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December 23 2011

BY HAND DELIVERY

Kim Collins
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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Re: MUR 6507

Dear Ms. Collins:

We write on behalf of the DNC Services Corp./Democratic National Committee and Andrew Tobias, Treasurer ("Respondents") in response to a complaint filed by Daniel J. Dunn on November 1, 2011 (the "Complaint"). The Complaint asks the Commission to investigate a contribution that Respondents reported receiving from Mr. Dunn on June 2, 2009, which he claims not to have made. The contribution at issue was actually made by a different individual, Marguerite Lederberg, but was reported as coming from Mr. Dunn due to a minor clerical error. Respondents are amending the relevant report accordingly. As Respondents have used their best efforts to obtain, maintain, and submit the information required to be reported under the Federal Election Campaign Act of 1971, as amended (the "Act"), and due to the de minimis nature of this issue, we request that the Commission find no reason to believe that Respondents violated the Act and dismiss the Complaint immediately.

On June 2, 2009, Respondents received a contribution from Marguerite Lederberg. Ms. Lederberg sent her contribution to the DNC along with a contribution form that the DNC provided to her after speaking with Ms. Lederberg on the telephone. See Exhibit A. The contribution form included a donor identification code associated with Ms. Lederberg to ensure that when the DNC processed her contribution, her information was maintained and reported correctly. The contribution form also included the following statement: "Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year." Ms. Lederberg's

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Perkins Coie LLP

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contribution and contribution form initially went to Merkle Response Management Group ("Merkle"), a processing and contribution caging company used by Respondents.

Respondents and Merkle have developed a number of procedural mechanisms to ensure that they use their best efforts to obtain, maintain, and submit required to be reported under the Act. Respondents always include the language set forth at 11 C.F.R. § 104.7(b)(1)(i)(A) in order to clearly request a contributor's name, mailing address, occupation, and name of employer, and inform donors of Respondents' legal reporting obligations. When individuals make contributions exceeding \$200 in a calendar year but do not provide the required information, Respondents make at least one additional effort to collect that information and also report contributor information not provided, but in Respondents' possession. When Merkle, on behalf of Respondents, receives and processes contribution information, it follows a number of procedures and safeguards established by Merkle and Respondents in order to properly record and prepare contributor information for reporting, including both manual and computerized review of contribution forms, checks against information previously in Respondents' possession, and a number of other mechanisms standard in the industry to assure accuracy and prevent errors. Despite an exceptionally large volume of contributions, including thousands of individual receipts in June 2009 alone, the Respondents have an established record of accurate reporting.

With this contribution at issue here, Merkle received the contribution form from Ms. Lederberg and then manually reviewed the form to ensure that the information provided by Ms. Lederberg matched the information associated with the donor code printed on the form. At that point, the donor code is normally scanned and the information is processed by computer and matched against Respondents' records to assure accuracy. Here, however, the donor code could not be scanned so was manually entered into a computer system. Due to human error, the code was entered incorrectly, and thus the contribution was attributed to Mr. Dunn. While Merkle's check normally catches such issues, by unlikely chance, the inaccurate code matched the information for Mr. Dunn in the file Merkle was using to perform its quality control. In response to the Complaint, Merkle is instituting further procedural safeguards to prevent similar errors in the future to the greatest extent possible.

As Respondents have used their best efforts to collect and report the required information to the Commission, the inadvertent reporting of Ms. Lederberg's contribution as coming from Mr. Dunn does not constitute a violation of the Act. The Commission's regulations state that "[w]hen the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act." 11 C.F.R. § 104.7(a); see also 2 U.S.C. § 432(i) (2011). As set forth in the plain language of this regulation, this safe harbor applies with equal force not only to collection of information, but also to the submission or reporting of information to the Commission. See *Lovely v. Fed. Election Comm'n*, 307 F. Supp. 2d 294, 299 (D. Mass. 2004) (holding that the safe harbor applies where the committee used best efforts to submit its report before the deadline). Accordingly, when confronted with

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isolated instances of inaccurate reporting in the past, the Commission has deemed them de minimis and found no violation to have occurred. *See, e.g.,* Matter Under Review 5538, First General Counsel's Report (March 24, 2006) and Certification (March 30, 2006).

Accordingly, we ask that the Commission find no reason to believe that the DNC violated the Act and dismiss the matter immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Bauer', with a long horizontal flourish extending to the right.

Robert F. Bauer
Graham M. Wilson
Counsel to Respondents

Exhibit A

12044313049



DEMOCRATIC NATIONAL COMMITTEE
430 South Capitol Street SE, Washington, DC 20003
www.democrats.org

Thank you for speaking with our representative on the phone and making a generous pledge of \$500. President Obama was elected - with your help - to bring change in Washington, but the Republicans in Congress are putting up roadblocks every single step of the way. Your gift to Organizing for America will connect a network of Americans that will build support for the President's legislative agenda and policies critical to the prosperity of our nation. Thank you again.

Please make your check payable to the Organizing for America and return it today with this form in the envelope provided for your convenience. Thank you.

Payment method: ☒ Check ☐ MC ☐ Visa ☐ Amex ☐ Discover ☐ Amt Enclosed \$500.⁰⁰

Card # _____ Exp. Date _____

Signature: _____

Ms. Marguerite Lederberg

New York, NY 10065

079185850 T1C9943

06/12/08 gds0db mrmmb

Please make your check payable to Organizing for America and return it with this form in the envelope provided to the Democratic National Committee, 430 South Capitol St., SE, Washington, DC 20003. Please see reverse to charge your contribution.

Contributions to Organizing for America or the Democratic National Committee are not deductible as charitable contributions for federal income tax purposes. Please fill out the required information on the reverse side required by law.



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Corporate and labor union contributions are prohibited. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year. The DNC can accept contributions from an individual of up to \$30,400 in a calendar year. The DNC does not accept contributions from currently registered federal lobbyists, registered foreign agents, political action committees or minors under the age of 18.

Name: _____

Current Address: _____

Home Phone: _____

Office Phone: _____

Current Occupation: _____

☐ Check here if Self-Employed

4.11/14 16/12 16/10/11H 43A7

Employer:

16/12 16/10/11H 43A7

Email Address: _____

Federal law prohibits foreign nationals, except legal permanent residents of the U.S., from contributing to the DNC. Contributions must be made from the donor's personal funds. Please certify the following information by checking one of the following and signing below:

If an individual:

☒ I am a citizen of the United States

☐ I am a legal permanent resident of the United States

The funds I am donating are not being provided to me by another person or entity for the purpose of making this contribution.

Signature: William J. Clinton

Paid for by Organizing for America, a project of the Democratic National Committee — 430 S. Capitol Street SE, Washington, D.C., 20003.
This communication is not authorized by any candidate or candidate's committee.

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