



January 19, 2023

Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: REG 2022-06 (Disgorgement)

Dear Commissioners:

Campaign Legal Center (“CLC”) respectfully submits this comment in connection with REG 2022-06 (Disgorgement), CLC’s petition for rulemaking regarding the refunding of illegal contributions.¹ The Commission recently notified CLC that it had closed matter under review (“MUR”) 7889, which CLC initiated in March 2021 by filing a complaint alleging that gun manufacturer and federal contractor SIG Sauer, Inc. (“SIG Sauer”) violated the Federal Election Campaign Act (“FECA”) by contributing \$100,000 to the “Gun Owners Action Fund,” a federal independent-expenditure only political committee (“IEOPC” or “super PAC”).²

To resolve MUR 7889, SIG Sauer acknowledged violating FECA’s federal contractor contribution ban and agreed to pay a \$19,000 civil penalty, but per 11 C.F.R. § 103.3(b) — the regulation that CLC has asked the Commission to revise — SIG Sauer also “requested and received a full refund” of its \$100,000 illegal contribution.³ As with many prior enforcement matters, the

¹ Campaign Legal Center, Petition for Rulemaking to Revise and Amend Regulations Regarding the Refunding of Illegal Contributions (Aug. 25, 2022), <https://sers.fec.gov/fosers/showpdf.htm?docid=420995>.

² Complaint, MUR 7889 (SIG Sauer, Inc., *et al.*) (Mar. 17, 2021), <https://campaignlegal.org/sites/default/files/2021-03/03-17-21%20Sig%20Sauer%20%28final%20signed%29.pdf>. The Commission has not yet publicly released the file in MUR 7889, but per its notification letter to CLC, the Commission closed MUR 7889 as to SIG Sauer in April 2022. *See* Letter from Mark Shonkwiler, Asst. Gen. Counsel, FEC, to Saurav Ghosh, CLC (Jan. 5, 2023) (attached).

³ Conciliation Agreement ¶¶ IV.3, MUR 7889 (SIG Sauer, Inc.) (Apr. 18, 2022) (attached).

refunding of SIG Sauer’s illegal contribution — as opposed to disgorging those funds to the U.S. Treasury — substantially undercuts the deterrent value of the enforcement process, sending the regulated community a clear, unfortunate message that those caught trying to unlawfully influence elections and advance their desired policy goals will be allowed to recover the tool of their illegal conduct — a manifestly unjust result that will do little to prevent similar FECA violations in the future. As such, MUR 7889 is the most recent in a long line of matters that illustrates why the Commission sorely needs to address this glaring flaw in its regulations.

The Problem with Refunding Unlawful Contributions

As noted in our rulemaking petition, FECA prohibits contributions from a number of sources, including foreign nationals and federal contractors, yet does not prescribe what committees should do with contributions that initially appear legal but are later determined to be from a prohibited source. The Commission’s regulation at 11 C.F.R. § 103.3(b) provides that committee treasurers “shall refund” such illegal contributions, yet the Commission has also confusingly advised that committees “may disgorge” such contributions to the U.S. Treasury.⁴ Although the Commission has previously used disgorgement as an equitable remedy, some Commissioners have articulated a view that absent regulatory reform, the agency lacks the legal authority to use it.⁵

Against this backdrop, a troubling standard operating procedure has emerged regarding federal contractor contributions, which FECA explicitly prohibits: Committees refund these illegal contributions shortly after being notified of an administrative complaint, such that the contribution refund more than offsets any civil penalty that the contractor may eventually have to pay, long before the Commission has taken any action on the complaint.

Accordingly, even if the Commission fines the federal contractor, there is no meaningful consequence and thus no real deterrent for others in a similar position; at best, the contractor recovers the funds it illegally contributed and the matter is later dismissed without penalty,⁶ while at worst, the contractor

⁴ See 11 C.F.R. § 103.3(b); *How to Report Disgorged Contributions*, <https://www.fec.gov/help-candidates-and-committees/filing-reports/d disgorged-contributions/> (last viewed Jan. 17, 2023) (“If a committee deposits a contribution that appears to be legal and later discovers that it is prohibited, the committee *must refund* the contribution to the original contributor (if known) within 30 days of making the discovery. Alternatively, the committee *may disgorge* the funds to the U.S. Treasury.”) (emphases added).

⁵ *E.g.*, Interpretive Statement of Chairman Allen Dickerson Concerning 11 C.F.R. § 103.3 and the Disgorgement of Unlawful Contributions (Apr. 22, 2022), https://www.fec.gov/resources/cms-content/documents/interpretive_statement_22apr2022.pdf.

⁶ See, *e.g.*, Certification, MUR 7888 (Martin Marietta Materials, Inc.) (Apr. 11, 2022).

has to pay a penalty that is a fraction of the funds it illegally contributed, and can pay that penalty *using* those illegal funds.⁷

This is precisely what happened with SIG Sauer in MUR 7889. About a month after CLC filed the administrative complaint initiating MUR 7889, which alleged that SIG Sauer illegally contributed \$100,000 to a super PAC while performing on federal contracts, the super PAC refunded the contribution.⁸ A full year later, the Commission entered into a conciliation agreement with SIG Sauer that assessed a civil penalty of just \$19,000. As such, SIG Sauer ended up \$81,000 in the black despite admitting that it openly violated a law clearly banning it from making political contributions.

Given the lack of meaningful consequences for SIG Sauer's unlawful conduct, it is inconceivable that any federal contractor looking at the MUR 7889 case file would find a compelling reason to comply with FECA's federal contractor contribution ban. Indeed, as noted above, many prior enforcement matters followed a virtually identical pattern and ended with similarly impotent consequences for the federal contractors caught breaking the law.⁹

The Commission should end this cycle of impunity by revising its regulations to explicitly permit, and in some cases require, the disgorgement of illegal contributions to the U.S. Treasury. This would prevent persons caught violating FECA's source prohibitions from recovering the tool of their illegal conduct, thus preventing further violations and deterring others in a similar position from engaging in similar conduct.

Conclusion

Enforcing federal campaign finance laws should involve real accountability, including consequences for violations that are significant enough to send a deterrent signal to the regulated community. Pairing civil penalties with contribution refunds will never accomplish that basic goal. The Commission should revise its regulations to make clear that those flouting FECA's source

⁷ Conciliation Agreement ¶¶ IV.4, VII.1, MUR 7450 (Ashbritt, Inc.) (Jul. 19, 2021) (contractor paid a \$125,000 penalty after receiving a \$500,000 refund); Conciliation Agreement ¶¶ IV.5, IX.1, MUR 7843 (Marathon Petroleum) (Feb. 17, 2022) (contractor paid an \$85,000 penalty out of a \$1 million contribution refund).

⁸ Gun Owners Action Fund, 2020 Year-End Report at 6 (Jan. 29, 2021) (disclosing a \$100,000 contribution from SIG Sauer on December 31, 2020); Gun Owners Action Fund, 2021 Mid-Year Report at 9 (July 30, 2021) (disclosing a refund of \$100,000 to SIG Sauer on April 21, 2021).

⁹ See, e.g., Compl., MUR 7568 (Alpha Marine Servs.) (Feb. 21, 2019) (alleging federal contractor made an illegal \$100,000 contribution); Conciliation Agreement, MUR 7568 (July 21, 2020) (noting that respondent received a full refund on March 13, 2019, and later agreed to pay a \$17,000 civil penalty).

prohibitions run the risk of not only paying a fine, but of losing the money they have used to illegally and corruptly influence federal elections.

Respectfully submitted,

/s/ Saurav Ghosh

Saurav Ghosh
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Encls. – Notification Letter and Conciliation Agreement, MUR 7889



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

January 5, 2023

VIA EMAIL

Saurav Ghosh, Esq.
Campaign Legal Center
1101 14th Street, NW, Suite 400
Washington, DC 20005
sghosh@campaignlegalcenter.org

RE: MUR 7889
SIG Sauer, et al.

Dear Mr. Ghosh:

The Federal Election Commission has considered the allegations contained in the above referenced complaint from the Campaign Legal Center dated March 17, 2021.

On January 11, 2022, the Commission found that there was reason to believe SIG SAUER, Inc. violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a). On April 5, 2022, a conciliation agreement signed by SIG SAUER, Inc. was accepted by the Commission. Accordingly, the Commission closed the file in this matter as to SIG SAUER, Inc. on April 5, 2022.

The Commission was equally divided on whether to find reason to believe Gun Owners Action Fund violated the Federal Election Campaign Act of 1971. Accordingly, on December 15, 2022, the Commission closed the file in this matter. A Statement of Reasons providing a basis for the Commission's decision will follow.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. A copy of the agreement with SIG SAUER, Inc. and a copy of the Factual and Legal Analysis are enclosed for your information.

If you have any questions, please contact Jacob Tully, the attorney assigned to this matter, at (202) 694-1404.

Sincerely,

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Enclosures
Conciliation Agreement
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7889
SIG SAUER, Inc.)
)

CONCILIATION AGREEMENT

This matter was initiated by a complaint filed with the Federal Election Commission (the “Commission”). The Commission found reason to believe that SIG SAUER, Inc. (“Respondent” or “SIG SAUER”), violated 52 U.S.C. § 30119(a)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 115.2(a) by making contributions while Respondent was a federal government contractor.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this Agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent is a firearms manufacturer incorporated in Delaware and based in New Hampshire. At the time relevant to this complaint, Respondent had been in continuous performance of a \$580 million federal government contract to provide service pistols to the U.S. Department of Defense.

2. On or around December 31, 2020, Respondent made a \$100,000 contribution to Gun Owners Action Fund, an independent expenditure-only political committee.

3. After being notified of the Complaint in this matter, Respondent requested and received a full refund of the \$100,000 contribution from Gun Owners Action Fund.

4. The Act and Commission regulations bar contributions to political committees by any person who enters into a contract with the United States or its departments or agencies for “furnishing any material, supplies, or equipment,” if payment on such contract “is to be made in whole or in part from funds appropriated by Congress.” 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2(a). Such contributions are barred for the period between (1) the earlier of commencement of negotiations or when requests for proposal are sent out, and (2) the later of the completion of performance on or termination of negotiations for the contract. 11 C.F.R. § 115.1(b).

5. These prohibitions apply to a federal contractor who makes contributions to any political party, political committee, federal candidate, or “any person for any political purpose or use.” 11 C.F.R. § 115.2(a).

V. Respondent violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) by making a \$100,000 contribution to Gun Owners Action Fund while Respondent was a federal contractor.

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Commission in the amount of Nineteen-Thousand dollars (\$19,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review

compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This Agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written Agreement shall be enforceable.

FOR THE COMMISSION:


Lisa J. Stevenson
Acting General Counsel

BY: **Charles Kitcher** Digitally signed by Charles Kitcher
Date: 2022.04.18 13:21:45 -04'00'

Charles Kitcher
Associate General Counsel
for Enforcement

4-18-22
Date

FOR THE RESPONDENT:



Melissa L. Laurenza, Esq.
Counsel for Respondent

2/2/2022
Date