BEFORE THE FEDERAL ELECTION COMMISSION

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) **MUR 6888**
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RESPONSE OF i360 TO THE SECOND SUPPLEMENTAL COMPLAINT

By and through the undersigned counsel, i360 hereby responds to the Second Supplemental Complaint in the above-captioned Matter Under Review ("MUR"). i360 has already filed a response to the first two complaints in this matter. Because the various Complaints fail to allege a violation of the Federal Election Campaign Act of 1971 (as amended) ("the Act") or the Commission's regulations implementing same, and misstate both the law and the facts, we respectfully request that the matter be dismissed and the file closed.

Most of the allegations contained in the latest Complaint are merely a rehash of the previous Complaint. i360's initial response has already responded to most of these regurgitated allegations. Complainant's claims are as wrong now as they were then, including their central, albeit erroneous, claim regarding the "real time" sharing of strategic information. i360 has already explained at length why Complainant is wrong, and i360 relies upon and incorporates by reference its prior response. As i360 has already said:

- In no case can an i360 customer select data that that customer knows has been generated by a particular other customer.
- i360's process does not transmit communicative strategy or information; it is used to refine and enhance data produced by its proprietary predictive model.

Complainant seems to be under the impression that by simply repeating the same allegation over and over, that somehow makes it true. Even in this "proof by forceful repetition" approach, they miss the mark – for example, they badly mischaracterize news coverage and claim that unnamed "[o]peratives of i360 have confirmed" all sorts of things that are nowhere to

be found in the cited news article. They fare no better with their take on the law, claiming "a near-textbook violation" of the Commission's "common vendor coordinated communication rule . . . ." simply because i360 appears on multiple FEC reports. Perhaps their "textbook" is missing the actual regulatory text and the accompanying explanation and justification, where the Commission has already made clear that the theory proffered by Complainant (which presumes coordination without any real factual showing) is wrong:

> But under this final rule, even those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders. This regulation focuses on the sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor to a spender who pays for a communication that could not then be considered to be made "totally independent" from the candidate or political party committee.

2003 E&J at 436-37.

Nor does Complainant's claim of "new" information fare any better. First, there is nothing "new" about Complainant's not-so-new trick of loading up a complaint with extraneous information in an effort to cause damage to a respondent. *See* MUR 4821 (Lazio for Congress) (complainant accused campaign and virtually all donors of making excessive contributions; matter eventually dismissed after virtually all contributors were served with the complaint and filed a response). Here, Complainant has apparently culled from FEC reports anyone who has showed payment to i360, and without more, accused them all of illegal coordination. Adding this "new" information does not advance any actual claim, so, predictably, Complainant now claims a massive "scheme" to evade. That this massive "scheme" is far-fetched is obvious from the sheer number of supposed participants. According to the Complainant, it seems that almost everyone in the world of Republican electoral politics is involved, a claim that would make even the most rabid Kennedy assassination conspiracy theorist blush.

Second, Complainant characterizes the fact that i360 also provides media placement services to some other customers as a "new" revelation. But as the Commission knows, i360 acknowledged as much in its initial response. *See* Response of i360 to the Complaint in MUR 6888 at 1 n. 1 ("on a limited basis, i360 also provides other services, including media buying services . . . ."). In its haste (or maybe intentionally), Complainant omits two critical points that obliterate their allegations:

> (1) Providing access to predictive modeling data regarding specific individuals has nothing to do with providing television or radio media buying, and comparing the two is akin to comparing apples and oranges. The first is focused on the predicted behavior of certain individuals, whereas the second is delivered to the faceless and unidentified masses *via* mass media. Given this stark difference, such information cannot possibly be "material" under the Commission's regulations.
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> (2) There is no factual allegation that supports Complainant's "common vendor" claim. i360 certainly has campaign customers for its individual-focused predictive modeling. And i360 provided unrelated media buying services for independent expenditures aired on television and radio. Critically, however, there is no allegation (nor could there be) that i360 provided media buying services for the same candidates referenced in those independent expenditures. Thus, since i360 does not have any candidate and/or campaign media buying customers, they are not the sort of "common vendor" contemplated by the Commission's regulation.

Relatedly, even if i360 is somehow a "common vendor," that is not enough to raise a coordination problem. Much more is needed: a campaign's "plans, projects, activities, or needs" need to be shared, and such information must be material to the creation, production or dissemination of a covered communication. There is no factual support offered that such information was shared or used here, nor could there be, as i360 maintains internal firewalls to ensure compliance – firewalls described in i360's initial response and which wall off its media placement division from its other data operations.

Complainant's attempt at burden shifting fails. The Commission has already made clear that such speculation is insufficient and does not establish that there is a reason to believe a

violation occurred. MUR 5467 (Michael Moore), First General Counsel's Report at 5 ("Purely speculative charges, especially when accompanied by a direct refutation, do not form the adequate basis to find reason to believe that a violation of [the law] has occurred.") (quoting MUR 4960 Statement of Reasons at 3); MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas at 2 (rejecting OGC's recommendation to find reason to believe because the respondent did not specifically deny allegations, stating a "mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents."); *see also* MUR 5506 (Castor/Emily's List) (dismissing matter and recognizing the use of firewalls).

There is nothing new in the Second Supplemental Complaint, and what was added suffers the same lack of connection to the statutory and regulatory requirements as their previous submission. i360 has already refuted the prior allegations, and shown that they are unsupported by fact or law. It does not need to do anything else when the Complainant's burden is so lacking. In sum, the Second Supplemental Complaint adds little to what was already filed, and appears designed more to get news headlines than advance a serious legal complaint. Therefore, i360 respectfully requests that the matter be dismissed and the file closed.

Respectfully submitted,

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