

Karra J. Porter, 5223
Scott T. Evans, 6218
CHRISTENSEN & JENSEN, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 323-5000
Karra.Porter@chrisjen.com
Scott.Evans@chrisjen.com
Attorneys for Defendant Jeremy Johnson

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

<p>FEDERAL ELECTION COMMISSION, Plaintiff, v. JEREMY JOHNSON and JOHN SWALLOW, Defendants.</p>	<p>ANSWER OF JEREMY JOHNSON TO AMENDED COMPLAINT</p> <p>Civil No. 2:15-cv-00439-DB</p> <p>District Judge Dee Benson</p>
--	--

Defendant, Jeremy Johnson, by and through counsel, answers plaintiff's Amended Complaint and responds as follows:

FIRST DEFENSE

Much of the FEC's complaint is stated in language that is conclusory and not statutory, such as the term "straw donor." Further, the complaint fails to set forth any factual allegations that would support injunctive or other equitable relief. For these and other reasons, most or all of the amended complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff has previously acknowledged and represented to the Court in court filings that its claims against this defendant encompass only the period of time beginning on or about

May 15, 2010. Based upon that representation, plaintiff's claims may not be time barred under 28 U.S.C. § 2462, which is cited herein only as a precaution.

THIRD DEFENSE

Pursuant to F.R.Civ.P. 8(2) and (3), this Answer may set out two or more statements of a defense alternatively or hypothetically, and may state such alternative or hypothetical defenses regardless of perceived consistency.

FOURTH DEFENSE

Pursuant to F.R.Civ.P. 10(c), this defendant hereby adopts by reference the Third Defense, Fourth Defense, Seventh Defense, and Thirteenth Defenses set forth in Defendant John Swallow's Answer to Amended Complaint (Doc. 45). Defendant also incorporates for preservation purposes the additional defenses set forth in this defendant's answer to the initial complaint, but acknowledges that its ability to assert such defenses is subject to previously ruling of the Court (Doc. 34).

FIFTH DEFENSE

With respect to the specific paragraphs of plaintiff's complaint, this defendant responds:

1. With respect to paragraphs 1-6, 11-12, 19-38, the third sentence of ¶ 39, ¶¶ 40-49, 73, 75, and 77, upon advice of counsel, this defendant asserts his rights under the Fifth Amendment to the United States Constitution and Art. I § 7 of the Utah Constitution not to respond to said paragraphs, as a result of which said paragraphs are denied. This defendant submits that requiring him to state specific factual bases for asserting these rights would require the defendant to divulge protected attorney-client communications and opinion work product, and would itself comprise a violation of the stated constitutional provisions. Subject to that

objection, defendant (through counsel) notes that the United States government has already expended extraordinary resources to obtain convictions against Mr. Johnson for alleged false statements (to a bank) without regard to whether such statements were made by Mr. Johnson, were intentional or material, etc. It seems likely that the government would be willing to go to similar lengths if given an opportunity to pursue Mr. Johnson for alleged violations of other “false statement” statutes, *e.g.*, 18 U.S.C. § 1001. Counsel’s concern is reinforced by the fact that they were unable to obtain an immunity commitment earlier this year that would address these concerns or place reasonable limitations on the government’s ability to pursue unreasonable charges. Additionally, all or nearly all of the plaintiff’s claims are based upon purported communications that, to the extent they were made, were made under representations of immunity by agents of the federal government, but were instead handed over to the government. The defendant also avers that, because he is incarcerated, because he is not permitted free (unmonitored) discussion with his attorneys, because the alleged events occurred many years ago, and because he does not have access to records or other potentially relevant material (and, in fact, e-mails and other material have been lost or destroyed by third parties), the likelihood of making an inadvertent misstatement herein, or erroneously subjecting himself to prosecution for prior events, is exacerbated.

2. With respect to ¶ 7, defendant states that the complaint speaks for itself and therefore no response is required. Defendant further states that the relief requested is not authorized by the Federal Election Campaign Act in this case.

3. With respect to ¶ 8, defendant states that the paragraph appears to contain conclusions of law or mixed conclusions of law and fact to which no response is required. To

the extent that a response is required, defendant admits that the court would appear to have jurisdiction under the allegations as pled.

4. With respect to ¶ 9, defendant admits that venue would appear to lie in this district, but denies said paragraph to the extent it differs from this admission.

5. With respect to ¶ 10, defendant states that the paragraph appears to contain conclusions of law or mixed conclusions of law and fact to which no response is required. To the extent that a response is required, defendant asserts that the cited statutes speak for themselves and that the plaintiff's authority is limited to that granted in the statutes.

6. With respect to ¶¶ 13-18, defendant states that the paragraphs appear to contain (incomplete) characterizations of law to which no response is required. Defendant asserts that the statutes speak for themselves, and that the regulations cited are not authorized, but to the extent the regulations are binding authority, they speak for themselves.

7. With respect to ¶ 39, defendant does not know the meaning intended by plaintiff the phrase "the time relevant to this case," and accordingly is unable to respond to the first sentence. Defendant denies the second sentence as inaccurately characterizing the FTC action. (For example, the FTC expressly denied in the IWorks matter that it was alleging "fraud.") With respect to the fourth sentence, defendant admits that the FTC filed suit against him and other defendants, but denies the unspecified reference to "some of his associates and businesses". Defendant denies the final sentence, which inaccurately characterizes the criminal indictment and matter.

8. With respect to ¶ 50, defendant has no personal knowledge of when the Commission received the alleged administrative complaint, which is not attached to the

Amended Complaint. Defendant states that the content of the so-called complaint would speak for itself, and accordingly denies the plaintiff's characterization.

9. With respect to ¶ 51, defendant admits that the Commission sent a communication to Johnson regarding the so-called administrative complaint, and that Johnson did not submit a written response.

10. With respect to ¶ 52, defendant has no personal knowledge of when, how, or whether the Commission or members thereof voted, but admits that plaintiff sent a communication to Johnson in or around December 2014.

11. With respect to ¶ 53, denies that the FEC "conduct[ed] an investigation," affirmatively alleges that the FEC was unlawfully provided by agents of the federal government with purported material that, to the extent it was authentic, was procured by various representations of immunity. Admits that the Commission's Office of the General Counsel sent Mr. Johnson a letter dated March 11, 2015, which speaks for itself, and that Mr. Johnson did not submit a reply.

12. With respect to ¶ 54, denies for lack of knowledge, but affirmatively alleges that, if the "information then available" allegedly "review[ed]" by the Commission included unlawfully obtained, tainted, and/or inadmissible information or summaries thereof, members of the Commission should have disqualified themselves and any subsequent vote was unlawful.

13. With respect to ¶ 55, defendant admits that the FEC sent Mr. Johnson a letter dated April 20, 2015, which speaks for itself, and denies that the FEC "endeavored to correct Johnson's [alleged] violations through informal methods of conference, conciliation, and persuasion, for a period of not less than 30 days."

14. Defendant admits ¶ 56. Mr. Johnson did not waive any statute of limitations or related defenses that had already vested.

15. With respect to ¶ 57, defendant denies for lack of knowledge, and denies that the lawsuit was filed at that time because the FEC was “unable to secure an acceptable conciliation agreement[.]”

16. With respect to ¶ 58, defendant states that said paragraph appears to assert a conclusion of law to which no response is required. To the extent that a response is required, defendant lacks sufficient knowledge to admit said paragraph, and therefore denies the same.

17. ¶¶ 59-71 are directed solely at another defendant, and therefore no response is required from this defendant. To the extent that a response is required, defendant denies said paragraphs for lack of knowledge.

18. With respect to ¶¶ 72, 74, and 76, defendant incorporates all responses set forth with respect to the states paragraphs 1-71.

SIXTH DEFENSE

Unless expressly and specifically admitted above or subject to defendant’s assertion of constitutional rights, the allegations of plaintiff’s complaint are denied.

PRAYER FOR RELIEF

Mr. Johnson hereby prays for the following relief:

1. Dismissal of the complaint with prejudice;
2. An order requiring the FEC to return all illegally obtained evidence and to destroy all copies thereof;

3. An award of attorney fees, expenses, and costs against Plaintiff to the extent allowed by law, including under the Equal Access to Justice Act and F.R.Civ.P. 54(d);
4. All other relief, equitable and otherwise, deemed appropriate by the Court.

DATED this 27th day of April, 2017.

CHRISTENSEN & JENSEN, P.C.

/s/ Karra J. Porter
Karra J. Porter
Scott T. Evans
Attorneys for Defendant Jeremy Johnson

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2017, a copy of the foregoing ANSWER OF JEREMY JOHNSON TO AMENDED COMPLAINT was electronically filed using the CM/ECF system and notification was sent to the following:

Daniel A. Petalas - depetalas@fec.gov
Lisa J. Stevenson – l Stevenson@fec.gov
Kevin Deeley - kdeeley@fec.gov
Harry J. Summers – hsummers@fec.gov
Kevin P. Hancock - Khancock@fec.gov
Claudio J. Pavia - cpavia@fec.gov
FEDERAL ELECTION COMMISSION
999 E Street NW
Washington, DC 20463

/s/ Marilyn Grant