FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR - 9 2009

Charles G. King, Esq.
60 East 42nd Street
Suite 3210
New York, NY 10165

RE: MUR 5408
Reverend Alfred C. Sharpton;
Sharpton 2004 and
Andrew A. Rivera, in his official
capacity as treasurer

Dear Mr. King:

On April 2, 2009, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. §§ 434(b), 441a(f) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that, pursuant to the conciliation agreement, the first installment of the civil penalty is due within 90 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Camilla Jackson Jones
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer	)	MUR 5408

CONCILIATION AGREEMENT

This matter was initiated by a complaint as later supplemented by information the Federal Election Commission ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Reverend Alfred C. Sharpton and his presidential campaign committee, Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) (the "Committee" or "Sharpton 2004"), violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), including 2 U.S.C. §§ 434(b), 441a(f) and 441b by failing to accurately report all receipts and expenditures, and by receiving excessive and prohibited in-kind contributions.

NOW, THEREFORE, the Commission and the Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (collectively "Respondents"), having duly participated in informal methods of conciliation prior to a finding of probable cause to believe, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

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

III. Respondents enter voluntarily into this agreement with the Commission.

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

Background

1. Reverend Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in 2004. Although Sharpton did not file a Statement of Candidacy on April 29, 2003, he actually was a candidate no later than October 2002. *See* MUR 5363 Conciliation Agreement ¶¶ V.1-3. Sharpton is an entrepreneur who derives his living from paid speaking engagements, his radio and television talk shows, and from his work as an activist. Although he has never held public office, Sharpton has been a federal candidate on three prior occasions, having run in New York's Democratic primaries for the United States Senate in 1978, 1992 and 1994.

2. Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) was the principal campaign committee for Sharpton.

3. National Action Network ("NAN") is a domestic non-profit corporation founded by Sharpton in 1991 and incorporated in the State of New York in 1994. The organization describes itself as being focused on grassroots activity designed to highlight civil and human rights issues throughout the country. Sharpton has served as President of NAN since its inception and traveled extensively for NAN-related activities in 2002-2004.

4. Rev-Als Production, Inc. and Sharpton Media Group LLC, are two unincorporated wholly owned, sole proprietorships founded by Sharpton. Both business entities serve as vehicles for Sharpton's entrepreneurial activities and have no staff, maintain no overhead, and pay all of their profits to Sharpton in the form of dividends, which he claims as income in his personal tax filings with the Internal Revenue Service.

5. Archer Group, Inc. is a San Francisco-based political consulting firm that originally entered into a contract with NAN in October 2003 to develop, write and

implement a voter registration plan and to support NAN in scheduling, logistics and voter registration activity. In November 2003, Archer Group consultants began working for Sharpton 2004, with one executive, Michael Pitts, later being named as the Deputy Campaign Manager.

6. LaVan Hawkins was a prominent businessman and owner of the Hawkins Food Group, Inc., a Detroit based corporation.

Applicable Law

7. The Act requires all political committees to file periodic reports of the committee's receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the case of committees that the authorized committees of a candidate for Federal office, these reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C. § 434(b)(4). In-kind contributions shall be reported both as contributions and as expenditures. 11 C.F.R. § 104.13(c).

8. During the 2004 election cycle, the Act limited contributions to any candidate for Federal office or his authorized political committee, in the aggregate, to $2,000. *See* 2 U.S.C. § 441a(a)(1). Further, the Act states that no candidate or political committee shall knowingly accept any contribution in violation of the limitations imposed under this section. *See* 2 U.S.C. § 441a(f).

9. The Act provides that it is unlawful to make or receive contributions from a corporation in connection with an election for federal office. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a)-(b). Corporate contributions or expenditures include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of

value . . . to any candidate, campaign committee, or political party or organization, or any other person" in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1). Any candidate who receives a contribution for use in connection with his campaign shall be considered as having received the contribution as an agent of the authorized committee for his candidacy. 2 U.S.C. § 432(e)(2).

10. The Act defines the term "contribution" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

11. The Act defines the term "expenditure" as including "anything of value ... made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).

12. Expenditures for travel relating to the campaign of a candidate receiving matching funds and seeking nomination for election to the office of President, shall be qualified campaign expenses and be reported by the candidate's authorized committee as expenditures. 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1). If a trip includes campaign and non-campaign-related stop, the campaign-related portion of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(2). A stop is considered campaign-related if campaign activity, other than incidental contact, is conducted at the stop. *See id.*

Contributions Arising from American Express Charges and Payments

13. During his candidacy, Sharpton traveled extensively, and routinely mixed travel that was for both the Committee and NAN. The costs of this dual campaign and non-campaign travel should have been allocated between the Committee and NAN, pursuant to the Commission regulations, so that the Committee would pay for all campaign travel. However, Sharpton 2004 kept poor records of its activities and expenditures, which often resulted in NAN or other entities paying for travel expenses incurred by the campaign.

14. It was the practice to charge all travel expenses to Sharpton's American Express charge card. The card was then paid by using multiple accounts owned by Sharpton, NAN and/or the Committee. However, there were no ledgers kept to record the check numbers, the amounts, what loans or activities the checks were meant to pay or reimburse, for whom the payments or reimbursements were meant, and/or whether the checks were meant to be direct payments to the American Express card or reimbursements for payments already made. All of the payments that the Committee made to pay for campaign-related expenses charged on the American Express card were remitted in the form of checks or electronic transfers drawn on the Committee's account and paid to Sharpton.

15. Concern was expressed within the Committee about the problem of commingling expenses, and efforts were made to implement policies and procedures to ensure that the Committee properly segregated and allocated expenses between NAN and the Committee. In fact, consultants who worked with both NAN and Sharpton 2004 were instructed to develop an invoice to be used for allocating expenditures for shared events between the NAN and the Committee. Yet, there was a breakdown at the administrative level in the implementation of those procedures, and the adoption of proper recordkeeping and use of invoices by staff at both organizations continued to be a problem.

16. As a consequence of the Committee's poor recordkeeping, coupled with the practice of charging Committee, NAN and other expenses to Sharpton's personal American Express card and later paying the American Express account with monies drawn from various bank accounts, NAN and Sharpton's business entities often paid for campaign expenses that were not reimbursed or reported to the Commission.

17. The Commission determined that by applying the proper allocations to the travel expenses, the Committee incurred $509,188 in campaign-related expenses on Sharpton's American Express card, but had made payments on the card from its bank accounts in amounts totaling only $121,996. Thus, $387,192 was paid to Sharpton's American Express account for campaign expenses from other sources.

18. The Commission concluded that NAN made payments totaling $107,615 to the American Express card for Committee expenses, in violation of the prohibition against corporate contributions set forth in 2 U.S.C. § 441b.

19. Additionally, the Commission concluded that Sharpton's sole proprietorships, Rev-Als Production and Sharpton Media LLC, paid for the portion of campaign travel and expenses charged to the American Express card. Specifically, the Commission determined that Rev-Als Production paid $209,577 and Sharpton Media LLC paid $5,000 for campaign expenses. Finally, $65,000 in campaign-related travel and expenses charged to the American Express card was paid by unknown sources. All of these in-kind contributions made through the payments to American Express, should have been disclosed to the public in the Committee's disclosure reports as contributions and expenditures.

Payments to Vendors and Consultants

20. Although contrary to their original intent, NAN effectively subsidized the Sharpton 2004 presidential campaign by paying for vendors and consultants who performed work to benefit the Committee. Though originally retained by NAN in October 2003 to develop a voter registration plan and to conduct NAN's scheduling and advance logistics, the Archer Group began working exclusively for the Committee in November 2003. The work the Archer Group performed for the Committee was the continuation of work paid by NAN. Documents produced by the Committee show that Archer Group staff handled campaign travel arrangements, including travel reservations for Sharpton, during the October 2003 time period that the Archer Group was supposedly working exclusively for NAN.

21. The Commission determined that the Committee received approximately $73,500 from NAN for in-kind contributions, which consisted of payments to consultants and vendors for campaign-related work, including scheduling, logistics and voter registration services, fundraising and travel.

22. NAN made impermissible in-kind contributions to the Committee, in violation of 2 U.S.C. § 441b, totaling $181,115, which includes $107,615 in payments to the American Express account and $73,500 in direct payments to vendors and consultants.

23. Moreover, these contributions were not disclosed to the public in the Committee's disclosure reports in violation of 2 U.S.C. § 434(b).

Hawkins' Fundraising Event

24. On February 7, 2003, LaVan Hawkins held a fundraising event for the Sharpton Presidential Exploratory Committee at his home. The expenses associated with the fundraising event were subject to the limitations and reporting requirements of the Act. *See* 2 U.S.C. §§ 434(b)(2) and 441a(a)(1).

25. Sharpton traveled to the fundraising event with Hawkins on board a private, chartered jet that Hawkins regularly used for commuting between Detroit and Atlanta. Hawkins billed the plane trip to Hawkins Food Group's corporate account and Hawkins Food Group paid the invoice. The cost associated with the airplane trip to the fundraiser totaled $1,750.

26. The Act provides that the cost of voluntarily provided invitations, food and beverages are not "contributions" if they do not exceed $1,000 with respect to any single election. *See* 11 C.F.R. § 100.77. To the extent the Hawkins spent over $1000 for the event, it is considered an in-kind contribution under the FECA. The Commission's investigation revealed that the costs associated with the event, including food and beverages, rentals, catering staff, and services provided by a professional personal chef, valet and hostesses, totaled approximately $10,000. Accordingly, the Committee knowingly accepted an excessive in-kind contribution from LaVan Hawkins of more than $9,000, in violation of 2 U.S.C. § 441a(f), and failed to disclose the expenses associated with the fundraising event in violation of 2 U.S.C. § 434(b).

27. The Committee did not reimburse Hawkins Food Group the cost of the airfare, nor did it report the receipt of the contribution to the Commission. Thus, the Committee received a prohibited in-kind contribution totaling $1,750 from Hawkins Food Group, in violation of 2 U.S.C. § 441b, and failed to disclose the contribution in violation of 2 U.S.C. § 434(b).

Additional Violations

28. The Commission determined that a comparison of Sharpton 2004 reported activity and bank records reveals that Sharpton 2004 materially misstated its receipts and disbursements, as well as cash on hand in 2004. Receipts were understated by $110,279, primarily due to failure to report the receipt of $100,000 in matching funds. Disbursements were understated by $24,937, for the most part due to payroll and bank fees paid in March 2004. Ending cash on hand was understated by $96,537. The Committee has failed to file amended reports.

29. The Commission determined that the Committee has received $15,000 in loans from unknown sources. The Committee has represented that these funds derived from Rev-Als Productions, Inc. The Committee failed to appropriately disclose the receipts to the Commission, in violation of 2 U.S.C. § 434(b).

30. The Commission determined that the Committee received $10,500 in excessive contributions from individuals. Only one of these contributions was eligible for presumptive reattribution, but that no copy of a reattribution letter was provided; additionally, none of the contributions had been refunded. Thus, the Committee accepted $10,500 in excessive contributions from individuals identified during the audit.

V. Respondents violated the Act in the following ways:

1. Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(2) by failing to file complete and accurate reports disclosing all of the Committee's receipts and expenditures.

2. Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by knowingly accepting excessive and prohibited in-kind contributions.

3. This agreement does not establish or mean that any of the violations were knowing and willful.

VI. Respondents will cease and desist from violating 2 U.S.C. § 434(b) by failing to report complete and accurate disclosure reports. Respondents will cease and desist from violating 2 U.S.C. §§ 441a(f) and 441b by accepting contributions in excess of the limits as set forth in the Act or from prohibited sources.

VII. Respondents will file amended disclosure reports to disclose the receipts and disbursements described in this agreement.

VIII. Respondents will refund to its contributors, or in the alternative, disgorge to the U.S. Treasury, the $10,500 in unresolved excessive contributions received in violation of 2 U.S.C. § 441a. Respondents will disgorge to the U.S. Treasury the $9,000 in excessive contributions received from LaVan Hawkins in violation of 2 U.S.C. § 441a. Respondents will refund to the National Action Network, Inc., or in the alternative, disgorge to the U.S. Treasury, the $181,115 in impermissible corporate contributions received in violation of 2 U.S.C. § 441b with the first available funds. Respondents will disgorge to the U.S. Treasury the $1,750 in prohibited corporate contributions received from the Hawkins Food Group in violation of 2 U.S.C. § 441b.

IX. Respondents shall pay a civil penalty of Two Hundred and Eight Thousand Dollars ($208,000), pursuant to 2 U.S.C. § 437g(a)(5)(A). The civil penalty will be paid as follows:

A. A payment of Thirty Five Thousand Dollars ($35,000), which is due no later than 90 days from the date this agreement becomes effective.

B. Thereafter, a second installment payment of One Hundred and Five Thousand Dollars ($105,000), which is due no later than August 1, 2009, and a final installment payment of Sixty Eight Thousand Dollars ($68,000), which is due no later than October 1, 2009.

C. In the event that any installment payment is not received by the Commission by the fifth day after it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the Respondent. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to further overdue installments, pursuant to 2 U.S.C. § 437g(a)(5)(A).

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) commitment 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.

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

XII. Respondent shall have no more than 90 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, except as otherwise expressly specified in Paragraphs VIII and IX.

XIII. 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:

Thomasenia P. Duncan
General Counsel

BY: _____ 4/8/09
Ann Marie Terzaken
Associate General Counsel
for Enforcement
Date

FOR THE RESPONDENTS:

_____ 2/17/09
Sharpton 2004 and Andrew Rivera,
in his official capacity as Treasurer
Date

_____ 2/17/09
Reverend Alfred C. Sharpton
Date