

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

FEDERAL ELECTION COMMISSION,	)	
	)	
Plaintiff,	)	Civ. No. 17-22643 (RNS-EGT)
	)	
v.	)	
	)	
DAVID RIVERA,	)	OPPOSITION TO
	)	MOTION TO DISMISS
	)	
Defendant.	)	

**PLAINTIFF FEDERAL ELECTION COMMISSION’S MEMORANDUM IN  
OPPOSITION TO DEFENDANT’S MOTION TO DISMISS COMPLAINT**

The Court should deny defendant David Rivera’s motion to dismiss the Complaint. As the Complaint describes in detail, in 2012, then-U.S. Congressman David Rivera violated the Federal Election Campaign Act’s (“FECA”) ban on making contributions in the names of others, *see* 52 U.S.C. § 30122, when he knowingly helped and assisted the making of nearly \$70,000 in contributions in a false name to the campaign of Justin Lamar Sternad.

Sternad was a candidate in Florida’s 26th Congressional District’s 2012 Democratic primary election along with Rivera’s likely general election opponent, Joe Garcia. Rivera directed an associate, Ana Sol Alliegro, to approach Sternad with an offer to help fund his campaign, to which Sternad agreed. With Alliegro’s help, Rivera then hired vendors to provide services to Sternad’s campaign and arranged for those vendors to be paid for those services, while taking several measures to conceal his involvement and the source of the contributions. Upon Alliegro’s instructions, Sternad then concealed the sources of the in-kind contributions that Rivera facilitated by falsely stating in his campaign’s public disclosure reports that the contributions were loans from Sternad’s personal funds.

Rivera's motion should be denied because it is premised on mistaken understandings of the Complaint and the provision he violated, 52 U.S.C. § 30122. First, the Complaint does not allege that Rivera merely made lawful in-kind contributions that were not properly reported by the recipient committee, as Rivera asserts. Instead, the Complaint clearly alleges that the in-kind contributions Rivera facilitated were illegal because they were made in a false name.

Second, Rivera's motion attacks a strawman when it incorrectly claims that the Complaint failed to allege a valid section 30122 violation because it does not state that Rivera paid or reimbursed "third parties" (*i.e.*, conduits) to pay the vendors. Section 30122 outlaws at least two types of contributions in the names of others — "false name" contributions (which is the type involved in this case) and "conduit" contributions with falsely disclosed straw donors (which is not the alleged conduct here). Rivera's argument is premised on a purported requirement that he himself must have played a particular role in a particular version of the latter type of contribution, which the Complaint does not allege. The Complaint alleges that Rivera knowingly helped and assisted false name contributions. It does not — and need not — specify that he was the true source of funds in a conduit scheme using other persons as disclosed straw donors.

Finally, Rivera misrepresents the Complaint by claiming it states that Sternad knew the identity of all of the true contributors to his campaign, and misrepresents the law by claiming that this fact, if true, would defeat the Complaint. Rivera is wrong on both counts. Though aware of the payments to vendors and the false attribution of the funds to himself, Sternad is not alleged in the Complaint to have been definitively aware of the source of all of the contributions that Rivera facilitated for his campaign. But even if Sternad was aware, Rivera still would have violated section 30122 since the contributions at issue were attributed to a false name with

Rivera's help and assistance. Rivera cites no authority for his apparent position that a false name contribution cannot take place where the candidate is in on the scam, nor could he. FECA's text specifically rules out such an interpretation and plaintiff Federal Election Commission ("FEC" or "Commission") has enforced section 30122 in similar factual contexts.

Rivera's motion to dismiss should be denied.

## **BACKGROUND**

### **I. LEGAL BACKGROUND**

#### **A. Plaintiff Federal Election Commission and FECA**

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

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

424 U.S. at 66-69.

Additionally, FECA limits the dollar amounts and permissible sources of contributions to candidates for federal office, political parties, and political committees. 52 U.S.C. §§ 30116(a), 30118-19, 30121. For instance, during the 2011-2012 election cycle that is at issue in this case, no person could contribute in excess of \$2,500 per election to a federal candidate.<sup>1</sup>

Additionally, certain sources, such as foreign nationals and corporations, may not contribute any sum to a federal candidate's committee. *See id.* §§ 30118-19, 30121.

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

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

FECA states that "[n]o person shall make a contribution in the name of another person[.]" 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).<sup>2</sup> The statute prohibits at least two types of contributions in the name of another. First, it bans "false name" contributions. This is the type of contribution in the name of another at issue in which Rivera is alleged to have participated. False name contributions include, but are not limited to, the scenario of a person "[m]aking a

---

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

<sup>2</sup> Effective September 1, 2014, the provisions of FECA that were codified in Title 2 of the United States Code were recodified in a new title, Title 52. *See* Editorial Reclassification Table, [http://uscode.house.gov/editorialreclassification/t52/Reclassifications\\_Title\\_52.html](http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html). As a result, many of the relevant authorities cited herein refer to 2 U.S.C. § 441f.

contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.” 11 C.F.R. § 110.4(b)(2)(ii) (describing an example of a contribution in the name of another).

Second, section 30122 also bars “conduit” contributions, which include the scenario when a person provides funds to a conduit (also called a “straw donor”), who then contributes those funds to a candidate or committee without disclosing the true source of the contribution. *See, e.g.*, 11 C.F.R. § 110.4(b)(2)(i) (describing an example of a contribution in the name of another); *United States v. O’Donnell*, 608 F.3d 546, 548-49 (9th Cir. 2010) (distinguishing false name from conduit violations of section 30122). The Complaint does not allege that Rivera was the true source of funds in a conduit scheme involving straw donors who inaccurately identified themselves as contributors to a recipient committee and became inaccurately disclosed as a result.

Under the Commission’s regulations, a person can be liable under section 30122 even when he or she is not the source of the contributed funds, when that person “[k]nowingly help[s] or assist[s] any person in making a contribution in the name of another.” 11 C.F.R. § 110.4(b)(1)(iii). A person knowingly helps or assists a contribution in the name of another when he or she “initiate[s] or instigate[s] or ha[s] some significant participation in a plan or scheme to make a contribution in the name of another.” *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,104-05 (Aug. 17, 1989).

FECA’s ban on making contributions in the names of others prevents people from evading FECA’s disclosure requirements and from circumventing FECA’s contribution limits. For example, under section 30122, a prohibited contributor (such as a foreign national or

corporation) may not conceal its illicit contribution by using a false name. The statute also prevents even legal contributors such as individuals from using a false name to hide that they contributed an excessive amount of money to a campaign or committee. As a result, courts have repeatedly held that section 30122 promotes the government's important interests in promoting campaign finance disclosure and preventing the circumvention of FECA's contribution limits. *See, e.g., United States v. Whittemore*, 776 F.3d 1074, 1079 (9th Cir. 2015); *O'Donnell*, 608 F.3d at 554; *Mariani v. United States*, 212 F.3d 761 775 (3rd Cir. 2000); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990); *United States v. Curran*, No. 92-558, 1993 WL 137459, at \*1 (E.D. Pa. Apr. 28, 1993). Because making a contribution in the name of another is a common way for individuals to attempt to hide illicit contributions, section 30122 historically has been one of FECA's most frequently violated prohibitions. *See* Department of Justice, Federal Prosecution of Election Offenses 166 (7th ed. May 2007).<sup>3</sup>

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

For decades, the FEC has consistently and repeatedly enforced section 30122 in administrative enforcement matters against respondents who knowingly helped or assisted the making of false name or conduit contributions. *See, e.g.,* Matter Under Review ("MUR")

---

<sup>3</sup> *See* <https://www.justice.gov/sites/default/files/criminal/legacy/2013/09/30/electbook-rvs0807.pdf>.

4322/4650 (Waldholtz)<sup>4</sup>; MUR 6922 (ACA International)<sup>5</sup>; MUR 5948 (Critical Health Systems of N.C., P.C.)<sup>6</sup>; MUR 5849 (Cannon)<sup>7</sup>; MUR 4748 (Moniot).<sup>8</sup>

For example, in MURs 4322 and 4650 (Waldholtz), the Commission concluded that the treasurer of a campaign committee (and spouse of the candidate), Joseph Waldholtz, knowingly accepted approximately \$1.8 million in false name contributions for his wife’s campaign and knowingly helped and assisted the making of those illegal contributions. *See* MUR 4322/4650 Conciliation Agreement ¶¶ IV.9, IV.27 (Oct. 12, 1999).<sup>9</sup> Waldholtz admitted that he and his wife, Enid Greene, had solicited the contributions from Greene’s father to help fund Greene’s campaign. *Id.* ¶¶ IV.17-19. Instead of reporting Greene’s father as the contributor, Waldholtz provided false contributors to the FEC in the Greene campaign’s public disclosure reports. *Id.* ¶ IV.23. The reports incorrectly stated that the \$1.8 million had been contributed by fabricated “ghost contributors” and by the candidate herself from her own assets. *Id.* ¶¶ IV.23, IV.25-26. In addition to section 30122, the Commission concluded that Waldholtz had also violated FECA’s provisions requiring campaigns to accurately report the identities of their contributors. *Id.* ¶¶ IV.6, IV.25, V.

In another instance, in MUR 6922 (ACA International) in an effort to address a perceived shortfall in a political action committee’s bank account, a corporate officer authorized a transfer of \$23,419 to committee’s account. *See* MUR 6922 Conciliation Agreement ¶ IV.4 (Aug. 17

---

<sup>4</sup> <https://www.fec.gov/files/legal/murs/current/93382.pdf>.

<sup>5</sup> <https://www.fec.gov/files/legal/murs/current/111951.pdf>.

<sup>6</sup> <https://www.fec.gov/files/legal/murs/current/95874.pdf>.

<sup>7</sup> <https://www.fec.gov/files/legal/murs/current/95225.pdf>.

<sup>8</sup> <https://www.fec.gov/files/legal/murs/current/38705.pdf>.

<sup>9</sup> <https://www.fec.gov/files/legal/murs/current/93382.pdf>.

2015).<sup>10</sup> To obscure the true source of that transfer, and in violation of section 30122, the corporate officer directed his staff to create records falsely indicating previous donors to the committee, who contributed less than the statutory maximum contribution, had made additional contributions. (*Id.*)

Similarly, in MUR 4748 (Moniot), the Commission concluded that a television station executive violated section 30122 by knowingly helping and assisting the station in making illegal corporate contributions to five members of Congress through its employees. *See Factual & Legal Analysis (“F&LA”)* (Resp’t Moniot) at 2-3<sup>11</sup>; *see also* MUR 4758 (Moniot) Conciliation Agreement (Aug. 23, 2000), *supra* note 8. Moniot “initiated the entire sequence of events” by convincing the station that it should make contributions to members of Congress in hopes that members would then appear in stories aired by the station. Moniot F&LA at 4. Moniot not only “actively participate[d] in the decision making process,” but also asked station staff to participate, and drafted the letters to members of Congress that accompanied the illicit contributions. *Id.*

## II. FACTUAL BACKGROUND

### A. The Complaint Alleges That Rivera Knowingly Helped and Assisted the Making of Nearly \$70,000 in False Name Contributions to the Sternad Campaign

Defendant David Rivera was a United States Congressman representing Florida’s 25th Congressional District from January 2011 through January 2013. (*See* Compl. ¶ 6 (Docket No. 1).) In 2012, Rivera unsuccessfully ran for re-election as the Republican candidate to represent Florida’s redrawn 26th Congressional District. (*Id.*) Rivera lost that election to Democrat Joe Garcia. (*Id.* ¶ 12.) Garcia became the Democratic nominee in the 2012 general

---

<sup>10</sup> <https://www.fec.gov/files/legal/murs/current/111951.pdf>.

<sup>11</sup> <https://www.fec.gov/files/legal/murs/current/38714.pdf>.

election after defeating three other candidates in the Democratic primary, including Justin Lemar Sternad. (*Id.*)

During the Democratic primary, Rivera executed a scheme to secretly provide funds to Sternad's campaign in an apparent attempt to oppose and weaken Garcia, who was likely to be Rivera's general election opponent. (*See, e.g.*, Compl. ¶¶ 1, 26.) In April 2012, Rivera initiated the scheme when he met with his associate, Ana Sol Alliegro, to discuss providing financial support to Sternad's primary campaign, and directed Alliegro to approach Sternad with the offer to help fund his campaign. (*Id.* ¶¶ 14-15.) Alliegro spoke with Sternad and offered to provide funds for his campaign, to which Sternad agreed. (*Id.* ¶ 15.) At Rivera's direction, Alliegro then spent the next few months serving as an intermediary transmitting funds to Sternad, the Sternad Committee, and the vendors providing services to the Committee. (*Id.*)

As part of that scheme, nearly \$70,000 in in-kind contributions were made to Sternad in the form of campaign services. (Compl. ¶¶ 13, 16.) Rivera and Alliegro hired vendors to provide Sternad's campaign with flyers, demographics research, and mailing services. (*Id.* ¶ 16.) Rivera worked with the vendors, separately and with Alliegro, to design and distribute materials for the Sternad campaign. (*Id.* ¶ 17.)

Rivera also ensured that the vendors were paid for their services to Sternad's campaign while taking steps to ensure that his involvement in those payments would be concealed to those not involved in the arrangement. (*Id.* ¶¶ 17-21.) For one payment, Rivera delivered a check for more than \$13,000 to a vendor named Expert Printing. (*Id.* ¶ 19.) That check was issued by a non-profit organization called the Florida Action Network, which Rivera helped found in early April 2012, the same month his scheme began. (*Id.*) On the same day Rivera delivered the Florida Action Network's check to Expert Printing, Rivera directed Expert Printing to issue a

check for \$9,000 to another vendor, Rapid Mail, to pay for mailing costs for the Sternad campaign. (*Id.* ¶ 20.)

Rivera also used cash to pay the vendors to conceal his involvement. (*Id.* ¶¶ 13, 17-18.) Alliegro delivered some of those cash payments to the vendors, while others were delivered by a courier service. (*Id.* ¶ 18.) In one instance, after the owner of Rapid Mail asked Rivera about an outstanding payment for its work for Sternad, Rivera instructed the owner to check his mailbox, where the owner found an envelope containing several thousand dollars in cash. (*Id.* ¶ 21.) In another example of Rivera's efforts to hide his payments to the vendors, Rivera insisted that Expert Printing not use his name on its invoices for services to Sternad after an instance where Expert Printing had done so. (*Id.* ¶ 17.) These in-kind contributions to Sternad continued from July through August 2012. (*Id.* ¶¶ 13, 19-21.)

In the meantime, Alliegro instructed Sternad that in his disclosure reports to the FEC he should attribute a false name as the source of these in-kind contributions — his own. (Compl. ¶ 22.) In multiple FEC reports from May to August 2012, Sternad falsely stated he had used his own personal funds to loan money to his campaign to pay for the nearly \$70,000 in services that Rivera and Alliegro had arranged for him to receive. (*Id.*)

In 2013 and 2014, Sternad and Alliegro pleaded guilty to criminal charges relating to Rivera's scheme. (Compl. ¶¶ 23-24.) After his 2013 guilty plea, Sternad filed amended disclosure reports with the FEC attributing the in-kind contributions at issue to "Unknown Contributors" rather than himself. (*Id.* ¶ 24.)

## **B. Procedural History**

In April 2013, the FEC notified Rivera that it had received information indicating that he may have violated FECA. (Compl. ¶ 28.) After an investigation, the Commission unanimously

concluded that there was probable cause to believe that Rivera knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). (*Id.* ¶¶ 31-32.) After attempts to reach a conciliation agreement failed, the Commission filed this lawsuit on July 14, 2017. (Docket No. 1.) This Court granted the Commission additional time to serve the summons and Complaint upon Rivera after finding that “[w]hether through coincidence or by design” Rivera “has dodged service in this matter and has otherwise failed to respond” to the FEC and the United States Marshals Service’s attempts to contact him. (Order Granting Mot. to Extend the Time for Service at 1 (Docket No. 11).) The FEC successfully served Rivera on October 20, 2017. (Docket No. 15.) On November 22, 2017, Rivera moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) (*see* Mot. to Dismiss Compl. (“Mot.”) (Docket No. 17)), and the FEC now opposes that motion.

## ARGUMENT

### I. STANDARD OF REVIEW

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

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

## **II. THE FEC HAS STATED A PLAUSIBLE CLAIM**

### **A. The FEC Has Pleaded Sufficient Facts Showing that Rivera Violated 52 U.S.C. § 30122's Prohibition of False Name Contributions**

The FEC has pleaded sufficient facts in its Complaint upon which the Court may reasonably infer that Rivera violated the contribution in the name of another provisions in 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(iii). These provisions bar a person from knowingly helping or assisting the making of a false name contribution, including by initiating, instigating, or significantly participating in a false name contribution scheme. *See supra* pp. 4-5. As the Complaint explains, Rivera initiated, instigated, and significantly participated in false name contributions to the Sternad campaign.

First, as the Complaint establishes, false name contributions were made to the Sternad campaign. A false name contribution occurs where anything of value is contributed and the thing of value is attributed to someone other than the true source of funds. *See, e.g.* 11 C.F.R. § 110.4(b)(2)(ii) (describing an example of a false name contribution); MURs 4322/4650 (Waldholtz).<sup>12</sup> Here, nearly \$70,000 worth of campaign services were contributed to Sternad for the 2012 democratic primary election. *See supra* p. 9. Sternad was attributed as the source of those contributions on the Sternad campaign's public reports to the FEC when in fact the true source was some other person or group of persons. *Id.* at 9-10. One of the apparent true sources was the Florida Action Network, which issued a check for more than \$13,000 to Expert Printing. *Id.* at 9. Sternad also was not the true source for the cash payments to the vendors, as he has

---

<sup>12</sup> <https://www.fec.gov/files/legal/murs/current/93382.pdf>.

admitted. *Id.* at 10. The Complaint does not take a definitive position that Rivera was the true source of the cash that was given to the vendors — he could theoretically establish during discovery that the cash came from some other source — but in any event, the Complaint establishes that the true source was not Sternad. *Id.* at 9-10. If Rivera was the true source of the cash that paid for in-kind contributions to the Sternad campaign, then Rivera would not only have violated section 30122 by knowingly helping or assisting false name contributions to Sternad, *see* 11 C.F.R. § 110.4(b)(1)(iii), he also would have violated section 30122 by making the false name contributions as the source of that money, *id.* § 110.4(b)(1)(i). In either case, Rivera at a minimum participated in the false attribution of Sternad’s name as the true source of the contributions: He concealed his involvement in the payments to the vendors and had Alliegro interact with Sternad and instruct him to falsely attribute his own name as the source of the in-kind contributions. *See supra* p. 10.

Second, the Complaint’s facts establish that Rivera knowingly helped and assisted the false name contributions to the Sternad campaign. The Complaint details how Rivera initiated and instigated the scheme. Rivera directed Alliegro to approach Sternad with an offer to help fund his campaign, and Sternad agreed. *See supra* p. 9. Rivera also significantly participated in the scheme. He and Alliegro hired the vendors, helped them design and distribute Sternad campaign materials, and made sure the vendors were paid. *Id.* at 9-10. Rivera also concealed the source of the funds by routing money from the Florida Action Network through multiple vendors and by paying vendors in cash.<sup>13</sup> *Id.* Moreover, the Complaint details how Rivera used Alliegro to direct Sternad to provide a false name for the source of those funds on his campaign’s disclosure reports to the FEC. *Id.* at 10.

---

<sup>13</sup> Because cash can be difficult to trace and easier to launder than other forms of payment, FECA limits cash contributions to \$100 or less per election. 52 U.S.C. § 30123.

As a result, the Complaint establishes that Rivera did far more than merely make legal in-kind contributions to Sternad, as Rivera claims. (Mot. at 3-4.) Instead, the allegations present an amply plausible claim that Rivera knowingly helped and assisted with in-kind contributions made in the name of another, under 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). These allegations show that Rivera initiated, instigated, and significantly participated in the scheme. Moreover, if all of the funds had come from Rivera, the in-kind contributions would have vastly exceeded the then-applicable limit of \$2,500 per election to a federal candidate. *See supra* p. 4 & n.1. Rivera acknowledges the limit but then proceeds to wrongly claim that “[h]ad the candidate, Mr. Sternad, disclosed the true and known source of the contributions made to the vendors, there would not have been any violation of FECA.” (Mot. at 4.) Rivera had a clear motive to disguise extensive cash contributions if they were from his own funds or otherwise not attributable to individuals in amounts of no more than \$2,500; the allegations of the Complaint do not amount to mere misreporting by the Sternad campaign. Defendant’s motion to dismiss should be denied.

**B. Rivera Attacks a Strawman When He Characterizes the FEC’s Claim as Presenting a Conduit Contribution Theory**

As detailed above, there are at least two possible ways in which section 30122 can be violated — false name contributions and conduit contributions through inaccurately identified straw donors. *See supra* pp. 4-5. In this case, the FEC has alleged a false name scheme. *Id.* at 12-14.

Rivera, in his motion to dismiss, constructs a strawman argument, claiming the FEC did not properly allege a different type of section 30122 violation, a conduit contribution scheme with straw donors. Rivera irrelevantly asserts that the FEC failed to allege that Rivera used such straw donors in his scheme: “There is no allegation within the four corners of the complaint

alleging that Mr. Rivera either reimbursed third parties or provided funds to third parties so that they could pay the vendors and effectively hide the source of the donation from the Sternad campaign.” (Mot. at 4.)

However, the use of a “third party” (*i.e.*, a conduit or straw donor), in the manner Rivera describes, is not an element of a false name violation. *See* 11 C.F.R. § 110.4(b)(2) (providing contrasting examples of a potential conduit scheme and a potential false name scheme). Courts have repeatedly recognized that false name schemes violate section 30122. *See Whittemore*, 776 F.3d at 1079 (explaining that “false name contributions [undermine transparency] by shielding the identity of the true contributor”); *O’Donnell*, 608 F.3d at 550 (describing section 30122 as applying whether funds are directed “either directly . . . or through an intermediary”); *United States v. Boender*, 691 F. Supp. 2d 833, 838-39 (N.D. Ill. 2010) (considering both false name and conduit contributions); *United States v. Danielczyk*, 788 F. Supp. 2d 472, 481-82 (E.D. Va. 2011) (describing how prohibited contributions under section 30122 can be direct or indirect); *United States v. Suarez*, No. 13-420, 2014 WL 1898579, at \*2 (N.D. Ohio May 8, 2014) (“holding that [section 30122] unambiguously proscribes . . . false name contributions”). Rivera is attacking a particular version of a type of violation not alleged in the Complaint and his argument, therefore, presents no reason to dismiss the Complaint.

**C. The Complaint States a Valid Claim Regardless of Whether Sternad Knew the Identity of the True Contributor**

Rivera incorrectly asserts that because the Complaint states that “the Sternad campaign was fully aware of the identity of the donor of the in-kind contributions,” it was only the Sternad campaign, and not Rivera, that violated the law. (Mot. at 4.) Rivera is incorrect for two reasons. First, he misrepresents the Complaint. Second, even if his misrepresentation were correct, the Complaint would still state a valid claim against Rivera.

First, the Complaint does not state that Sternad definitively knew the identity of the true source of the false name contributions he received, despite Rivera's repeated misrepresentations otherwise. (*See, e.g.*, Mot. at 4 (“[T]he Sternad campaign was fully aware of the identity of the donor”; “Mr. Rivera is alleged to be the sole donor”). Rivera provides no citations for these assertions. The Complaint identifies the Florida Action Network as one true source of the in-kind contributions, and does not state that Sternad knew that. *See supra* p. 9. As for the cash payments to the vendors, Rivera ensured that the vendors received those cash payments, but the Complaint does not conclusively state that the cash belonged to Rivera. *See id.* at 9-10. Even assuming that the cash did belong to Rivera, the Complaint does not say that Sternad was certain of that. *See id.* As the Complaint describes, months after the scheme, Sternad filed an amended FEC disclosure report with the FEC. (Compl. ¶ 24.) Sternad included a cover letter with his report stating that deposits were coordinated with payments directly to vendors by Alliegro and/or Rivera. (*Id.*) But Sternad's report nevertheless identified the contributors as “Unknown Contributors,” indicating residual uncertainty about the true source or sources. (*See id.*)

Second, even if the Complaint had stated that Sternad was aware of the true source of the false name contributions he received, that awareness would not defeat the FEC's claim, as Rivera wrongly suggests. (Mot. at 4.) Rivera provides no authority for his interpretation of the statute, which if correct, would mean that a false-name contributor could evade liability simply by getting the candidate in on the scheme. Nothing in the text of the statute, the statute's implementing regulation, the FEC's regulatory guidance, or the FEC's past enforcement cases support that interpretation, and Rivera does not claim otherwise.

Indeed, Rivera's interpretation is inconsistent with the text of the statute itself, which shows that Congress intended section 30122 to prohibit false name contributions even where the

recipient was aware of the scheme. Section 30122 broadly prohibits not only “mak[ing] a contribution in the name of another person” but also “*knowingly accept[ing]* a contribution made by one person in the name of another person.” 52 U.S.C. § 30122 (emphasis added). Under Rivera’s theory, however, it would be impossible for a recipient to knowingly accept a false name contribution since the recipient’s knowledge that the contribution was in a false name would negate the violation. Rivera’s reading of the law therefore cannot be correct. Consistent with the correct reading of FECA, the Commission has concluded in its administrative enforcement proceedings that false name contributions in violation of section 30122 have taken place in situations where the recipient-candidate was aware of the true identity of the contributor and yet attributed a false name to those contributions in its reports. *See supra* pp. 7-8 (describing MURs 4322/4650 (Waldholtz) and MUR 6922 (ACA International)).

Therefore, the Complaint here would establish that Rivera made false name contributions to Sternad even if the Complaint had stated that Sternad knew that Rivera was the true source of the contributions. Sternad attributed a false name to those in-kind contributions and Rivera helped ensure that Sternad did so by, among other things, having Alliegro recruit Sternad and direct him to falsely attribute his own name to the contributions in his FEC reports. *See supra* p. 9-10. Rivera incorrectly argues that the only FECA violation on the facts alleged here is a reporting violation by Sternad that Rivera may have aided and abetted. (Mot. at 4-5.) But Rivera gives no valid reason why Rivera cannot be liable for participating in a false name contribution just because he may have *also* aided and abetted a reporting violation. It is not an either-or choice, and in fact, the Commission has pursued similarly situated respondents for violating both section 30122 and FECA’s reporting requirements in previous matters. *See supra* pp. 7-8 (describing MURs 4322/4650 (Waldholtz) and MUR 6922 (ACA International).) Even if

other theories of liability against Rivera could have been alleged, it does not undermine that what is alleged in the Complaint and supported by the facts is that Rivera knowingly helped and assisted in making a false name contribution in a violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(iii).

### CONCLUSION

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

Respectfully submitted,

Lisa J. Stevenson (Special Bar No. A5502354)  
Acting General Counsel  
lstevenson@fec.gov

Kevin Deeley (Special Bar No. A5502355)  
Associate General Counsel  
kdeeley@fec.gov

Kevin P. Hancock (Special Bar No. A5502375)  
Acting Assistant General Counsel  
khancock@fec.gov

December 11, 2017

/s/ Greg J. Mueller  
Greg J. Mueller (Special Bar No. A5502376)  
Sana Chaudhry (Special Bar No. A5502350)  
Attorneys  
gmueller@fec.gov  
schaudhry@fec.gov

FOR THE PLAINTIFF  
FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463  
(202) 694-1650

**CERTIFICATE OF SERVICE**

I, Greg J. Mueller, counsel of record in this case, certify that on December 11, 2017, I electronically filed plaintiff Federal Election Commission's Memorandum in Opposition to Defendant's Motion to Dismiss Complaint with the Clerk of the United States District Court for the Southern District of Florida by using the Court's CM/ECF system, which sent notification of such filing to the following:

Roy J. Kahn, Esq.  
rjk@roykahnlaw.com  
*Counsel for Defendant David Rivera*

/s/ Greg J. Mueller  
Greg J. Mueller (Special Bar No. A5502376)  
Attorney  
gmueller@fec.gov