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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the matter of

MUR 6522

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All Star Therapy, LLC,  
Blue Fox Enterprises and  
LWF Holdings, Inc./  
Medstat Pharmacy, LLC.

**RESPONSE OF ALL STAR THERAPY, LLC, BLUE FOX ENTERPRISES AND LWF  
HOLDINGS, INC./MEDSTATE PHARMACY, LLC  
TO THE COMPLAINT IN MUR 6522**

This responds on behalf of our clients, All Star Therapy, LLC, Blue Fox Enterprises and LWF Holdings, Inc./Medstat Pharmacy, LLC (collectively "Respondents"), to the notification from the Federal Election Commission ("Commission") that a complaint was filed against them in the above-referenced matter. The complaint, filed by Sean Murphy, alleges that respondents are "potentially" violating federal election law. Put simply, the allegations contained in the complaint have no basis in law or fact. Accordingly, we respectfully request that the Commission dismiss the Complaint, take no further action, and close the file.

**ANALYSIS**

**I. Introduction.**

Specifically, the complaint alleges that Lisa Wilson-Foley's businesses – the Respondents – made an in-kind contribution to her congressional campaign through advertisements on their websites and Facebook accounts. All of the communications listed in the complaint are fee-less website communications, which are exempt from the Commission's coordinated communications regulations. The advertisements for Apple Rehab on [www.youtube.com](http://www.youtube.com) and also allegedly on Fox News were not advertisements sponsored by any of the Respondents. In addition, even if the website communications were not exempt as Internet communications, these communications were

not coordinated on two other separate grounds: (1) they were placed outside the 90-day pre-election window applicable to public communications referencing congressional candidates that would otherwise satisfy the regulations' content standard; and (2) the All Star Therapy, LLC Facebook posts are also exempt under the regulations' safe harbor for commercial advertisements.

**II. The Communications Discussed In The Complaint Do Not Satisfy The Content Standards Under The Commission's Coordination Regulations And, Therefore, Do Not Constitute Coordinated Communications.**

A communication sponsored by a third-party is "coordinated" with a candidate or his or her authorized committee and treated as an in-kind contribution only if it satisfies the Commission's three-prong test under the Commission's coordination regulations.<sup>1</sup> Only "public communications" are included within the "content standards", which is one element that must be satisfied in order for a communication to be even eligible for analysis under the Commission's coordination regulation.<sup>2</sup> In fact, the content standard serves as a filter to determine whether the Commission's coordination regulations even apply to a specific communication.<sup>3</sup> If a communication does not satisfy the content standard prong, it cannot legally be considered a "coordinated communication" with the candidate or his or her campaign committee.<sup>4</sup>

Commission regulations specifically provide that the definition of "public communication" does not include Internet communications unless they were placed for a fee on another person's website:

*Public communication* means a by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political

<sup>1</sup> 11 C.F.R. §§ 109.21(a) & (b).

<sup>2</sup> 11 C.F.R. § 109.21(c).

<sup>3</sup> See 68 Fed. Reg. 421, 426 ("The Commission notes that the inclusion of one prong of its test, the content standard, could function efficiently as an initial threshold for the coordination analysis.").

<sup>4</sup> *Id.* ("For a communication to be "coordinated," all three prongs of the test must be satisfied.).

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advertising. The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.<sup>5</sup>

No postings cited by complainant are "public communications" as they were all distributed on the Internet on Respondents' websites or without a fee on their Facebook accounts<sup>6</sup>. Since the Internet communications listed in the complaint do not constitute "public communications," they do not satisfy the content standard under the coordination regulations.<sup>7</sup> Thus, the content standard is not met and it is obvious that no violation occurred.

### CONCLUSION

The allegations contained in the complainant – that Internet communications constitute in-kind contributions to the Foley campaign – do not constitute violations under the Act or Commission regulations. Commissioners Wold, Mason, Thomas, Statement of Reasons, MUR 4850 ("A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents. . . . The burden of proof does not shift to a respondent merely because a complaint is filed."); Commissioners Mason, Sandstrom, McDonald, Smith, Thomas, Wold, Statement of Reasons, MUR 5141 ("A complainant's unwarranted legal conclusions from asserted facts, will not be accepted as true.").

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<sup>5</sup> § 100.26.

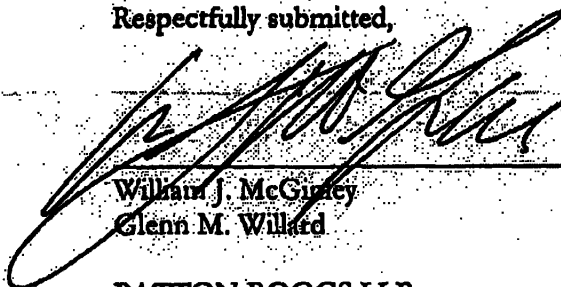
<sup>6</sup> The All Star Therapy, LLC Facebook postings also qualify for the commercial activity safe harbor under the Commission's coordination regulations. See 11 C.F.R. § 109.21(i); *see also* 75 Fed. Reg. 55959 ("The safe harbor excludes from the definition of coordinated communication any public communication in which a Federal candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, so long as the public communication does not PASO that candidate or another candidate who seeks the same office, and so long as the communication is consistent with other public communications made by the business prior to the candidacy in terms of the medium, timing, content, and geographic distribution.").

<sup>7</sup> 71 Fed. Reg. 18599 ("To be a 'coordinated communication' . . . a communication must be a 'public communication' as defined by 11 C.F.R. § 100.26.").

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For all the reasons stated above, there is no factual or legal basis for finding reason to believe in this matter. We respectfully request that the Commission dismiss the complaint, close the file, and take no further action in this matter.

Respectfully submitted,



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