

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

_____	)	
LEVEL THE PLAYING FIELD, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 1:15-cv-01397 (TSC)
v.	)	
	)	ANSWER
FEDERAL ELECTION COMMISSION,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S ANSWER  
TO PLAINTIFFS’ SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant Federal Election Commission (“Commission” or “FEC”), through its undersigned counsel, responds to the Second Amended Complaint filed by plaintiffs Level the Playing Field (“LPF”), Peter Ackerman (“Ackerman”), Green Party of the United States (“Green Party”) and Libertarian National Committee, Inc. (“LNC”) on January 5, 2016 (Doc. # 25):

**GENERAL DENIAL**

I. Any allegation not specifically responded to below is denied.

**SPECIFIC RESPONSES AND DENIALS**

II. The Commission responds as follows to the paragraphs of the Complaint:

**“COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF”**

This unnumbered paragraph contains plaintiffs’ characterization of their civil complaint, which speaks for itself, and therefore no response is necessary. To the extent that this paragraph incorporates succeeding paragraphs of the complaint, the Commission incorporates its responses to those succeeding paragraphs and its response to plaintiffs’ prayer for relief.

**“PRELIMINARY STATEMENT”**

1. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

2. Deny that major party candidates can lawfully raise up to \$834,000 per year more from individuals than “unaffiliated candidates” can, because the same limits apply to individual contributions to the campaigns of federal candidates regardless of party affiliation. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

3. This paragraph contains plaintiffs’ characterization of their civil complaint, which speaks for itself, and plaintiffs’ conclusions of law, and therefore no response is necessary. To the extent a response is required, deny that the Federal Election Commission is a “‘bipartisan’ agency run by members of the two major parties, which refuses to carry out its statutory mandate to enforce the federal election laws that CPD is blatantly violating.” The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

4. This paragraph contains plaintiffs’ characterization of administrative and civil complaints, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is necessary. To the extent a response is required, admit that Level the Playing Field and Ackerman filed an administrative complaint with the Commission on September 11, 2014 naming the Commission on Presidential Debates (“CPD”) and others as respondents, and that this administrative complaint was designated Matter Under Review (“MUR”) 6869. LPF and Ackerman subsequently submitted supplements dated November 24, 2014 and April 10, 2015 to the Commission. Plaintiffs Green Party and LNC were not named complainants in either the

initial administrative complaint or the two supplements in MUR 6869. The Green Party and LNC filed administrative complaints on June 15, 2015 naming the Commission on Presidential Debates (“CPD”) and others as respondents, and those administrative complaint were designated MUR 6942. The Green Party and LNC subsequently submitted a supplement dated October 20, 2015 to the Commission. Deny that the Commission had reason to believe that the conduct described in any of these administrative complaints violated the law. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

5. This paragraph contains plaintiffs’ characterization of the Commission’s regulations, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is necessary. To the extent a response is required, admit that persons affiliated with CPD have also been affiliated with the Republican or Democratic parties and that CPD has received corporate funding. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

6. This paragraph contains plaintiffs’ characterization of the Commission’s regulations and the documents cited in this paragraph, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is necessary. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. Deny that the Commission’s decisions to dismiss the administrative complaints and to deny the rulemaking petition were contrary to law.

7. This paragraph contains plaintiffs’ characterization of the administrative complaints and the documents cited in this paragraph, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is necessary. To the extent a response is

required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. Deny that the Commission's decisions to dismiss the administrative complaints and to deny the rulemaking petition were contrary to law.

8. This paragraph contains plaintiffs' conclusions of law, and therefore no response is necessary. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. Deny that the conduct of CPD described in the administrative complaints in MUR 6869 or MUR 6942 constituted violations of FECA.

9. This paragraph contains plaintiffs' characterization of the administrative complaints, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is necessary.

To the extent that a response is required, admit that on July 13, 2015, the Commission decided by a vote of 5-0 (with one Commissioner recused) in MUR 6869 to find no reason to believe that CPD or Frank Fahrenkopf, Jr. and Michael D. McCurry as Co-Chairs of CPD violated 52 U.S.C. §§ 30116(f) and 30118(a); find no reason to believe that CPD violated 52 U.S.C. § 30103 or § 30104; approve a Factual and Legal Analysis; and close the file in MUR 6869, thus dismissing the administrative complaint in MUR 6869. The Factual and Legal Analysis, which serves as the statement of reasons for purposes of judicial review of the Commission's dismissal decision in MUR 6869, speaks for itself. On December 10, 2015, the Commission decided by a vote of 5-0 (with one Commissioner recused) in MUR 6942 to find no reason to believe that CPD or Frank Fahrenkopf, Jr. and Michael D. McCurry as Co-Chairs of CPD violated 52 U.S.C. §§ 30116(f) and 30118(a); find no reason to believe that CPD violated 52 U.S.C. § 30103 or § 30104; approve a Factual and Legal Analysis; and close the file

in MUR 6942, thus dismissing the administrative complaints in MUR 6942. The Factual and Legal Analysis, which serves as the statement of reasons for purposes of judicial review of the Commission's dismissal decision in MUR 6942, speaks for itself.

Deny the remaining allegations in this paragraph.

10. This paragraph contains plaintiffs' characterization of the rulemaking petition and rulemaking record, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is necessary. To the extent that a response is required, admit that on September 11, 2014, Level the Playing Field filed a petition for rulemaking requesting that the Commission open a rulemaking to revise its regulations concerning the selection criteria used to determine participation in candidate debates. This petition was designated REG 2014-06 for administrative purposes. Plaintiffs Ackerman, Green Party and LNC were not petitioners. Admit that a Notice of Availability was published in the Federal Register, Rulemaking Petition: Candidate Debates, 79 Fed. Reg. 68137 (Nov. 14, 2014), and that the Commission received about 1,260 comments, which speak for themselves. Ackerman, the Green Party and LNC did not submit comments, but the "Libertarian Party" did. Admit that on July 16, 2015 the Commission failed by a vote of 2-4 to approve a motion to open a rulemaking, thus deciding not to initiate a rulemaking.

On November 6, 2015, the Commission approved the notice of disposition for REG 2014-06.

*See* <http://sers.fec.gov/fosers/showpdf.htm?docid=341874>;

<http://sers.fec.gov/fosers/showpdf.htm?docid=341936>. Deny the remaining allegations in this paragraph.

11. This paragraph contains plaintiffs' characterization of the civil complaint, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is required.

To the extent that a response is necessary, admit that about 10 months elapsed between the filing of the administrative complaint in MUR 6869 and rulemaking petition in September 2014 and the Commission's dismissal of the administrative complaint in MUR 6869 and denial of the rulemaking petition in July 2015, and admit that six months elapsed between the filing of the administrative complaints in MUR 6942 in June 2015 and the Commission's dismissal of those administrative complaints in December 2015, but deny that the passage of that amount of time before the dismissals and denial occurred, or the dismissals and denial themselves, were contrary to law. Deny that the Federal Election Campaign Act ("FECA" or "the Act") requires the Commission to act or take final action on administrative complaints or rulemaking petitions within 120 days. *See* 52 U.S.C. § 30109 (authorizing the filing of petition for judicial review after 120 days).

Deny the remaining allegations in this paragraph.

12. This paragraph contains plaintiffs' conclusions of law and plaintiffs' characterization of the administrative complaints, the rulemaking petition, prior administrative enforcement and rulemaking records, the Commission's decisions in these matters, and documents cited in this paragraph, all of which speak for themselves, and therefore no response is required. To the extent that a response is required, deny that "[t]he FEC itself is neither nonpartisan nor independent, and in this context should not be entitled to any deference whatsoever," and deny that "it is captive of the two parties." Deny that "three of the FEC's six Commissioners are Democrats, and the other three are Republicans" or that there is a "3-3 split along party lines among the Commissioners." Admit that currently two FEC Commissioners are Democrats, three Commissioners are Republicans, and one is an independent. The General Counsel's recommendations in these and prior matters are irrelevant, since it is the

Commissioners, not staff, that are authorized by statute to administer and enforce the Act. With regard to footnote 7, deny that an FEC General Counsel's Report can "find[]" reason to believe a violation occurred; the General Counsel makes recommendations to the Commission. Deny the remaining allegations in this paragraph.

13. This paragraph contains plaintiffs' characterization of the administrative and civil complaints, the Commission's dismissals of the administrative complaints, and a document cited in the paragraph, all of which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is necessary. To the extent that a response is required, the Commission states as follows: Deny the first sentence. Admit that 2016 presidential campaigns are underway. The Commission is without knowledge of information sufficient to admit or deny the remaining factual allegations in this paragraph.

14. This paragraph contains plaintiffs' characterization of their court complaint, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is necessary. To the extent that a response is required, deny that any relief is warranted in this case because the Commission's dismissals of the administrative complaints and denial of the rulemaking petition at issue were not contrary to law.

The relief requested in subparagraphs (a) and (b) regarding the administrative complaints in MUR 6869 and MUR 6942 exceeds the Court's authority under 52 U.S.C. § 30109(a)(8)(C). Even if the Court were to declare that the dismissals of the administrative complaints were contrary to law, the statute authorizes remand to the Commission with directions to conform with the Court's declaration within 30 days, not an order that the agency find a violation of law occurred. In the unlikely event that the Commission failed to comply, plaintiffs then could move for an order granting a private right of action. Moreover, if CPD adopted new rules for the 2016

election as suggested in subparagraph (b), pursuing any claim that such new rules were unlawful under FECA would require the filing of a new administrative complaint.

Similarly, the relief requested in subparagraph (c) regarding the rulemaking petition in REG 2014-06 exceeds the Court's authority under the Administrative Procedure Act ("APA"). If the Court determines that denial of the rulemaking petition was contrary to law, the proper remedy would be to remand to the Commission for further proceedings consistent with the Court's decision. The Commission's action on remand would be subject to judicial review under the ordinary legal standards.

**"JURISDICTION AND VENUE"**

15. Admit that this Court has jurisdiction to review the Commission's dismissals of the administrative complaints in MUR 6869 and MUR 6942 under 52 U.S.C. § 30109(a)(8)(A). Deny that plaintiffs Green Party and LNC have standing under 52 U.S.C. § 30109(a)(8)(A) to challenge the Commission's dismissal in MUR 6869 and deny that plaintiffs LPF and Ackerman have standing under 52 U.S.C. § 30109(a)(8)(A) to challenge the Commission's dismissal in MUR 6942, because they were not named as complainants in the respective administrative complaints or subsequent supplements. Although counsel for plaintiffs submitted improper requests to the Commission by the Green Party and LNC to join the administrative complaint in MUR 6869 on June 16 and 19, 2015, those requests were not granted by the FEC. Admit that this Court has jurisdiction to review the Commission's denial of Level the Playing Field's rulemaking petition in REG 2014-06 under 28 U.S.C. § 1331.

16. Admit.



**“PARTIES”**

17. The Commission is without knowledge of information sufficient to admit or deny the factual allegations in this paragraph.

18. The Commission is without knowledge of information sufficient to admit or deny the factual allegations in this paragraph.

19. Admit that candidates of the Green Party of the United States have competed in recent presidential elections. The Commission is otherwise without knowledge of information sufficient to admit or deny the factual allegations in this paragraph.

20. Admit, except that the Commission is without knowledge of information sufficient to admit or deny the factual allegations regarding the Libertarian Party’s intentions in the 2016 election cycle.

21. Admit.

**“STATUTORY AND REGULATORY FRAMEWORK”**

22. This paragraph contains plaintiffs’ characterization of FECA and the decision in *McCutcheon v. FEC*, 134 S. Ct. 1434, 1444 (2014), which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is needed.

23. This paragraph contains plaintiffs’ characterization of FECA and the Commission’s regulations and Federal Register notice, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is needed.

24. This paragraph contains plaintiffs’ characterization of the Act and the Commission’s regulations and Federal Register notice, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is needed.

25. This paragraph contains plaintiffs' characterization of the Internal Revenue Code and the Commission's regulations, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed.

26. This paragraph contains plaintiffs' characterization of a Commission regulation, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed.

27. This paragraph contains plaintiffs' characterizations of the Commission's 2005 determination in MUR 5395 (In the Matter of Dow Jones, et al, ("Dow Jones")), a report of the Commission's General Counsel in that matter, and the decision in *Buchanan v. FEC*, 112 F. Supp. 2d 58, 74 (D.D.C. 2000), which speak for themselves, and therefore no response is needed.

28. This paragraph contains plaintiffs' characterizations of the Act and Commission regulations, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed.

**"FACTS GIVING RISE TO PLAINTIFFS' ADMINISTRATIVE COMPLAINT"**

29. Admit that CPD has staged presidential general election debates since 1988 and that CPD derives its funding from sources that include corporations, foundations, universities, and private donations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph. To the extent that this paragraph incorporates succeeding paragraphs of the complaint, the Commission incorporates its responses to those succeeding paragraphs and its response to plaintiffs' prayer for relief.

**A. "The CPD Is Not A Nonpartisan Organization; It Supports The Democratic And Republican Parties And Opposes Third Parties And Independents"**

30. Deny the heading "A" that precedes this paragraph to the extent it suggests that the dismissals of the administrative complaints in MUR 6869 and MUR 6942 were contrary to

law. The paragraph contains plaintiffs' characterizations of the cited Explanation and Justification, Funding and Sponsorship of Candidate Debates, 44 Fed. Reg. 39,348 (July 5, 1979), which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

31. This paragraph contains plaintiffs' characterizations of the cited document, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, deny that the Commission had reason to believe the conduct described in the administrative complaints violated Commission regulations. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

32. This paragraph contains plaintiffs' characterizations of the cited Memorandum of Agreement, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

33. This paragraph contains plaintiffs' characterizations of the cited Press Release, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

34. This paragraph contains plaintiffs' characterizations of the cited Press Release, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

35. This paragraph contains plaintiffs' characterizations of the cited memoranda of understanding, administrative complaints and CPD responses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

36. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

37. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

38. This paragraph contains plaintiffs' characterizations of the cited publication, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

39. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

40. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

41. Admit the first sentence, subparagraphs (a) and (d). Admit that the American Gaming Association Political Action Committee made more than \$150,000 in contributions to federal political committees in the 2011-2012 election cycle. The Commission notes that the cited document speaks for itself. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

42. Admit the first sentence and subparagraph (a). The Commission notes that the cited document speaks for itself. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

43. Admit that McCurry has been co-chair of CPD since 2009. Admit that McCurry made at least \$33,000 in contributions to Democratic Party candidates for federal office from 2008 through 2012 inclusive, including \$200 to Hillary Clinton during this period. Admit subparagraph (c) with regard to contributions made to federal candidates. The Commission notes that the cited document speaks for itself. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

44. Admit that John Danforth and Alan Simpson are former Republican Senators and that Danforth contributed \$2,700 to Kasich for America in August 2015. Admit subparagraphs (c) and (e) with regard to contributions made to federal political committees in 2008 and 2015. Admit that Richard Parsons made at least \$61,000 in contributions to Republican Party candidates for federal office between 2008 and 2012 inclusive. The Commission notes that the cited documents speak for themselves. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

45. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph, except to note that the referenced documents speak for themselves.

46. This paragraph contains plaintiffs' characterization of the Commission's regulations and a cited interview, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission is

without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

**B. “The CPD Uses Subjective Candidate Selection Criteria That Are Designed To Exclude Third-Party And Independent Candidates”**

“The CPD’s Selection Criteria”

47. Deny the heading “B” that precedes this paragraph to the extent it suggests that the dismissals of the administrative complaints in MUR 6869 and MUR 6942 were contrary to law. This paragraph contains plaintiffs’ characterization of CPD’s candidate selection criteria for 2012 and prior presidential elections, which speak for themselves, and therefore no response is necessary. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

48. This paragraph contains plaintiffs’ characterization of CPD’s candidate selection criteria for 2012 and the cited document, which speak for themselves, and therefore no response is necessary. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

49. This paragraph contains plaintiffs’ characterization of CPD’s 2012 Application of Criteria, which speaks for itself, and therefore no response is necessary. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

50. Admit that in 2000, 2004, 2008, and 2012 only the Democratic and Republican nominees participated in CPD’s general election presidential debates. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

51. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

“The CPD’s 15% Rule Is Biased Against Independent and Third Party Candidates”

52. Deny the heading that precedes this paragraph to the extent it suggests that the dismissals of the administrative complaints in MUR 6869 and MUR 6942 were contrary to law. This paragraph contains plaintiffs’ characterization of the Commission’s regulation, the First General Counsel’s Report in MUR 5395 (Dow Jones), and the decision in *Buchanan*, which speak for themselves, and plaintiffs’ legal conclusions, and therefore no response is required. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the second sentence of this paragraph.

53. Deny the first sentence to the extent it suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the Act or Commission regulations. This paragraph contains plaintiffs’ characterizations of the Commission’s regulation, the administrative complaints and supplements, and the cited documents, which speak for themselves, and plaintiffs’ legal conclusions, and therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

54. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

55. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

56. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

57. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

58. This paragraph contains plaintiffs' characterization of the cited document, which speaks for itself, and therefore no response is necessary. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

59. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

60. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence, which are phrased vaguely and not limited to federal elections. Admit the second sentence.

61. Admit that federal candidates incur costs other than paid media. The Commission is otherwise without knowledge or information sufficient to admit or deny the other factual allegations in this paragraph.

62. This paragraph contains plaintiffs' characterization of the Act and a Commission publication, which speak for themselves, and therefore no response is needed. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

63. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

64. The first sentence of this paragraph contains plaintiffs' legal conclusions, and therefore no response is required. To the extent a response is required, the Commission is



without knowledge or information sufficient to admit or deny the factual allegations in the sentence. Deny the second sentence.

65. Deny the second sentence to the extent it suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

66. This paragraph contains plaintiffs' characterizations of cited documents and a statement by a Commissioner at a Commission meeting, which speak for themselves, and therefore no response is needed. The Commission notes that plaintiffs cite a document containing the "live captions" of the audio of that Commission meeting, but that document expressly states that "[t]his file is not a transcript of the meeting and it has not been reviewed for accuracy or approved by the Federal Election Commission." Admit that the paragraph accurately, but selectively, quotes from the live captions. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

67. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

68. This paragraph contains plaintiffs' characterizations of the cited documents, which speak for themselves, and therefore no response is needed. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

69. Admit that the Green Party and the LNC submitted a supplemental letter to the FEC dated October 20, 2015. This paragraph contains plaintiffs' characterizations of the cited documents, which speak for themselves, and therefore no response is needed. To the extent a

response is required, the Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

70. Deny the second sentence to the extent it suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

71. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

72. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

73. Deny the first sentence. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the second sentence.

74. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

75. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

76. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

**C. “The CPD’s Exclusionary Debates Further Corruption Of The Electoral Process And The Appearance Of Corruption”**

77. Deny the heading that precedes this paragraph to the extent it suggests that the dismissals of the administrative complaints in MUR 6869 and MUR 6942 were contrary to law. Admit that CPD derives its funding from sources that include corporations, foundations,

universities, and private donations. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

78. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

79. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

80. The Commission notes that reports of receipts on file with the Commission reflect contributions by political committees to political party committees. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph, in part due to the vagueness of the allegations regarding unspecified political committees.

81. Deny that corporations can lawfully contribute their treasury funds to federal political committees. Admit that some political committees contribute to both Republicans and Democrats. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

82. Deny this paragraph to the extent it suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the Act or Commission regulations. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

83. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

84. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

85. This paragraph contains plaintiffs' characterizations of the cited documents, which speak for themselves, and therefore no response is needed. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

86. This paragraph contains plaintiffs' characterizations of the cited documents, which speak for themselves, and therefore no response is needed. To the extent that a response is required, deny that a 50% view constitutes a public preference. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

87. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

**“THE ADMINISTRATIVE COMPLAINTS”**

88. Admit that on September 11, 2014, Level the Playing Field and Ackerman filed an administrative complaint designated as MUR 6869 with the Commission. LPF and Ackerman submitted supplements to the Commission dated November 24, 2014 and April 10, 2015. These filings speak for themselves, and therefore no further response is required. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in the paragraph and its accompanying footnote.

89. Admit that counsel for plaintiffs submitted improper requests by the Green Party and the LNC to join the administrative complaint in MUR 6869 in June 2015, but those requests were not granted by the Commission. To the extent that this paragraph contains plaintiffs' characterization of those requests, the documents speak for themselves, and no response is required.

90. This paragraph contains plaintiffs' characterization of the civil complaint, the administrative complaint in MUR 6869, and material filed in support of the administrative complaint, all of which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, deny that the conduct of respondents described in the administrative complaint in MUR 6869 was unlawful under the Act or Commission regulations. To the extent that this paragraph incorporates preceding and succeeding paragraphs of the complaint, the Commission incorporates its responses to those paragraphs and its response to plaintiffs' prayer for relief.

91. This paragraph contains plaintiffs' characterization of the Commission's regulations, which speak for themselves, and plaintiffs' conclusions of law, therefore no response is required. To the extent a response is required, deny that the conduct of respondents described in the administrative complaint in MUR 6869 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

92. This paragraph contains plaintiffs' characterization of the Act and a Commission regulation, which speak for themselves, and plaintiffs' conclusions of law, therefore no response is required. To the extent a response is required, deny that the conduct of respondents described in the administrative complaint in MUR 6869 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

93. This paragraph contains plaintiffs' characterization of FECA, which speaks for itself, and plaintiffs' conclusions of law, therefore no response is required. To the extent a response is required, deny that the conduct of respondents described in the administrative

complaint in MUR 6869 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

94. This paragraph contains plaintiffs' characterization of FECA and the decision in *FEC v. Mass. Citizens for Life*, 479 U.S. 238 (1986), which speak for themselves, and plaintiffs' conclusions of law, therefore no response is required. To the extent a response is required, deny that the conduct of respondents described in the administrative complaint in MUR 6869 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

95. This paragraph contains plaintiffs' characterization of FECA, which speaks for itself, and plaintiffs' conclusions of law, therefore no response is required. To the extent a response is required, deny that the conduct of respondents described in the administrative complaint in MUR 6869 was unlawful under the Act or Commission regulations. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

96. Admit.

97. Admit that counsel for CPD and the individual respondents sent a letter dated December 15, 2014 to the Commission responding to the administrative complaint in MUR 6869.

98. Admit.

99. Admit that on June 22, 2015, plaintiffs filed their civil complaint in *Level the Playing Field v. FEC*, No. 1:15-cv-0961 (TCS) (D.D.C. June 22, 2015) ("*LPF I*"), which speaks

for itself, and therefore no further response is required. The Commission notes that that suit was voluntarily dismissed by plaintiffs on August 27, 2015.

100. Admit that on July 13, 2015, the Commission decided by a vote of 5-0 (with one Commissioner recused) in MUR 6869 to find no reason to believe that CPD or Frank Fahrenkopf, Jr. and Michael D. McCurry as Co-Chairs of CPD violated 52 U.S.C. §§ 30116(f) and 30118(a); find no reason to believe CPD violated 52 U.S.C. § 30103 or § 30104; approve a Factual and Legal Analysis; and close the file in MUR 6869, thus dismissing the administrative complaint. The Factual and Legal Analysis, which serves as the statement of reasons for purposes of judicial review of the Commission's dismissal decision, speaks for itself. Deny the remaining allegations in this paragraph. Admit that the Commission notified counsel for Level the Playing Field and Ackerman by letter dated July 17, 2015, which enclosed a copy of the Commission's Factual and Legal Analysis.

101. Admit that on December 10, 2015, the Commission decided by a vote of 5-0 (with one Commissioner recused) in MUR 6942 to find no reason to believe that CPD or Frank Fahrenkopf, Jr. and Michael D. McCurry as Co-Chairs of CPD violated 52 U.S.C. §§ 30116(f) and 30118(a); find no reason to believe CPD violated 52 U.S.C. § 30103 or § 30104; approve a Factual and Legal Analysis; and close the file in MUR 6942, thus dismissing the administrative complaint. The Factual and Legal Analysis, which serves as the statement of reasons for purposes of judicial review of the Commission's dismissal decision in MUR 6942, speaks for itself. Deny the remaining allegations in this paragraph. Admit that the Commission notified counsel for Level the Playing Field and Ackerman by letter dated December 16, 2015, which enclosed a copy of the Commission's Factual and Legal Analysis.

**“LEVEL THE PLAYING FIELD’S PETITION FOR RULEMAKING”**

102. Admit that LPF filed a petition for rulemaking on September 11, 2014 and that the petition was designated REG 2014-06 for administrative purposes. That petition speaks for itself, and therefore no further response is needed.

103. This paragraph contains plaintiffs’ characterization of the petition for rulemaking, which speaks for itself, and plaintiffs’ conclusions of law, therefore no response is required. To the extent a response is required, deny that the Commission’s decision to deny the petition for rulemaking was contrary to law. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

104. This paragraph contains plaintiffs’ characterization of the petition for rulemaking, which speaks for itself, and plaintiffs’ conclusions of law, and therefore no response is required. To the extent a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

105. Admit that a Notice of Availability was published in the Federal Register, Rulemaking Petition: Candidate Debates, 79 Fed. Reg. 68137 (Nov. 14, 2014), which speaks for itself, but deny that the Notice reproduced the petition for rulemaking. Admit the second sentence.

106. This paragraph contains plaintiffs’ characterization of comments regarding the petition for rulemaking, which speak for themselves, and plaintiffs’ conclusions of law, and therefore no response is required. Admit that about 1,260 comments were submitted to the Commission. These comments speak for themselves, and therefore no further response is needed. Deny that the LNC filed a comment in the rulemaking, but admit that the “Libertarian Party” filed one.



107. Admit that on July 16, 2015 the Commission failed by a vote of 2-4 to approve a motion to open a rulemaking, thus deciding not to initiate a rulemaking, and approved by a vote of 4-2 a motion to direct the Commission's Office of General Counsel to draft a notice of disposition that reflects the views of the four Commissioners who voted not to proceed with the rulemaking. On November 6, 2015, the Commission approved the notice of disposition for REG 2014-06. *See* <http://sers.fec.gov/fosers/showpdf.htm?docid=341874>, <http://sers.fec.gov/fosers/showpdf.htm?docid=341936>. The third, fourth, and fifth sentences include plaintiffs' characterizations of the comments of the Commissioners at the July 16 meeting, which speak for themselves, and no further response is required. The Commission notes that plaintiffs cite a document containing the "live captions" of the audio of that Commission meeting, but that document expressly states that "[t]his file is not a transcript of the meeting and it has not been reviewed for accuracy or approved by the Federal Election Commission." Admit that the paragraph accurately, but selectively, quotes from the live captions. Deny the remaining allegations in the paragraph.

**"FEC'S UNLAWFUL DISMISSALS"**

108. Deny.

109. This paragraph contains plaintiffs' characterization of the Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed.

110. This paragraph contains plaintiffs' characterization of the Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this paragraph.

111. This paragraph contains plaintiffs' characterization of the Factual and Legal Analyses, which speaks for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this paragraph.

112. This paragraph contains plaintiffs' characterization of the decision in *Buchanan*, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this paragraph.

113. This paragraph contains plaintiffs' characterization of the administrative complaints and supplements, and the Commission's Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this paragraph.

114. This paragraph contains plaintiffs' characterization of the administrative complaints and supplements, and the Commission's Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. Admit that the Commission notified CPD, Fahrenkopf and McCurry of the administrative complaints, but did not notify 10 CPD directors named in the complaints. The Commission denies the remaining allegations in this paragraph.

115. This paragraph contains plaintiffs' characterization of the administrative complaints and supplements, the responses to the administrative complaints, and the Commission's Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. Admit that the Factual and Legal

Analyses cited a declaration by Frank Fahrenkopf. The Commission denies the remaining allegations in this paragraph.

116. This paragraph contains plaintiffs' characterization of the Commission's Factual and Legal Analysis in MUR 6942, which speaks for itself, and plaintiffs' conclusions of law, and therefore no response is needed. Admit that the Factual and Legal Analysis in MUR 6942 cited a declaration by Frank M. Newport. The Commission denies the remaining allegations in this paragraph.

117. Deny.

118. This paragraph contains plaintiffs' characterization of the administrative complaints and supplements, and the Commission's Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission denies the allegations in this paragraph.

119. This paragraph contains plaintiffs' characterization of the administrative complaints and supplements, and the Commission's Factual and Legal Analyses, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. Admit that the paragraph accurately quotes a portion of the Factual & Legal Analysis in MUR 6869, but the full sentence states "Even if CDP's 15% polling criterion may tend to exclude third-party and independent candidates, the available information does not indicate – as the available information in previous complaints does not indicate – that the CPD failed to use pre-established, objective criteria. *See* 11 C.F.R. § 110.13(c)." Factual and Legal Analysis, MUR 6869 at 7 n.4. Deny the remaining allegations in the paragraph.

120. This paragraph contains plaintiffs' characterization of the administrative complaints and supplements, the Commission's Factual and Legal Analyses, and the decision in

*Buchanan*, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, deny the remaining allegations in the paragraph.

121. Deny the first and third sentences. The second sentence and the accompanying footnotes contain plaintiffs' characterization of the rulemaking petition and statements of Commissioners, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. The Commission notes that plaintiffs cite a document containing the "live captions" of the audio of that Commission meeting, but that document expressly states that "[t]his file is not a transcript of the meeting and it has not been reviewed for accuracy or approved by the Federal Election Commission." To the extent that a response is required, admit that a Notice of Disposition had not been issued on the date plaintiffs' amended civil complaint was filed but on November 6, 2015 the Commission approved the notice of disposition for REG 2014-06, and admit that the paragraph accurately, but selectively, quotes from the live captions, but deny the remaining allegations in the paragraph.

122. Deny the first and last sentences. The rest of this paragraph contains plaintiffs' characterization of LPF's rulemaking petition in REG 2014-06 and documents in current and prior FEC rulemaking proceedings, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent a response is required, admit that the petitions in the prior rulemaking matters (REG 1999-04 and REG 2002-12) were filed in 1999 and 2002, that the FEC denied those petitions in 2009, and that the paragraph accurately quotes three words from an opening statement by then-Chairman Walther. The Commission also notes that the Notice of Disposition, Notice 2009-16, Candidate Debates, 74 Fed Reg. 31179 (July 28,

2009), provides the statement of reasons for the Commission's 2009 rulemaking decision. The Commission denies the remaining allegations in this paragraph.

123 Deny the last sentence. This paragraph also contains plaintiffs' characterizations of comments by FEC Commissioners in the consideration of LPF's rulemaking petition in REG 2014-06, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, admit that the referenced prior rulemaking petitions (REG 1999-04 and REG 2002-12) were filed in 1999 and 2002, fifteen and twelve years before LNC's 2014 rulemaking petition (REG 2014-06). To the extent that a further response is required, the Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

124. This paragraph contains plaintiffs' characterization of LPF's rulemaking petition and comments by FEC Commissioners, which speak for themselves, and plaintiffs' conclusions of law, and therefore no response is needed. The Commission notes that plaintiffs cite a document containing the "live captions" of the audio of that Commission meeting, but that document expressly states that "[t]his file is not a transcript of the meeting and it has not been reviewed for accuracy or approved by the Federal Election Commission." To the extent that a response is required, admit that the paragraph accurately, but selectively, quotes from the live captions, but the Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

125. Admit that the Commission received about 1,260 comments in REG 2014-06. This paragraph contains plaintiffs' characterization of those comments, which speak for themselves, and therefore no response is needed. To the extent that a response is required, the Commission denies the remaining allegations in this paragraph.

126. Admit that currently two FEC Commissioners are Democrats, three Commissioners are Republicans, and one is an independent. This paragraph contains plaintiffs' characterization of a judicial opinion and comments by an FEC Commissioner, which speak for themselves, and therefore no response is needed. To the extent that a response is required, the Commission denies the remaining allegations in this paragraph.

127. This paragraph contains plaintiffs' characterization of the cited documents and comments by an FEC Commissioner, which speak for themselves, and therefore no response is needed. To the extent that a response is required, the Commission denies the remaining allegations in this paragraph.

128. Deny the first, second, and fourth sentences. In 2014 the Commission collected \$135,813 in civil penalties as part of its Administrative Fines program alone, a figure that does not include amounts collected as part of its regular enforcement process. See <http://www.fec.gov/press/bkgnd/EnforcementStatistics.shtml#search=%22135,813%22>. In addition, the Commission notes that it plans to publish a report on the occasion of the agency's 40<sup>th</sup> anniversary. See Minutes of June 18, 2015 Open Meeting at 11, available at [http://www.fec.gov/agenda/2015/documents/approved\\_15-34-a.pdf](http://www.fec.gov/agenda/2015/documents/approved_15-34-a.pdf). This paragraph also contains plaintiffs' characterization of the cited document, which speaks for itself, and therefore no response is needed. Admit the third sentence.

129. Admit that the Commission denied LPF's petition in REG 2014-06 less than 10 months after it was filed. The remaining allegations in the paragraph are denied.

130. This paragraph contains plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, deny that the conduct of respondents described in the administrative complaints was unlawful under the Act or Commission

regulations. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

131. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

132. This paragraph contains plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

133. Admit this paragraph's allegations regarding the Green Party's prior nomination of presidential candidates, and those candidates' matching funds eligibility and percentages of the popular vote in past presidential elections. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

134. Admit that the paragraph accurately states the Libertarian presidential candidates for 1984-2012 and the total votes that Gary Johnson received in 2012. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

135. Deny to the extent this paragraph suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the Act or Commission regulations. The paragraph contains plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in the paragraph.

136. Deny to the extent this paragraph suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the

Act or Commission regulations. The paragraph contains plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in the paragraph.

137. Deny to the extent this paragraph suggests that the conduct of respondents described in the administrative complaints in MUR 6869 and MUR 6942 was unlawful under the Act or Commission regulations. The paragraph contains plaintiffs' conclusions of law, and therefore no response is needed. To the extent that a response is required, the Commission is without knowledge or information sufficient to admit or deny the factual allegations in the paragraph.

**“FIRST CAUSE OF ACTION  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
(28 U.S.C. §§ 2201-2202)”**

138. The Commission incorporates its responses to paragraphs 1 through 137 inclusive.

139. Deny.

140. Deny.

141. Deny.

**“SECOND CAUSE OF ACTION  
FOR DECLARATORY AND INJUNCTIVE RELIEF  
(28 U.S.C. §§ 2201-2202)”**

142. The Commission incorporates its responses to paragraphs 1 through 137 inclusive.

143. Deny.

144. Deny.



**“REQUESTED RELIEF”**

The Court should deny plaintiffs’ requests for relief and grant no other relief to plaintiffs. Such relief is not warranted in this case because the Commission’s dismissal of the administrative complaints in MUR 6869 and MUR 6942, and denial of the rulemaking petition in REG 2014-06, were not contrary to law. In addition, the relief requested in subparagraphs (c), (d), (e), and (f) regarding the administrative complaints exceeds the Court’s authority under 52 U.S.C. § 30109(a)(8)(C), and the relief requested in subparagraphs (g)(2) and (h) regarding the rulemaking petition exceeds the Court’s authority under the APA. *See* Response to Paragraph No. 14.

**Affirmative Defenses**

1. The Complaint fails to state a claim upon which relief may be granted.
2. One or more plaintiffs lack standing to bring their claim(s).
3. The relief requested by plaintiffs exceeds the Court’s authority.

Respectfully submitted,

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