the $1,622.49 (ultimately amended to $1,374.12) in alleged violations still remaining within the statute of limitations be more appropriate, even though he was under no obligation to do so as he was not even a candidate. The Defendant also requested

for the OGC to provide him with a counter offer. The Defendant based his counter offer on the numbers provided and utilized by the OGC.

127. Additionally, the OGC would not discuss anything further unless the Defendant signed a tolling agreement yet there was no language in the tolling agreement so as not to resuscitate claims for which the limitations period has already passed despite his request. Based on the government's blatantly false claims of what is the actual amount of alleged violations still remaining within the statute of limitations, the fact that the Defendant was not even a candidate and the "requirement" to provide an inadequate tolling statement or face civil suit violating the government's own timeline, there is clear and convincing evidence that the government is engaged in a blatant breach of its duty of good faith and fair dealing. Contrarily, the Defendant has acted in good faith, without the assistance of counsel, as the continued costs of tens of thousands of dollars made it prohibitive to continue to engage outside counsel, in order to resolve this issue and enter into a conciliation agreement based on the actual items still remaining within the statute of limitations and utilizing the OGC's very own percentages to do so.

128. According to 52 U. S. C. §30109(a)(4)(A), The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days as is stated in the FEC's "Guidebook for Complainants and Respondents on the FEC Enforcement Process". The OGC, by refusing to provide any work papers until 2 days prior to the filing of a suit, despite the Defendant's repeated requests for same, violated 52

U. S. C. §30109(a)(4)(A) by only allowing 2 days, violating their obligation to allow at least 30 days. Additionally, the Defendant responded, in good faith, immediately upon receipt of correspondence from the OGC in an attempt to enter into a conciliation agreement so as to finally resolve this costly matter.

129. The Plaintiff did not even know what the amount of alleged violations was as they lowered the amount from $1,622.49 to $1,374.12, a reduction of 15.3%. Given that the Plaintiff could not come up with a definitive amount of alleged violations to the point where they had to amend their civil complaint, it would be literally impossible to negotiate any kind of settlement since any settlement would be based on the extent to the alleged violations. This in addition to the fact that the Plaintiff would not disclose to the Defendant that the alleged violations in question were for a time period when he was not even a candidate.

130. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation agreement as well as not even informing the Defendant that the civil suit was for a time when he was not even a candidate and testing the waters. When their misdeeds were discovered, they immediately tried to strong arm the Defendant into a settlement, which is higher than the amount sought in this suit, and, when he would not acquiesce, they immediately filed suit. They would not even attempt to enter into negotiations based on the actual alleged violations as is required under 52 U. S. C. §30109(a)(4)(A). The Defendant had no knowledge of what the actual items that the OGC was claiming as personal use violations were until December 15, 2015 despite over 6 weeks of asking for same and, in

bad faith, they filed suit 2 days after providing the requested documentation. Additionally, they did not even inform the Defendant that the civil suit would be for alleged violations during a time when he was not even a candidate and was testing the waters, which is allowable and falls under different rules and regulations.

131. Any claim that the FEC allowed for the requisite amount of time is patently false. It is impossible to enter into any settlement conciliation agreement without knowing what the alleged violations are or for what time period, especially if they were for a time period when the Defendant was not even a candidate and testing the waters. Additionally, it is impossible to know what to even correct if the FEC does not provide what the alleged violations are that would need to be corrected. Finally, it is impossible to enter into conciliation negotiations without benefit of the knowledge of what the extent of the alleged violations are considering that most conciliation agreements and, for that matter, all settlements are based upon a percentage of the alleged violations as well as being based on the regulations guiding the actions of a candidate versus a non-candidate testing the waters.

132. As a matter of fact, given that the FEC has, once again, failed to provide an accurate amount due changing the amount that they claim in alleged violations proves that they continue to make it impossible to enter into any realistic settlement or conciliation discussions as any settlement or conciliation or civil penalty would be based on the extent of the alleged violations as well as the rules and regulations governing whether or not the person was a candidate or simply testing the waters, which requires no reporting at all and would not be a violation.

By continuing to fail to provide accurate information, they continued to violate their requisite duty to act in good faith to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days.

133. WHEREFORE, based on the direct violation of the standards set forth in the FEC's "Guidebook for Complainants and Respondents on the FEC Enforcement Process"; Defendant prays that this matter should be dismissed with prejudice and that the Federal Elections Commission and Office of General Counsel be held accountable and sanctions be levied against them as Counsel may also be criminally liable if they demand settlement for a clearly frivolous lawsuit. In an October 14, 2015 letter from the OGC, the OGC states, "Please make the check for the **civil penalty** payable to the Federal Elections Commission." (Emphasis added) The FEC counsel knew full well and/or should have known that they were demanding settlement and conciliation for a time when the Defendant was not even a candidate. See, e.g., State of New Hampshire v. Hynes, 978 A.2d 264, 268 (N.H. 2009)

MOTION 6 TO DISMISS BASED ON BAD FAITH

134. On October 14, 2015, a letter was sent by the OGC which attempted to allow for conciliation. The letter clearly allowed for, "no more than 90 days". Additionally, the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation.

135. During the week of October 26, 2015 the Defendant had a conversation with OGC, Ana Pena-Wallace going over what could be done to conciliate this matter and put this matter to rest once and for all.

136. On November 6, 2015, the Defendant received a follow up email from Ana Pena-Wallace regarding the conversation from the previous week.

137. On November 6, 2015, the Defendant responded asking for the OGC work papers as I disagreed with the claims that the OGC was making.

138. On November 9, 2015, Ana Pena-Wallace responded that she wanted to schedule another phone call.

139. On November 9, 2015, the Defendant responded that he felt that the best course of action would be for the OGC to send him their work papers so that the phone conversation would be more fruitful. The Defendant once again, requested the backup documentation substantiating their claim.

140. On November 10, 2015, Ana Pena-Wallace stated, "We are unable to provide you with any attorney work product..." and the Defendant was told to review bank statements.

141. The only way that the Defendant received the numbers that he sought was when he was forwarded a draft of the civil suit, despite his repeated requests for same.

142. The Defendant was also told, several times that the period for entering into a conciliation agreement would end on November 15, 2015, to which he vehemently disagreed due to the aforementioned letter and not being provided with the documentation that he requested. The time to enter into a conciliation agreement, which the Defendant was more than willing to do, did not end and it

should not have ended until January 12, 2016.

143. Based on 52 U. S. C. §30109(a)(4)(A) The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. Therefore, it is my right to have more than 2 days to negotiate a conciliation agreement without having to waive my civil rights and enter into a tolling agreement. The government has frustrated the Defendant's ability to make an adequate counter offer due to refusing to provide him with the information that he requested until December 15, 2015 and is acting in bad faith demanding that the Defendant sign another tolling agreement by 9:00 AM by the next day or face a civil suit when the government's own letter allowed until January 12, 2016 (90 days), not the two (2) days that the Defendant was provided.

144. On December 14, 2015 in an email to Mr. Blumberg, the Defendant emphasized his willingness to enter into a conciliation agreement and that he wanted to mitigate any financial burden which is why he was requesting the work papers as he disagreed with the assertions of the OGC.

145. On December 15, 2015 the Defendant received a draft of the civil complaint which mirrors this civil suit. It was at this point that, for the **first time,** that the Defendant received what the OGC was claiming was in violation and it was significantly less than what they originally claimed as well as for being during a time when the Defendant was not even a candidate and was testing the waters. The Defendant was not even given a chance to review the information adequately disputing the OGC's claim that this was a personal use violation.

146. The Defendant asked, several times, for the "work papers" which he was told, in the November 10, 2015 email, that the OGC would not be willing to provide. Finally, the Defendant was provided the documentation that he sought on December 15 and given less than 2 days to conciliate this matter, utilizing the actual numbers, when the October 14, 2015 letter allows for "no more than 90 days" and the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" allows for 30-90 days for Conciliation. This is despite the Defendant making a good faith effort and providing a counter to the OGC conciliation agreement the very same day that he was provided the actual amounts still remaining within the statute of limitations and given the fact that this for a time when the Defendant was not even a candidate and not under the jurisdiction of the FEC. Both the letter and the Guidebook would allow until January 12, 2016 to enter into a conciliation agreement.

147. On December 16, 2015, the Defendant sent an email to OGC, Mr. Deeley, in an attempt to enter into a conciliation agreement utilizing the percentages of alleged penalties sent to him by the OGC previously despite not even having been a candidate at the time of the alleged violations.

148. On December 17, 2015 OGC, Erin Chlopak sent the Defendant an email declining to accept the offer that he sent and was told that the amount that he derived, utilizing the FEC's own mathematical formulas, was "not nearly commensurate with the extent of the violations at issue in this matter" despite the Defendant not even being a candidaste and in a period of testing the waters which is well within the confines of FEC rules and regulations. The OGC was using the

extent of civil violations as a measure, NOT the amount of the alleged violations, contrary to their ordinary and previous practice. She indicated that the 10% of the potential penalties was not enough however, the 10% of civil penalties sought is nearly 96% of the alleged violations, which is significantly higher than any percentages that were offered or used as a basis previously.

149. On December 17, 2015 the Defendant responded that he did not even know what they consider "commensurate with the extent of the violations at issue in this matter". According to the FEC's own suit, that the Defendant received the day before, the "extent of the violations at issue in this matter" and still remaining within the statute of limitations is $1,622.49 (ultimately amended to $1,374.12). After all these years and the tens of thousands of dollars in paid attorney fees and undue stress, the extent of the alleged violations at issue in this matter comes down to $1,622.49 (ultimately amended to $1,374.12) during a time when the Defendant was not even a candidate and not under the jurisdiction of the FEC. The Defendant offered the EXACT same percentage that the OGC sought which is higher than every other conciliation agreement that he researched. The Defendant even offered if 100% of the $1,622.49 (ultimately amended to $1,374.12) in alleged violations still remaining within the statute of limitations be more appropriate despite not even having been a candidate for office. He also requested for the OGC to provide him with a counter offer. The Defendant based his counter offer on the numbers provided and utilized by the OGC.

150. Given the delay in getting the information that the Defendant requested almost 6 weeks prior to receiving the actual work papers and the OGC not accepting the

EXACT percentage offered of the higher percentages in the government's conciliation agreement, it is a clear breach of the covenant of good faith and, in fact, bad faith to have not allowed the Defendant the opportunity for the full amount of time allotted by the government's own handbook and more specifically the October 14, 2015 letter sent by the OGC to him as well as what is required in 52 U. S. C. §30109(a)(4)(A). Especially given the fact that the amount in question is quite minimal and that the Defendant was not even a candidate and was testing the waters which is allowed as per FEC rules and regulations.

151. Additionally, the OGC would not discuss anything further unless the Defendant signed a tolling agreement yet there was no language in the tolling agreement so as not to resuscitate claims for which the limitations period has already passed despite his request for same. Based on the government's blatantly false claims of what is the actual amount of alleged violations still remaining within the statute of limitations, the fact that the Defendant was not even a candidate and the "requirement" to provide an inadequate tolling statement or face civil suit violating the government's own timeline, there is clear and convincing evidence that the government is engaged in a blatant breach of its duty of good faith and fair dealing. Contrarily, the Defendant has acted in good faith, without the assistance of counsel, as the continued costs of tens of thousands of dollars made it prohibitive to continue to engage outside counsel, in order to resolve this issue and enter into a conciliation agreement based on the actual items still remaining within the statute of limitations and utilizing the OGC's very own percentages to do so despite the fact that the time period stipulated in the suit was one in which

the Defendant was not even a candidate and, therefore, not under the jurisdiction of the FEC and was testing the waters which is allowable as per the rules and regulations of the FEC.

152. The Defendant continued to endeavor to avoid a civil suit, as he has this entire time, and he was still hopeful that there would be a resolution to this issue in a timely manner. He can not imagine that a reasonable conciliation agreement could not be agreed to quickly based on the $1,622.49 (ultimately amended to $1,374.12) of alleged violations still remaining within the statute of limitations, which I was willing to do despite disagreeing with the assertion of the OGC that the items were for personal use and despite not even being a candidate and testing the waters. The Defendant would not have engaged in this strenuous exercise if he was not interested in seriously attempting to conciliate this matter.

153. According to 52 U. S. C. §30109(a)(4)(A), The Commission is **required** to seek to correct the violations through informal methods of conference, conciliation, and persuasion for at least 30 days and no more than 90 days. The OGC, by refusing to provide any work papers until 2 days prior to the filing of a suit, despite the Defendant's repeated requests for same and not even informing him that the time period in question was during a time when he was not even a candidate and testing the waters, violated 52 U. S. C. §30109(a)(4)(A) by only allowing 2 days, violating their obligation to allow at least 30 days. Additionally, the Defendant responded, in good faith, immediately upon receipt of correspondence from the OGC in an attempt to enter into a conciliation agreement and resolve this matter.

154. According to the FEC "Guidebook for Complainants and Respondents on the FEC Enforcement Process" (N), page 20,"If the Commission determines that there is "probable cause to believe" the law has been violated, the Commission must attempt to conciliate with the respondent for at least 30 days, but no more than 90 days." The OGC would not provide the Defendant with their work papers until 2 days prior to filing suit and did not let him know that the alleged violations were for a time period when he was not even a candidate and was testing the waters. In good faith, the Defendant made several attempts to enter into a conciliation agreement immediately upon receiving the amounts in question despite disagreeing with the assertion of the OGC that the items were allegedly for personal use and despite not even being a candidate, thus outside the jurisdiction of the FEC.

155. The government has an implied duty to act in good faith and fair dealing. By refusing to provide the actual amounts of alleged violations until 2 days prior to issuing a civil suit, which the Defendant requested several times, and providing alleged violations greatly exaggerated and not letting the Defendant know that the time period referenced in the suit was for a time period when he was not even a candidate, the OGC acted in bad faith. By adding knowingly and willful fallacious and defamatory language making claims to alleged violations, which the Defendant denies, in the text of a public suit, the OGC is acting in bad faith.

156. Any claim that the FEC allowed for the requisite amount of time is patently false. It is impossible to enter into any settlement conciliation agreement without knowing what the alleged violations are or that they are for a time when the

Defendant was not even a candidate and testing the waters. Additionally, it is impossible to know what to even correct if the FEC does not provide what the alleged violations are that would need to be corrected. Finally, it is impossible to enter into conciliation negotiations without benefit of the knowledge of what the extent of the alleged violations are considering that most conciliation agreements and, for that matter, all settlements are based upon a percentage of the alleged violations.

157. The Plaintiff did not even know what the amount of alleged violations was as they lowered the amount from $1,622.49 to $1,374.12, a reduction of 15.3%. Given that the Plaintiff could not come up with a definitive amount of alleged violations to the point where they had to amend their civil complaint, it would be literally impossible to negotiate any kind of settlement since any settlement would be based on the extent to the alleged violations. This in addition to the fact that the Plaintiff would not disclose to the Defendant that the alleged violations in question were for a time period when he was not even a candidate.

158. The OGC knowingly and willfully lied and misrepresented the actual amount of alleged violations in order to achieve a higher settlement offer in the conciliation agreement. When their misdeeds were discovered, they immediately tried to strong arm the Defendant into a settlement, which is higher than the amount sought in this suit, and, when he would not acquiesce, they immediately filed suit. They would not even attempt to enter into negotiations based on the actual alleged violations as is required under 52 U. S. C. §30109(a)(4)(A).

CERTIFICATE OF SERVICE

I herby certify that a copy of the answer to Civil Action 15-81732 and Notice of Appearance was mailed first class, postage paid, this 6TH day of JULY, 2016 to:

Federal Election Commission
999 E Street, N. W.
Washington, D. C. 20463
Attn: Benjamin A. Streeter III

Signature Edward J Lynch, Sr.

Address 10269 Trianon Place
Wellington, Florida 33449

Telephone Number 561-445-3139