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2 **BEFORE THE**
3 **POSTAL REGULATORY COMMISSION**
4 **WASHINGTON, DC 20268-0001**

5 JAMES D. GOODMAN and) Docket No.: C2015-2
6 ROSALYN GOODMAN)
7 Complainants,)

8
9 **MOTION TO VACATE ORDER GRANTING MOTION TO DISMISS**
10 **AND OTHER RELIEF**

11 **First Filed –**

12 **January 9, 2015**

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19 NOW COMES the Complainants, JAMES D. GOODMAN and ROSALYN GOODMAN, *pro se*,
20 and having filed a Complaint against the U.S. Postal Service, Patrick A. Donahoe, as Postmaster
21 General, U.S. Postmaster, Pomona, California and Alejandro L. Peralta, individually and as
22 Supervisor, Pomona Post Office, and having first learned of the entry of an Order Granting a
23 Motion to Dismiss thereof, issued on July 15, 2015, states as follows:

24 **I. JURISDICTION**

25 Pursuant to Title 39, Part IV, Ch. 36 (39 USCS 3662) the Complainant has invoked the
jurisdiction of the Postal Regulatory Commission in conformance with the requirements of
provisions of section 101(d), 401(2), 403 (c), 404a or 601 and regulation promulgated under any
of those provisions.

1 **II. POSTAL SERVICE ACTION OR INACTION WHICH VIOLATES STATUTES OR**
2 **OTHER REGULATORY REQUIREMENTS**

3 Pursuant to Section 3030.12 of the Rule for Complaints, the Postal Service has 20 days to
4 respond to a complaint. If the Postal Service files an appropriate motion, the timeline for the
5 Postal Service to file its answer to a complaint is altered as it would be under the Federal Rules
of Civil Procedure¹. The US Postal Service has wholly and willfully failed or refused to comply

6 ¹ Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions;
Waiving Defenses; Pretrial Hearing

7 (a) Time to Serve a Responsive Pleading.

8 (1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as
follows:

9 (A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

10 (ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days
after it was sent to the defendant outside any judicial district of the United States.

11 (B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that
states the counterclaim or crossclaim.

12 (C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order
specifies a different time.

13 (2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity. The United States, a United States
agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint,
counterclaim, or crossclaim within 60 days after service on the United States attorney.

14 (3) United States Officers or Employees Sued in an Individual Capacity. A United States officer or employee sued in an
individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve
an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the
United States attorney, whichever is later.

15 (4) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

16 (A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14
days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the
more definite statement is served.

17 (b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if
one is required. But a party may assert the following defenses by motion:

18 (1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

19 (3) improper venue;

(4) insufficient process;

20 (5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

21 A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out
a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No
22 defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

23 (c) Motion for Judgment on the Pleadings. After the pleadings are closed--but early enough not to delay trial--a party may move
for judgment on the pleadings.

24 (d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the
pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule
56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

25 (e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive
pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be

MOTION TO VACATE

1 with the service provisions of the rules requiring notice to party by seeking to dismiss the
2 Complaint by filing a Motion to Dismiss without first serving upon the Complainants its motion to
3 Dismiss, failing to provide a timely answer to the Complainant, and upon information and belief,
4 failed to provide discovery as requested, and has wholly misrepresented to the Commission that
5 it properly notified the Complainants of its actions taken to resolve any outstanding issues prior
6 to initiating its action to seek dismissal.

7 III. STATEMENT OF FACTS

8 On October 7, 2015, the complainant first learned of the entry of the Postal Regulatory
9 Commission's entry of an Order Granting Motion to Dismiss, Order No. 2585, entered on July
10 15, 2015 by random name search over the internet. Numerous inquiries have been made by
11 Congressmen and other individuals acting on behalf of the Complainants to the US Postal
12 Service and administrators of the Postal Regulatory Commission since the filing of the
13 Complaint – each inquiry has remained unanswered or otherwise ignored to date. At the time of
14 the filing of the Complaint herein, the claimant's address for all purposes, including addresses
15 where notice is to be provided is:

16 made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders
17 a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the
18 court may strike the pleading or issue any other appropriate order.

19 (f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or
20 scandalous matter. The court may act:

21 (1) on its own; or

22 (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after
23 being served with the pleading.

24 (g) Joining Motions.

25 (1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must
not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier
motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or
to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court
must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7)--whether made in a pleading or by motion--
and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

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7 At no time, since the filing of the Complaint has the Complainant ever received any notice,
8 communication, oral or written, or any other information regarding these proceedings, including
9 notice of motion, a motion, answers or orders entered by this Commission, at this address, or at
10 any other address where the Complaints reside or may otherwise be found. In support thereof,
11 attached hereto is the affidavit of James D. Goodman.

12 **III. NATURE OF THE EVIDENTIARY SUPPORT COMPLAINANT HAS OR**
13 **EXPECTS TO OBTAIN DURING DISCOVERY THAT SUPPORT THE FACTS**
14 **ALLEGED**

15 A demand, made pursuant to FOIA upon the Postmaster General for all supporting
16 documents used to bar or prohibit mail delivery to 1600 Entre Colinas Place, was effectively
17 ignored. Although, in its order granting dismissal, the Postal Service apparently submitted
18 discoverable matters demanded by Complainants, and such matters were used to support the US
19 Postal Service Motion to Dismiss. The denial of access to these materials to be used by
20 Complainants in response to the motion to dismissal is, and was, highly prejudicial to
21 Complainant's due process rights to a fair hearing as well as an opportunity to respond to the
22 Motion to Dismiss prior to the Commission's disposition thereof.

23 In addition, evidence supporting the failure and refusal to deliver, originated by the
24 Postmasters of Loveland and Montgomery Ohio seeking to accommodate delivery of mail from
25 Ohio to 1600 Entre Colinas Place, Pomona, California. was attached to the Complaint – a matter
to be proven at the trial of the issues. Each of these Postmaster were prepared to offer affidavits
or other statements regarding the refusal of the Postmaster and other postal officials in Pomona
California to make deliveries to the subject address.

The testimony of the Complainants, neighbors and others familiar with the dog, the
premises, and the circumstances alleged herein with photographs will be provided when the
merits are presented for adjudication.

Although the Order of the Commission dismissing the Complaint is couched in terms of a
dismissal, since the US Postal Service has introduced evidence in support of its motion, the
motion is more appropriately a motion for summary judgement wherein all facts are not in
dispute. In a Motion to Dismiss, all well pled allegations are taken as true, and only if such facts

1 do not constitute a claim upon relief may be granted, may such a compliant be dismissed with
2 prejudice. In this case there are contested facts which require a trial of the issues, and the
Complaint states a cause of action.

3 **IV. THE ORDER OF DISMISSAL SHOULD BE VACATED**

4 The Postmaster General, the Postmaster of Pomona California and their employees have
5 failed or refused to comply with FOIA and rules of discovery , failed to provide due and proper
6 notice of their Motion to Dismiss to Complainants and have otherwise misrepresented facts and
7 circumstances to this Commission so as to obtain an Order Granting Motion to Dismiss. If the
8 above and foregoing facts were known prior to the entry of the Order, the Commission would not
9 have entered its Order of July 15, 2015. The Commission retains jurisdiction over matters, if
such matters are material and relevant to its exercise, which, and jurisdiction is obtained by fraud
or misrepresentation, it proper for the Commission to vacate it order.

10 **V. RELIEF REQUESED.**

11 It is respectfully requested that this honorable Commission vacate its Order of July 15,
12 2015 (No. 2585), set aside the US Postal Service Motion to Dismiss, order and direct the US
13 Postal Service to comply with the Complainant's discovery requests, order the US Postal Service
14 to Answer the Complaint, re-instate the Complaint and impose fines against the US Postal
15 Service pursuant to Section 3030.50, and award damages, costs and fees as allowed under the
16 circumstances and provide such other additional relief may be appropriate.

17 **CERTIFICATION.**

18 The undersigned hereby certifies that reasonable attempts have been made to the
19 Postal Service's General Counsel by letter or demand for which such complaints or demands
20 have been ignored or for which no response has been forthcoming. Only upon the requirement
21 of the filing of an answer would an adequate opportunity to resolve the differences between the
parties and bring the matter to issue before the Postal Regulatory Commission.

22 *James D. Goodman*

23 _____
24 JAMES D. GOODMAN
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PROOF OF SERVICE

James D. Goodman, having been first sworn on oath, hereby deposes and states that he served a true copy of the above and foregoing Complaint upon the following:

United States Postal Service

by emailing it to PRCCOMPLAINTS@USPS.GOV. on the 9st day of October, 2015.

James D. Goodman

JAMES D. GOODMAN

AFFDAVIT OF JAMES D. GOODMAN

James D. Goodman, having been first sworn on oath, deposes and states as follows:

1. I am one of the Complainants in a certain matter pending before the Postal Regulatory under the style: James D. Goodman and Rosalyn Goodman, Complainants, Docket No. C2015-2
2. On January 9, 2015 and thereafter, on April 23, 2015, I filed the above and foregoing Complaint indicating my address to be: 800 E. Colorado Blvd. Suite 500, Pasadena, California 90010, Telephone number (909) 629-1964. EMail Address Noro19@aol.com
3. At no time since April 23, 2015 have I received any notice, document or other communication related to the above and foregoing matter at the above address.
4. At no time since April 23, 2015 have I received any notice, document or other communication related to the above and foregoing matter at my home address of 1600 Entre Colinas Place, Pomona, California 91768.
5. On August 24, 2015, a certified letter from Dora Therien, an employee of the Santa Ana, California, postal office was found in the mail box of the undersigned at the Pomona, California address. The letter was delivered regular mail, not certified. Contained in the letter was a statement by this employee that the Complaint was dismissed, but no other document regarding the case was enclosed in the mailing.
6. Seeking the status of the case, I attempted to discover the status of the case by contacting the US Postal Service and the Postal Regulatory Commission by directing my agents and designees to make inquiries. Until October 7, 2015 was I provided a copy of the Order Granting Dismissal.

I have read the above and foregoing statement, and state, under penalty of perjury the same is true.

October 9, 2015


James D. Goodman