

**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

2016 MAR -7 PM 4: 13

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6961

DATE COMPLAINT FILED: August 28, 2015

DATE OF NOTIFICATION: September 1, 2015

LAST RESPONSE RECEIVED: Nov. 2, 2015

DATE ACTIVATED: December 7, 2015

ELECTION CYCLE: 2016

EXPIRATION OF SOL: June 16, 2020 -  
October 15, 2020

**COMPLAINANT:**

American Democracy Legal Fund

**RESPONDENTS:**

Donald J. Trump  
Donald J. Trump for President, Inc. and  
Timothy Jost, in his official capacity as treasurer  
Gotham Government Relations & Communications  
LLC  
Extra Mile, Inc.

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30104(b)(8)  
52 U.S.C. § 30116  
52 U.S.C. § 30118(a), (b)  
11 C.F.R. § 104.3(d)  
11 C.F.R. § 104.11(b)  
11 C.F.R. § 110.1

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that Donald J. Trump for President, Inc. ("Committee") paid actors to attend Trump's candidacy announcement on June 16, 2015, but failed to disclose payments to those actors or to the companies that hired them. Thus, the Complaint alleges that the Committee violated the reporting provisions of the Federal Election Campaign Act of 1971,

as amended (“the Act”) and may have also accepted prohibited or excessive contributions from two companies involved with hiring the actors, Gotham Government Relations & Communications LLC (“Gotham”) and Extra Mile, Inc. (“Extra Mile”). The Committee and Gotham deny they committed any violation. The Committee states that it paid Gotham \$12,000 for its services on October 8, 2015, and denies any connection with Extra Mile, which allegedly hired the actors. The Committee further states that this payment would be disclosed on its 2015 Year-End Report, the next report it was scheduled to file with the Commission. Gotham explains that it hired Extra Mile as a subcontractor to provide administrative support at Trump’s announcement. Extra Mile did not submit a response.

The information in the record is consistent with Respondents' factual explanations, but it is also clear that the Committee did not pay Gotham for its services for almost four months after the event, and did not report the transaction for more than seven months after the event. Thus, Gotham's apparent extension of credit to the Committee for the services rendered at the June candidacy announcement may constitute an excessive or prohibited contribution, and the Committee failed to report the amount it owed Gotham as a debt. However, because of the seemingly modest amount at issue, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that Gotham made and Trump and the Committee accepted an excessive or prohibited contribution, dismiss the allegation that Extra Mile, Inc. made and Trump and the Committee received a prohibited contribution, and dismiss with caution the allegation that the Committee failed to report a debt.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

Donald J. Trump is a candidate for the Republican Presidential nomination in 2016.

1 Trump announced his candidacy at an event held at Trump Tower in New York City on June 16,  
2 2015, and filed his Statement of Candidacy with the Commission on June 22, 2015.<sup>1</sup> Based  
3 largely on press reports, the Complaint alleges that the Committee hired actors to be part of the  
4 audience at Trump's candidacy announcement and failed to report the related transactions.<sup>2</sup>  
5 According to press reports cited in the Complaint, Extra Mile issued a casting call e-mail for  
6 actors "to wear t-shirts and carry signs and help cheer [Trump] in support of his announcement"  
7 in exchange for a payment of \$50. One cited article from *The Hollywood Reporter* purports to  
8 reprint a redacted version of that e-mail, which reads as follows:<sup>3</sup>

9 Hi there—We are working helping one of are [sic] associates out at Gotham GR -  
10 <http://gothamgr.com/> with a big event happening on TUESDAY 6/16/15. This is  
11 an event in support of Donald Trump and an upcoming exciting announcement he  
12 will be making at this event. This event is called "People for a Stronger  
13 America." The entire group is a pro-small business group that is dedicated to  
14 encouraging Donald Trump and his latest ventures. This event will be televised.  
15 We are looking to cast people for the event to wear t-shirts and carry signs and  
16 help cheer him in support of his announcement. We understand this is not a  
17 traditional "background job," but we believe acting comes in all forms and this is  
18 inclusive of that school of thought. This event is happening LIVE and will be  
19 from 8:45AM-11:30AM. LESS THAN 3 HOURS. This will take place inside /  
20 interior. The rate for this is: \$50 CASH at the end of the event. We would love  
21 to book you if you are interested and still available. Please let us know and we  
22 will get back to you with confirmation.

<sup>1</sup> The Committee filed a Statement of Organization with the Commission on June 29, 2015. See also *Donald Trump Presidential Announcement*, TRUMP.WEBSITE, <http://www.donaldjtrump.com/media/donald-trump-presidential-announcement> (last visited Jan. 28, 2016); Ben Terris, *Donald Trump begins 2016 bid, citing outsider status*, WASH. POST (June 16, 2015), [https://www.washingtonpost.com/politics/donald-trump-is-now-a-candidate-for-president-of-the-united-states/2015/06/16/5e6d738e-1441-11e5-9ddc-e3353542100c\\_story.html](https://www.washingtonpost.com/politics/donald-trump-is-now-a-candidate-for-president-of-the-united-states/2015/06/16/5e6d738e-1441-11e5-9ddc-e3353542100c_story.html).

<sup>2</sup> See Compl. at 2 (citing Aaron Couch & Emmet McDermott, *Donald Trump Campaign Offered Actors \$50 to Cheer for Him at Presidential Announcement*, THE HOLLYWOOD REPORTER (June 17, 2015), <http://www.hollywoodreporter.com/news/donald-trump-campaign-offered-actors-803161> and Kieran Corcoran, *Donald Trump accused of hiring ACTORS for \$50 each to pose as supporters at Trump Towers presidential campaign launch*, Daily Mail (June 17, 2015), <http://www.dailymail.co.uk/news/article-3128230/Did-Donald-Trump-hire-PAID-ACTORS-presidential-campaign-launch-Claims-professionals-extras-brought-pose-supporters.html>). The practice of hiring crowds to attend political events appears to be common. See Dan Schneider, *I-800-HIRE-A-CROWD*, ATLANTIC (Jul. 22, 2015), <http://www.theatlantic.com/business/archive/2015/07/crowd-hiring-politics-campaign-2016/399002/> (identifying "Extra Mile Casting" as an example of a company that offers rental crowd services).

<sup>3</sup> Compl. at 2, (citing Couch, *supra* note 2).

1 The *Hollywood Reporter* article includes photographs purportedly showing two actors  
2 (Domenico Del Giacco and Courtney Klotz) wearing campaign t-shirts and holding campaign  
3 signs at the event.<sup>4</sup> Another press report indicated that campaign staff also persuaded tourists in  
4 the area to be part of the crowd.<sup>5</sup>

5 Extra Mile is a New York corporation and Gotham is a New York limited liability  
6 company.<sup>6</sup> On its website, Extra Mile describes itself as a casting agency founded "to target the  
7 abundant need of casting directors booking background talent in the New York City  
8 Metropolitan area."<sup>7</sup> Extra Mile's website lists "Gotham GR" as a client but does not list Trump  
9 or his Committee.<sup>8</sup> According to Gotham's website, it is a "government relations firm" whose  
10 clients include various profit and non-profit entities.<sup>9</sup> The Trump Organization, a limited  
11 liability company headed by Trump as its Chairman and President,<sup>10</sup> is listed on Gotham's  
12 website as a client, but the Committee is not. Gotham's YouTube channel, however, does

<sup>4</sup> Couch, *supra* note 2; see also [http://www.imdb.com/name/nm7401575/?ref\\_=fn\\_al\\_nm\\_1](http://www.imdb.com/name/nm7401575/?ref_=fn_al_nm_1) and [http://www.imdb.com/find?ref\\_=nv\\_sr\\_fn&q=courtney+klotz&s=all](http://www.imdb.com/find?ref_=nv_sr_fn&q=courtney+klotz&s=all) (listing bios for both actors). According to the press reports cited in the Complaint, the original source of these allegations appears to be an anti-Trump blogger named Angelo Carusone, who located the photographs of the actors at the Trump event through social media sites. See Angelo Carusone, *Donald Trump Hired Paid Actors to Attend Presidential Launch Event*, @GOANGELO (June 16, 2015), <https://medium.com/@GoAngelo/donald-trump-hired-paid-actors-to-attend-presidential-launch-event-7c65e8fadea0#fhwsov956> (last visited Jan. 28, 2016). Carusone states that a source verified that the actors in these photographs were indeed paid to attend the Trump event. *Id.*

<sup>5</sup> Terris, *supra* note 1 (stating that a campaign staff member offered free t-shirts to passersby who agreed to attend the event).

<sup>6</sup> See New York Department of State, Division of Corporations, State Records & UCC, [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html).

<sup>7</sup> <http://www.extramilenyc.com/document/who-we-are.html>.

<sup>8</sup> <http://www.extramilenyc.com/document/clients.html>.

<sup>9</sup> <http://gothamgr.com/>.

<sup>10</sup> See New York Department of State, Division of Corporations, State Records & UCC, [https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=2447088&p\\_corp\\_id=2405651&p\\_entity\\_name=trump&p\\_name\\_type=A&p\\_search\\_type=BEGINS&p\\_srch\\_results\\_page=](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=2447088&p_corp_id=2405651&p_entity_name=trump&p_name_type=A&p_search_type=BEGINS&p_srch_results_page=). Trump is listed as Chairman and President on The Trump Organization website. See <http://www.trump.com/biography/>.

1 include a two-minute video called “trump announce 061615” that it produced, which consists of  
2 a montage of footage taken at Trump’s announcement event.<sup>11</sup> The video shows camera crews  
3 setting up, supporters holding campaign signs and making positive statements about Trump, a  
4 person encouraging a crowd to chant and cheer for Trump, and a portion of Trump’s speech.<sup>12</sup>

5 The Complaint alleges violations of the Act because the Committee's 2015 July  
6 Quarterly Report, which covers the period from April 1 through June 30, 2015, did not disclose  
7 any payments to Extra Mile, Gotham, or either of the identified actors, even though it appeared  
8 that they had provided services to the Committee related to the event.<sup>13</sup> According to the  
9 Complaint, because Extra Mile paid the actors directly, the Committee should have reimbursed  
10 Extra Mile for those payments.<sup>14</sup> Likewise, the Complainant argues, Committee reports should  
11 have disclosed a disbursement to Gotham because Extra Mile's casting call stated that Gotham  
12 hired it to recruit the actors.<sup>15</sup>

The Committee denies the allegations. The Committee states that it did not retain Extra Mile, had “no knowledge” of that firm, and did not hire or authorize hiring actors.<sup>16</sup> It further explains that it hired Gotham to perform services for which it paid \$12,000 on October 8, 2015, which it claims was “within a commercially reasonable time.”<sup>17</sup> The Committee does not describe the services Gotham performed or state why it paid the firm for these services almost

<sup>11</sup> <https://www.youtube.com/watch?v=TsFYmylmvXM>.

. 12 *id.*

<sup>13</sup> Compl. at 3.

14 *Id.* at 4.

15 *Id.* at 5.

<sup>16</sup> Comm. Resp. at 1, 3.

17 *Id.* at 2-3.

1 four months after the event. According to the response, the Committee planned to disclose the  
2 payment to Gotham on its 2015 Year End Report due on January 31, 2016, which it did, listing  
3 "Event Consultant" as the purpose for the disbursement.

4 Gotham similarly denies the allegations, stating that it provided services at Trump's  
5 announcement event "[a]s part of its communication and media practice," for which it was paid  
6 \$12,000 on October 8, 2015.<sup>18</sup> Gotham attached a copy of the check to its response.<sup>19</sup> Gotham  
7 also denies hiring actors but acknowledges retaining Extra Mile to help it provide  
8 "administrative staff" for Trump's announcement.<sup>20</sup> Gotham avers, however, that it had no  
9 knowledge regarding the specific individuals Extra Mile hired.<sup>21</sup>

10 Extra Mile did not submit a response. In *The Hollywood Reporter* article, a  
11 representative for Extra Mile denied knowing about the e-mail casting call.<sup>22</sup>

## 12 B. Legal Analysis

### 13 1. Excessive and Prohibited Contributions

14 The Act prohibits contributions from an individual to a candidate or an authorized  
15 committee in excess of \$2,700 per election.<sup>23</sup> The Act also prohibits corporations from making  
16 contributions to candidates or their committees.<sup>24</sup> A "contribution" includes "any direct or

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<sup>18</sup> Gotham Resp. at 1-2.

<sup>19</sup> *Id.*, Attach.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* Both the Committee and Gotham also argue that the Complaint was speculative and should be dismissed because it served as "nothing more than an attempt to shift the burden to the Respondents through the use of innuendo and conjecture." Comm. Resp. at 2; Gotham Resp. at 2.

<sup>22</sup> Couch, *supra* note 2.

<sup>23</sup> 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

<sup>24</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a).

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1 indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or  
2 anything of value.”<sup>25</sup> “Anything of value” includes in-kind contributions, such as the provision  
3 of goods or services without charge, or at a charge less than the usual and normal charge.<sup>26</sup> A  
4 commercial vendor may extend credit to a candidate, a political committee or another person on  
5 behalf of a candidate or political committee provided that the credit is extended in the ordinary  
6 course of the vendor’s business and the terms are substantially similar to extensions of credit to  
7 nonpolitical debtors that are of similar risk and size of obligation.<sup>27</sup> Depending on the  
8 circumstances under which an extension of credit is made, such an extension may, or may not,  
9 constitute a contribution.

10 The Commission has interpreted “anything of value” broadly under the Act, focusing on  
11 whether the goods and services at issue provided a benefit to the candidate or committee that  
12 received them.<sup>28</sup> We believe that the service at issue here — assembling a crowd of attendees for  
13

<sup>25</sup> 52 U.S.C. § 30118(b)(2); *see also id.* § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>26</sup> 11 C.F.R. § 100.52(d)(1).

<sup>27</sup> 11 C.F.R. § 116.3(a). *See also* 11 C.F.R. § 116.3(b) (nearly identical rule regarding extensions of credit by corporate commercial vendors). In assessing whether a commercial vendor extended credit in the ordinary course of business, and thus did not make a contribution, the Commission will consider: (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor’s trade. 11 C.F.R. § 116.3(c).

<sup>28</sup> For example, the Commission has found that stocks and commodities, an activist’s contact list, and the production elements for a benefit concert — including the services of an orchestra, gospel choir, talent assistants, make-up and hair artists, and publicists, would be considered contributions. *See* Advisory Op. 2000-30 (pac.com) (stock); First Gen. Counsel’s Rpt. at 10, MUR 5409 (Grover Norquist, *et al.*) (Aug. 31, 2004) (finding reason to believe that master contact list of activists was something of value under Act even though it lacked commercial or market value and despite difficulty in quantifying its precise worth); PC Brief at 7-8, MUR 5225 (New York Senate 2000) (July 5, 2005) (probable cause finding by Comm’n Oct. 20, 2005) (detailing approximately \$395,000 worth of in-kind contributions related to joint fundraising concert event that were unreported).

1 a candidacy announcement — provided a benefit to the Trump campaign.<sup>29</sup> It is not uncommon  
2 for campaigns to hire companies or casting agencies like Extra Mile to generate a crowd at an  
3 event.<sup>30</sup> In this matter, the available information indicates that the Committee retained Gotham  
4 as an event consultant, and Gotham, in turn, subcontracted with Extra Mile to provide extra  
5 administrative support at Trump's announcement, including the provision of at least some of the  
6 rally crowd.

7 The Complaint alleges that Trump and the Committee failed to pay Gotham or Extra Mile  
8 for the services they provided at Trump's candidacy announcement. While there had been no  
9 such payment at the time the Complaint was filed, the Committee did pay Gotham \$12,000 about  
10 a month later, in early October, for unspecified services. Despite the payment, however, the  
11 allegations still raise the question whether Gotham's apparent four-month extension of credit  
12 became a contribution to the Committee, or whether Extra Mile made a prohibited corporate  
13 contribution. But there is limited information to make such determinations.

14 First, there is no information to help determine if the \$12,000 the Committee paid for  
15 Gotham's services was "usual and normal." The only information before the Commission about  
16 the services Gotham provided are a check and the entry on the Committee's Year-End report  
17 describing Gotham as an "Event Consultant." And while Gotham's response alludes to

<sup>29</sup> See, e.g., First Gen. Counsel's Rpt. at 12-13, 17-18, 22, MUR 6651 (Murray Energy Corp.) (collecting cases regarding the meaning of "anything of value," recommending that the Commission find that assembling a crowd for a political rally would be a thing of value, but also recommending dismissal). Our Office also recommended that the Commission find no reason to believe that the corporation facilitated contributions related to the rally, but ultimately the Commission was equally divided over how to proceed and closed the file. Certification, MUR 6651 (June 18, 2015).

<sup>30</sup> See, Schneider, *supra* note 2, and Extra Mile's website, <http://www.extramilenyc.com/document/who-we-are.html>.



1 "staffing" the event, the Committee's response merely states that Gotham provided "services,"  
2 without any more detail.

3 Similarly, the record is scant as to whether Gotham extended credit to the Committee  
4 outside the ordinary course of business.<sup>31</sup> The Commission has typically decided whether an  
5 extension of credit resulted in an in-kind contribution based upon an analysis of whether a  
6 vendor followed its ordinary course of business and whether the payment was made in a  
7 commercially reasonable time.<sup>32</sup> The Commission has usually investigated extensions of credit  
8 involving substantial amounts in violation and lengthy repayment periods.<sup>33</sup>

9 Here, the record is clear that the Committee paid Gotham almost four months after the  
10 event, and more than a month after the complaint was filed. But there is no available  
11 information supporting the Committee's assertion that the time it took to make the \$12,000  
12 payment to Gotham was commercially reasonable, or that Gotham followed its established credit

<sup>31</sup> As a limited liability company, Gotham may be subject to the prohibition against corporate contributions, depending on whether it elects to be treated as a partnership or corporation by the Internal Revenue Service. 11 C.F.R. 110.1(g). If treated as a partnership, it is possible that Gotham made an excessive in-kind contribution to the Committee in violation of 52 U.S.C. § 30116 when it allowed the Committee almost four months to pay for its services. If Gotham elected tax treatment as a corporation, it may have violated 52 U.S.C. § 30118(a) if allowing the Committee four months to pay was not commercially reasonable.

<sup>32</sup> Compare MURs 5069 and 5132 (Acevedo Vila) (authorizing an investigation where the record contained conflicting information about whether it was normal industry practice for advertising agencies to advance the money for media buys to campaigns, there did not appear to be a written agreement specifying the terms of the extension of credit, and there was insufficient information regarding the vendor's past dealings with the candidate or the committee), with MUR 6141 (Friends of Dave Reichert) (finding no reason to believe where the media vendor submitted a sworn statement that it followed its own past practice as well as industry practice in its credit arrangements with the committee, there was publicly available information regarding the vendor's ordinary course of business, and there was no available information to contradict respondents' contentions), and MUR 6023 (John McCain 2008) (finding no reason to believe where the committee and its vendor provided detailed documentation concerning a renegotiated debt, which accounted for the time delays and supported the respondents' contentions that the reduction of the committee's bill was done in a commercially reasonable manner).

<sup>33</sup> See, e.g., MUR 5396 (Bauer for President 2000) (entering into conciliation agreement to resolve, *inter alia*, excessive and prohibited corporate contribution violations resulting from extensions of credit from three different vendors totaling over \$700,000 and owed for periods between 105 to 235 days) and MURs 5069 and 5132 (Acevedo Vila) (investigating matter involving \$655,896 in debt for media and advertisement costs, almost half of which remained outstanding over a year after the debt was initially incurred).

1 practices and would have made the same accommodations to similarly situated clients.  
2 However, the apparent amount in question, \$12,000, is relatively modest and we have no  
3 information suggesting that the amount involved was more substantial. Press reports and video  
4 footage show that the event was held in the atrium of Trump Tower,<sup>34</sup> instead of a larger venue,  
5 and that there were hundreds, not thousands, of attendees.<sup>35</sup> Therefore, we recommend that the  
6 Commission exercise its prosecutorial discretion and dismiss the allegations that Gotham may  
7 have made, and Trump and the Committee may have accepted, excessive or prohibited  
8 contributions in connection with Gotham's services at the June event.

9 Likewise, there remain questions regarding the arrangements with Extra Mile. The  
10 record, however, indicates that the Committee paid \$12,000 to Gotham, and it is at least possible  
11 that Gotham used that money to pay its subvendors and employees, including Extra Mile.<sup>36</sup>

<sup>34</sup> See <http://www.trumptowerny.com/trump-events-venues> (stating that the atrium could accommodate 75 to 350 guests).

<sup>35</sup> See Corcoran, *supra* n. 2; see also Carusone, *supra* n. 4 (publishing photo of "practically empty room"); Erik Durkin and Adam Edelman, *Donald Trump Enters 2016 Presidential Race with Bizarre Speech Insulting Mexican Immigrants, Lambasting Obama*, N.Y. DAILY NEWS (June 17, 2015), <http://www.nydailynews.com/news/politics/donald-trump-entering-2016-presidential-race-article-1.2259706> (noting a "crowd that appeared to number in the hundreds"); Jeffrey Tomik, *2016 Presidential Announcements, Ranked by Entertainment Value*, WASH. POST (June 17, 2015), <https://www.washingtonpost.com/express/wp/2015/06/17/2016-presidential-announcements-ranked/> (stating that the Trump event was not a "big-budget announcement," noting no pyrotechnics, no musical guests and no grand entrance via helicopter). See also <https://www.youtube.com/watch?v=TsFYmy1mvXM>; <http://www.dailymail.co.uk/news/article-3128230/Did-Donald-Trump-hire-PAID-ACTORS-presidential-campaign-launch-Claims-professionals-extras-brought-pose-supporters.html>; <http://abcnews.go.com/Politics/donald-trump-rode-escalator-2016-presidential-announcement/story?id=31801433>.

<sup>36</sup> The Complaint does not allege that the Committee's payment to Gotham was intended to conceal that Extra Mile was the true recipient of the payment in violation of 52 U.S.C. § 30104(b)(5), which requires committees to identify the name and address of the recipient of any expenditure in excess of \$200. The Commission has determined that merely reporting the immediate recipient of a committee's payment will not satisfy the requirements of 52 U.S.C. § 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds. See, e.g., MUR 4872 (Jenkins) (finding that the committee made payments intended for a specific vendor through an unrelated vendor acting as an intermediary in order to avoid any association with the first vendor). Here, the Committee denies any association with Extra Mile, and Gotham acknowledges that it hired Extra Mile on its own for additional support for the event. There is nothing available to contradict those assertions. Indeed, it appears that the Gotham provided a broader range of services to the Committee in connection with the candidacy announcement event than Extra Mile did by providing paid attendees.

1 Accordingly, and for the same reasons as stated above, we recommend that the Commission  
2 exercise its prosecutorial discretion and dismiss the allegations that Extra Mile made, and that  
3 Trump and the Committee received, a prohibited corporate contribution in connection with the  
4 services provided for the candidacy announcement event.

## 5 **2. Failure to Report Debts and Obligations**

6 The Act requires committee treasurers to file reports of disbursements in accordance with  
7 the provisions of 52 U.S.C § 30104(b).<sup>37</sup> The reports also must include the amount and nature of  
8 outstanding debts and obligations owed by or to the political committee.<sup>38</sup> Specifically, a debt or  
9 obligation exceeding \$500 shall be reported as of the date on which the debt or obligation is  
10 incurred.<sup>39</sup> If the exact amount of the debt or obligation is not known, the report shall state that  
11 the amount reported is an estimate.<sup>40</sup>

12 Gotham provided services to the Committee at Trump's candidacy announcement event  
13 on June 16, 2015, but the Committee did not report any payments for those services to the  
14 Commission until more than seven months after the event, on its 2015 Year End Report filed on  
15 January 31, 2016. However, it appears that the Committee incurred a debt or obligation to  
16 Gotham on June 16, 2015, for the services it performed at the candidacy announcement,  
17 regardless of the payment arrangements it made with Gotham. Therefore, the Committee should  
18 have disclosed the debt on its 2015 July Quarterly Report. However, the Committee failed to

<sup>37</sup> 52 U.S.C. § 30104(a)(1).

<sup>38</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d) (indicating that outstanding debts must be reported on Schedule C or D as appropriate); *see also* 11 C.F.R. § 104.11(b) (requiring the continuous reporting of outstanding debts and obligations).

<sup>39</sup> 11 C.F.R. § 104.11(b).

<sup>40</sup> *Id.* Once the exact amount is determined, the committee must either amend the report containing the estimate, or indicate the correct amount on the report for the reporting period in which such amount is determined. *Id.*

1 report a debt to Gotham on any of its reports, including its 2015 July and October Quarterly  
2 Reports.

3 The amount in violation, however, does not warrant the additional use of Commission  
4 resources in this matter. In fact, the \$12,000 debt would not be referable under the Reports  
5 Analysis Division's ("RAD") thresholds.<sup>41</sup> However, the Committee should be cautioned  
6 against similar violations. Therefore, we recommend that the Commission dismiss the reporting  
7 allegations and send a caution letter to the Committee.

### 8 III. RECOMMENDATIONS

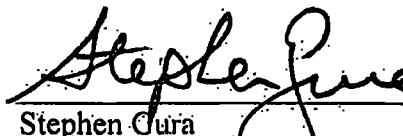
- 9 1. Dismiss the allegation that Gotham Government Relations & Communications LLC,  
10 Donald J. Trump, and Donald J. Trump for President, Inc. and Timothy Jost in his  
11 official capacity as treasurer, violated 52 U.S.C. §§ 30116(a) and 30118(a).  
12  
13 2. Dismiss the allegation that Extra Mile Inc., Donald J. Trump, and Donald J. Trump  
14 for President, Inc. and Timothy Jost in his official capacity as treasurer violated  
15 52 U.S.C. § 30118(a) in connection with allegations regarding Extra Mile, Inc.  
16  
17 3. Dismiss the allegation that Donald J. Trump for President, Inc. and Timothy Jost in  
18 his official capacity as treasurer violated 52 U.S.C. § 30104(b)(8), and send a caution  
19 letter.  
20  
21 4. Approve the attached Factual and Legal Analyses;  
22  
5. Approve the appropriate letters; and

<sup>41</sup> See Reports Analysis Division Review and Referral Procedures for the 2015-2016 Election Cycle for Unauthorized Committee, Title 52 Authorized Committees and Title 26 Authorized Committees. Omitted debts are handled under Standard 7 of the thresholds. See *id.*, Standard 17: Failure to Itemize Debts at 127. Under Standard 7, RAD will refer a matter to the Office of General Counsel for omitted schedules when the committee does not respond or responds inadequately to an RFAI and the total of all omitted schedules exceeds per report. See *id.*, at 73.

6. Close the entire file.

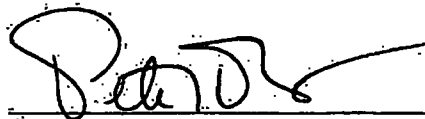
3.7.16

Date



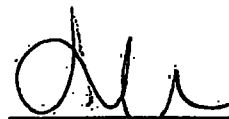
Stephen Cura

Deputy Associate General Counsel for Enforcement



Peter G. Blumberg

Assistant General Counsel



Ana J. Peña-Wallace

Attorney

Attachments:

1-Factual and Legal Analysis for Donald J. Trump and Committee

2- Factual and Legal Analysis for Gotham Government Relations & Communications LLC

3-Factual and Legal Analysis for Extra Mile, Inc.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Donald J. Trump **MUR: 6961**  
5 Donald J. Trump for President, Inc.  
6 and Timothy Jost in his official capacity as treasurer  
7

8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission  
10 (the "Commission"). See 52 U.S.C. § 30109(a)(1). The Complaint alleges that Donald J. Trump  
11 for President, Inc. ("Committee") paid actors to attend Trump's candidacy announcement on  
12 June 16, 2015, but failed to disclose payments to those actors or to the companies that hired  
13 them. Thus, the Complaint alleges that the Committee violated the reporting provisions of the  
14 Federal Election Campaign Act of 1971, as amended ("the Act") and may have also accepted  
15 prohibited or excessive contributions from two companies involved with hiring the actors,  
16 Gotham Government Relations & Communications LLC ("Gotham") and Extra Mile, Inc.  
17 ("Extra Mile"). The Committee denies that it committed any violation. The Committee states  
18 that it paid Gotham \$12,000 for its services on October 8, 2015, and denies any connection with  
19 Extra Mile, which allegedly hired the actors. The Committee further states that this payment  
20 would be disclosed on its 2015 Year-End Report, the next report it was scheduled to file with the  
21 Commission. Gotham explains that it hired Extra Mile as a subcontractor to provide  
22 administrative support at Trump's announcement.

23 The information in the record is consistent with Respondents' factual explanations, but it  
24 is also clear that the Committee did not pay Gotham for its services for almost four months after  
25 the event, and did not report the transaction for more than seven months after the event. Thus,

1 Gotham's apparent extension of credit to the Committee for the services rendered at the June  
2 candidacy announcement may constitute an excessive or prohibited contribution, and the  
3 Committee failed to report the amount it owed Gotham as a debt. However, because of the  
4 seemingly modest amount at issue, the Commission exercises its prosecutorial discretion and  
5 dismisses the allegation that Trump and the Committee accepted an excessive or prohibited  
6 contribution from Gotham, dismisses the allegation that Trump and the Committee received a  
7 prohibited contribution from Extra Mile, and dismisses with caution the Committee's violation  
8 for failure to report a debt.

## 9 II. FACTUAL AND LEGAL ANALYSIS

### 10 A. Factual Background

11 Donald J. Trump is a candidate for the Republican Presidential nomination in 2016.  
12 Trump announced his candidacy at an event held at Trump Tower in New York City on June 16,  
13 2015, and filed his Statement of Candidacy with the Commission on June 22, 2015.<sup>1</sup> Based  
14 largely on press reports, the Complaint alleges that the Committee hired actors to be part of the  
15 audience at Trump's candidacy announcement and failed to report the related transactions.<sup>2</sup>

<sup>1</sup> The Committee filed a Statement of Organization with the Commission on June 29, 2015. *See also Donald Trump Presidential Announcement*, TRUMP WEBSITE, <http://www.donaldjtrump.com/media/donald-trump-presidential-announcement> (last visited Jan. 28, 2016); Ben Terris, *Donald Trump begins 2016 bid, citing outsider status*, WASH. POST (June 16, 2015), [https://www.washingtonpost.com/politics/donald-trump-is-now-a-candidate-for-president-of-the-united-states/2015/06/16/5e6d738e-1441-11e5-9ddc-e3353542100c\\_story.html](https://www.washingtonpost.com/politics/donald-trump-is-now-a-candidate-for-president-of-the-united-states/2015/06/16/5e6d738e-1441-11e5-9ddc-e3353542100c_story.html).

<sup>2</sup> *See* Compl. at 2 (citing Aaron Couch & Emmet McDermott, *Donald Trump Campaign Offered Actors \$50 to Cheer for Him at Presidential Announcement*, THE HOLLYWOOD REPORTER (June 17, 2015), <http://www.hollywoodreporter.com/news/donald-trump-campaign-offered-actors-803161> and Kieran Corcoran, *Donald Trump accused of hiring ACTORS for \$50 each to pose as supporters at Trump Towers presidential campaign launch*, Daily Mail (June 17, 2015), <http://www.dailymail.co.uk/news/article-3128230/Did-Donald-Trump-hire-PAID-ACTORS-presidential-campaign-launch-Claims-professionals-extras-brought-pose-supporters.html>). The practice of hiring crowds to attend political events appears to be common. *See* Dan Schneider, *I-800-HIRE-A-CROWD*, ATLANTIC (Jul. 22, 2015), <http://www.theatlantic.com/business/archive/2015/07/crowd-hiring-politics-campaign-2016/399002/> (identifying "Extra Mile Casting" as an example of a company that offers rental crowd services).

1 According to press reports cited in the Complaint, Extra Mile issued a casting call e-mail for  
2 actors "to wear t-shirts and carry signs and help cheer [Trump] in support of his announcement"  
3 in exchange for a payment of \$50. One cited article from *The Hollywood Reporter* purports to  
4 reprint a redacted version of that e-mail, which reads as follows:<sup>3</sup>

5 Hi there—We are working helping one of are [sic] associates out at Gotham GR -  
6 <http://gothamgr.com/> with a big event happening on TUESDAY 6/16/15. This is  
7 an event in support of Donald Trump and an upcoming exciting announcement he  
8 will be making at this event. This event is called "People for a Stronger  
9 America." The entire group is a pro-small business group that is dedicated to  
10 encouraging Donald Trump and his latest ventures. This event will be televised.  
11 We are looking to cast people for the event to wear t-shirts and carry signs and  
12 help cheer him in support of his announcement. We understand this is not a  
13 traditional "background job," but we believe acting comes in all forms and this is  
14 inclusive of that school of thought. This event is happening LIVE and will be  
15 from 8:45AM-11:30AM. LESS THAN 3 HOURS. This will take place inside /  
16 interior. The rate for this is: \$50 CASH at the end of the event. We would love  
17 to book you if you are interested and still available. Please let us know and we  
18 will get back to you with confirmation.

19  
20 The *Hollywood Reporter* article includes photographs purportedly showing two actors  
21 (Domenico Del Giacco and Courtney Klotz) wearing campaign t-shirts and holding campaign  
22 signs at the event.<sup>4</sup> Another press report indicated that campaign staff also persuaded tourists in  
23 the area to be part of the crowd.<sup>5</sup>

<sup>3</sup> Compl. at 2, (citing Couch, *supra* note 2).

<sup>4</sup> Couch, *supra* note 2; see also [http://www.imdb.com/name/nm7401575/?ref=fn\\_al\\_nm\\_1](http://www.imdb.com/name/nm7401575/?ref=fn_al_nm_1) and [http://www.imdb.com/find?ref=nv\\_sr\\_fn&q=courtney+klotz&s=all](http://www.imdb.com/find?ref=nv_sr_fn&q=courtney+klotz&s=all) (listing bios for both actors). According to the press reports cited in the Complaint, the original source of these allegations appears to be an anti-Trump blogger named Angelo Carusone, who located the photographs of the actors at the Trump event through social media sites. See Angelo Carusone, *Donald Trump Hired Paid Actors to Attend Presidential Launch Event*, @GOANGELO (June 16, 2015), <https://medium.com/@GoAngelo/donald-trump-hired-paid-actors-to-attend-presidential-launch-event-7c65e8fadea0#.fhws0v956> (last visited Jan. 28, 2016). Carusone states that a source verified that the actors in these photographs were indeed paid to attend the Trump event. *Id.*

<sup>5</sup> Terris, *supra* note 1 (stating that a campaign staff member offered free t-shirts to passersby who agreed to attend the event).



1 Extra Mile is a New York corporation and Gotham is a New York limited liability  
2 company.<sup>6</sup> On its website, Extra Mile describes itself as a casting agency founded “to target the  
3 abundant need of casting directors booking background talent in the New York City Metropolitan  
4 area.”<sup>7</sup> Extra Mile’s website lists “Gotham GR” as a client but does not list Trump or his  
5 Committee.<sup>8</sup> According to Gotham’s website, it is a “government relations firm” whose clients  
6 include various profit and non-profit entities.<sup>9</sup> The Trump Organization, a limited liability  
7 company headed by Trump as its Chairman and President,<sup>10</sup> is listed on Gotham’s website as a  
8 client, but the Committee is not. Gotham’s YouTube channel, however, does include a two-  
9 minute video called “trump announce 061615” that it produced, which consists of a montage of  
10 footage taken at Trump’s announcement event.<sup>11</sup> The video shows camera crews setting up,  
11 supporters holding campaign signs and making positive statements about Trump, a person  
12 encouraging a crowd to chant and cheer for Trump, and a portion of Trump’s speech.<sup>12</sup>

13 The Complaint alleges violations of the Act because the Committee’s 2015 July Quarterly  
14 Report, which covers the period from April 1 through June 30, 2015, did not disclose any

<sup>6</sup> See New York Department of State, Division of Corporations, State Records & UCC,  
[http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html).

<sup>7</sup> <http://www.extramilenyc.com/document/who-we-are.html>.

<sup>8</sup> <http://www.extramilenyc.com/document/clients.html>.

<sup>9</sup> <http://gothamgr.com/>.

<sup>10</sup> See New York Department of State, Division of Corporations, State Records & UCC,  
[https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=2447088&p\\_corp\\_id=2405651&p\\_entity\\_name=trump&p\\_name\\_type=A&p\\_search\\_type=BEGINS&p\\_srch\\_results\\_page=](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=2447088&p_corp_id=2405651&p_entity_name=trump&p_name_type=A&p_search_type=BEGINS&p_srch_results_page=). Trump is listed as Chairman and President on The Trump Organization website. See <http://www.trump.com/biography/>.

<sup>11</sup> <https://www.youtube.com/watch?v=TsFYmylmvXM>.

<sup>12</sup> *Id.*

1 payments to Extra Mile, Gotham, or either of the identified actors, even though it appeared that  
2 they had provided services to the Committee related to the event.<sup>13</sup> According to the Complaint,  
3 because Extra Mile paid the actors directly, the Committee should have reimbursed Extra Mile  
4 for those payments.<sup>14</sup> Likewise, the Complainant argues, Committee reports should have  
5 disclosed a disbursement to Gotham because Extra Mile's casting call stated that Gotham hired it  
6 to recruit the actors.<sup>15</sup>

7 The Committee denies the allegations. The Committee states that it did not retain Extra  
8 Mile, had "no knowledge" of that firm, and did not hire or authorize hiring actors.<sup>16</sup> It further  
9 explains that it hired Gotham to perform services for which it paid \$12,000 on October 8, 2015,  
10 which it claims was "within a commercially reasonable time."<sup>17</sup> The Committee does not  
11 describe the services Gotham performed or state why it paid the firm for these services almost  
12 four months after the event. According to the response, the Committee planned to disclose the  
13 payment to Gotham on its 2015 Year End Report due on January 31, 2016, which it did, listing  
14 "Event Consultant" as the purpose for the disbursement.

15 Available information indicates that Gotham provided services at Trump's announcement  
16 event as part of its communication and media practice, for which it was paid \$12,000 on October  
17 8, 2015. The information indicates that Gotham had no knowledge about the actors being hired  
18 but did retain Extra Mile to help it provide "administrative staff" for Trump's announcement.

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<sup>13</sup> Compl. at 3.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Comm. Resp. at 1, 3.

<sup>17</sup> *Id.* at 2-3.

1 According to available information, Gotham may not have had knowledge regarding the specific  
2 individuals Extra Mile hired. Additionally, in *The Hollywood Reporter* article, a representative  
3 for Extra Mile denied knowing about the e-mail casting call.<sup>18</sup>

4 **B. Legal Analysis**

5 **1. Excessive and Prohibited Contributions**

6 The Act prohibits contributions from an individual to a candidate or an authorized  
7 committee in excess of \$2,700 per election.<sup>19</sup> The Act also prohibits corporations from making  
8 contributions to candidates or their committees.<sup>20</sup> A "contribution" includes "any direct or  
9 indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or  
10 anything of value."<sup>21</sup> "Anything of value" includes in-kind contributions, such as the provision of  
11 goods or services without charge, or at a charge less than the usual and normal charge.<sup>22</sup> A  
12 commercial vendor may extend credit to a candidate, a political committee or another person on  
13 behalf of a candidate or political committee provided that the credit is extended in the ordinary  
14 course of the vendor's business and the terms are substantially similar to extensions of credit to  
15 nonpolitical debtors that are of similar risk and size of obligation.<sup>23</sup> Depending on the

<sup>18</sup> Couch, *supra* note 2.

<sup>19</sup> 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

<sup>20</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a).

<sup>21</sup> 52 U.S.C. § 30118(b)(2); *see also id.* § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>22</sup> 11 C.F.R. § 100.52(d)(1).

<sup>23</sup> 11 C.F.R. § 116.3(a). *See also* 11 C.F.R. § 116.3(b) (nearly identical rule regarding extensions of credit by corporate commercial vendors). In assessing whether a commercial vendor extended credit in the ordinary course of business, and thus did not make a contribution, the Commission will consider: (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade. 11 C.F.R. § 116.3(c).

1 circumstances under which an extension of credit is made, such an extension may, or may not,  
2 constitute a contribution.

3 The Commission has interpreted “anything of value” broadly under the Act, focusing on  
4 whether the goods and services at issue provided a benefit to the candidate or committee that  
5 received them.<sup>24</sup> We believe that the service at issue here — assembling a crowd of attendees for  
6 a candidacy announcement — provided a benefit to the Trump campaign.<sup>25</sup> It is not uncommon  
7 for campaigns to hire companies or casting agencies like Extra Mile to generate a crowd at an  
8 event.<sup>26</sup> In this matter, the available information indicates that the Committee retained Gotham  
9 as an event consultant, and Gotham, in turn, subcontracted with Extra Mile to provide extra  
10 administrative support at Trump’s announcement, including the provision of at least some of the  
11 rally crowd.

12 The Complaint alleges that Trump and the Committee failed to pay Gotham or Extra Mile  
13 for the services they provided at Trump’s candidacy announcement. While there had been no  
14 such payment at the time the Complaint was filed, the Committee did pay Gotham \$12,000 about

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<sup>24</sup> For example, the Commission has found that stocks and commodities, an activist’s contact list, and the production elements for a benefit concert — including the services of an orchestra, gospel choir, talent assistants, make-up and hair artists, and publicists, would be considered contributions. *See* Advisory Op. 2000-30 (pac.com) (stock); First Gen. Counsel’s Rpt. at 10, MUR 5409 (Grover Norquist, *et al.*) (Aug. 31, 2004) (finding reason to believe that master contact list of activists was something of value under Act even though it lacked commercial or market value and despite difficulty in quantifying its precise worth); PC Brief at 7-8, MUR 5225 (New York Senate 2000) (July 5, 2005) (probable cause finding by Comm’n Oct. 20, 2005) (detailing approximately \$395,000 worth of in-kind contributions related to joint fundraising concert event that were unreported).

<sup>25</sup> *See, e.g.*, First Gen. Counsel’s Rpt. at 12-13, 17-18, 22, MUR 6651 (Murray Energy Corp.) (collecting cases regarding the meaning of “anything of value,” recommending that the Commission find that assembling a crowd for a political rally would be a thing of value, but also recommending dismissal). Our Office also recommended that the Commission find no reason to believe that the corporation facilitated contributions related to the rally, but ultimately the Commission was equally divided over how to proceed and closed the file. Certification, MUR 6651 (June 18, 2015).

<sup>26</sup> *See*, Schneider, *supra* note 2, and Extra Mile’s website, <http://www.extramilenyc.com/document/who-we-are.html>.

1 a month later, in early October, for unspecified services. Despite the payment, however, the  
2 allegations still raise the question whether Gotham's apparent four-month extension of credit  
3 became a contribution to the Committee, or whether Extra Mile made a prohibited corporate  
4 contribution. But there is limited information to make such determinations.

5 First, there is no information to help determine if the \$12,000 the Committee paid for  
6 Gotham's services was "usual and normal." The only information before the Commission about  
7 the services Gotham provided are a check and the entry on the Committee's Year-End report  
8 describing Gotham as an "Event Consultant." And while Gotham has alluded to "staffing" the  
9 event, the Committee's response merely states that Gotham provided "services," without any  
10 more detail.

11 Similarly, the record is scant as to whether Gotham extended credit to the Committee  
12 outside the ordinary course of business.<sup>27</sup> The Commission has typically decided whether an  
13 extension of credit resulted in an in-kind contribution based upon an analysis of whether a vendor  
14 followed its ordinary course of business and whether the payment was made in a commercially

<sup>27</sup> As a limited liability company, Gotham may be subject to the prohibition against corporate contributions, depending on whether it elects to be treated as a partnership or corporation by the Internal Revenue Service. 11 C.F.R. 110.1(g). If treated as a partnership, it is possible that Gotham made an excessive in-kind contribution to the Committee in violation of 52 U.S.C. § 30116 when it allowed the Committee almost four months to pay for its services. If Gotham elected tax treatment as a corporation, it may have violated 52 U.S.C. § 30118(a) if allowing the Committee four months to pay was not commercially reasonable.

1 reasonable time.<sup>28</sup> The Commission has usually investigated extensions of credit involving  
2 substantial amounts in violation and lengthy repayment periods.<sup>29</sup>

3 Here, the record is clear that the Committee paid Gotham almost four months after the  
4 event, and more than a month after the complaint was filed. But there is no available information  
5 supporting the Committee's assertion that the time it took to make the \$12,000 payment to  
6 Gotham was commercially reasonable, or that Gotham followed its established credit practices  
7 and would have made the same accommodations to similarly situated clients. However, the  
8 apparent amount in question, \$12,000, is relatively modest and we have no information  
9 suggesting that the amount involved was more substantial. Press reports and video footage show  
10 that the event was held in the atrium of Trump Tower,<sup>30</sup> instead of a larger venue, and that there

<sup>28</sup> Compare MURs 5069 and 5132 (Acevedo Vila) (authorizing an investigation where the record contained conflicting information about whether it was normal industry practice for advertising agencies to advance the money for media buys to campaigns, there did not appear to be a written agreement specifying the terms of the extension of credit, and there was insufficient information regarding the vendor's past dealings with the candidate or the committee), with MUR 6141 (Friends of Dave Reichert) (finding no reason to believe where the media vendor submitted a sworn statement that it followed its own past practice as well as industry practice in its credit arrangements with the committee, there was publicly available information regarding the vendor's ordinary course of business, and there was no available information to contradict respondents' contentions), and MUR 6023 (John McCain 2008) (finding no reason to believe where the committee and its vendor provided detailed documentation concerning a renegotiated debt, which accounted for the time delays and supported the respondents' contentions that the reduction of the committee's bill was done in a commercially reasonable manner).

<sup>29</sup> See, e.g., MUR 5396 (Bauer for President 2000) (entering into conciliation agreement to resolve, *inter alia*, excessive and prohibited corporate contribution violations resulting from extensions of credit from three different vendors totaling over \$700,000 and owed for periods between 105 to 235 days) and MURs 5069 and 5132 (Acevedo Vila) (investigating matter involving \$655,896 in debt for media and advertisement costs, almost half of which remained outstanding over a year after the debt was initially incurred).

<sup>30</sup> See <http://www.trumptowerny.com/trump-events-venues> (stating that the atrium could accommodate 75 to 350 guests).

1 were hundreds, not thousands, of attendees.<sup>31</sup> Therefore, the Commission has decided to  
2 exercise its prosecutorial discretion and dismiss the allegations that Trump and the Committee  
3 may have accepted excessive or prohibited contributions in connection with Gotham's services at  
4 the June event.

5 Likewise, there remain questions regarding the arrangements with Extra Mile. The  
6 record, however, indicates that the Committee paid \$12,000 to Gotham, and it is at least possible  
7 that Gotham used that money to pay its subvendors and employees, including Extra Mile.<sup>32</sup>  
8 Accordingly, and for the same reasons as stated above, the Commission has decided to exercise  
9 its prosecutorial discretion and dismiss the allegations that Trump and the Committee received a  
10 prohibited corporate contribution from Extra Mile in connection with the services provided for  
11 the candidacy announcement event.  
12

<sup>31</sup> See Corcoran, *supra* n. 2; see also Carusone, *supra* n. 4 (publishing photo of "practically empty room"); Erik Durkin and Adam Edelman, *Donald Trump Enters 2016 Presidential Race with Bizarre Speech Insulting Mexican Immigrants, Lambasting Obama*, N.Y. DAILY NEWS (June 17, 2015), <http://www.nydailynews.com/news/politics/donald-trump-entering-2016-presidential-race-article-1.2259706> (noting a "crowd that appeared to number in the hundreds"); Jeffrey Tomik, *2016 Presidential Announcements, Ranked by Entertainment Value*, WASH. POST (June 17, 2015), <https://www.washingtonpost.com/express/wp/2015/06/17/2016-presidential-announcements-ranked/> (stating that the Trump event was not a "big-budget announcement," noting no pyrotechnics, no musical guests and no grand entrance via helicopter). See also <https://www.youtube.com/watch?v=TsFYmylmvXM>; <http://www.dailymail.co.uk/news/article-3128230/Did-Donald-Trump-hire-PAID-ACTORS-presidential-campaign-launch-Claims-professionals-extras-brought-pose-supporters.html>; <http://abcnews.go.com/Politics/donald-trump-rode-escalator-2016-presidential-announcement/story?id=31801433>.

<sup>32</sup> The Complaint does not allege that the Committee's payment to Gotham was intended to conceal that Extra Mile was the true recipient of the payment in violation of 52 U.S.C. § 30104(b)(5), which requires committees to identify the name and address of the recipient of any expenditure in excess of \$200. The Commission has determined that merely reporting the immediate recipient of a committee's payment will not satisfy the requirements of 52 U.S.C. § 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds. See, e.g., MUR 4872 (Jenkins) (finding that the committee made payments intended for a specific vendor through an unrelated vendor acting as an intermediary in order to avoid any association with the first vendor). Here, the Committee denies any association with Extra Mile, and Gotham acknowledges that it hired Extra Mile on its own for additional support for the event. There is nothing available to contradict those assertions. Indeed, it appears that the Gotham provided a broader range of services to the Committee in connection with the candidacy announcement event than Extra Mile did by providing paid attendees.

**2. Failure to Report Debts and Obligations**

The Act requires committee treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C § 30104(b).<sup>33</sup> The reports also must include the amount and nature of outstanding debts and obligations owed by or to the political committee.<sup>34</sup> Specifically, a debt or obligation exceeding \$500 shall be reported as of the date on which the debt or obligation is incurred.<sup>35</sup> If the exact amount of the debt or obligation is not known, the report shall state that the amount reported is an estimate.<sup>36</sup>

Gotham provided services to the Committee at Trump's candidacy announcement event on June 16, 2015, but the Committee did not report any payments for those services to the Commission until more than seven months after the event, on its 2015 Year End Report filed on January 31, 2016. However, it appears that the Committee incurred a debt or obligation to Gotham on June 16, 2015, for the services it performed at the candidacy announcement, regardless of the payment arrangements it made with Gotham. Therefore, the Committee should have disclosed the debt on its 2015 July Quarterly Report. However, the Committee failed to report a debt to Gotham on any of its reports, including its 2015 July and October Quarterly Reports.

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<sup>33</sup> 52 U.S.C. § 30104(a)(1).

<sup>34</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d) (indicating that outstanding debts must be reported on Schedule C or D as appropriate); *see also* 11 C.F.R. § 104.11(b) (requiring the continuous reporting of outstanding debts and obligations).

<sup>35</sup> 11 C.F.R. § 104.11(b).

<sup>36</sup> *Id.* Once the exact amount is determined, the committee must either amend the report containing the estimate, or indicate the correct amount on the report for the reporting period in which such amount is determined.  
*Id.*



- 1           The amount in violation does not warrant the additional use of Commission resources in
- 2   this matter. However, the Committee should be cautioned against similar violations. Therefore,
- 3   the Commission dismisses the reporting allegations with a caution letter to the Committee.

1704404407



1. decided to exercise its prosecutorial discretion and dismisses the allegation that Gotham made an  
2 excessive or prohibited contribution to Trump and the Committee.

## 3 II. FACTUAL AND LEGAL ANALYSIS

### 4 A. Factual Background

5 Donald J. Trump is a candidate for the Republican Presidential nomination in 2016.

6 Trump announced his candidacy at an event held at Trump Tower in New York City on June 16,  
7 2015, and filed his Statement of Candidacy with the Commission on June 22, 2015.<sup>1</sup> Based

8 largely on press reports, the Complaint alleges that the Committee hired actors to be part of the  
9 audience at Trump's candidacy announcement and failed to report the related transactions.<sup>2</sup>

10 According to press reports cited in the Complaint, Extra Mile issued a casting call e-mail for  
11 actors "to wear t-shirts and carry signs and help cheer [Trump] in support of his announcement"  
12 in exchange for a payment of \$50. One cited article from *The Hollywood Reporter* purports to  
13 reprint a redacted version of that e-mail, which reads as follows:<sup>3</sup>

14 Hi there—We are working helping one of are [sic] associates out at Gotham GR -  
15 <http://gothamgr.com/> with a big event happening on TUESDAY 6/16/15. This is

<sup>1</sup> The Committee filed a Statement of Organization with the Commission on June 29, 2015. *See also Donald Trump Presidential Announcement*, TRUMP WEBSITE, <http://www.donaldjtrump.com/media/donald-trump-presidential-announcement> (last visited Jan. 28, 2016); Ben Terris, *Donald Trump begins 2016 bid, citing outsider status*, WASH. POST (June 16, 2015), [https://www.washingtonpost.com/politics/donald-trump-is-now-a-candidate-for-president-of-the-united-states/2015/06/16/5e6d738e-1441-11e5-9ddc-c3353542100c\\_story.html](https://www.washingtonpost.com/politics/donald-trump-is-now-a-candidate-for-president-of-the-united-states/2015/06/16/5e6d738e-1441-11e5-9ddc-c3353542100c_story.html).

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1 an event in support of Donald Trump and an upcoming exciting announcement he  
2 will be making at this event. This event is called "People for a Stronger  
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4 encouraging Donald Trump and his latest ventures. This event will be televised.  
5 We are looking to cast people for the event to wear t-shirts and carry signs and  
6 help cheer him in support of his announcement. We understand this is not a  
7 traditional "background job," but we believe acting comes in all forms and this is  
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14 The *Hollywood Reporter* article includes photographs purportedly showing two actors  
15 (Domenico Del Giacco and Courtney Klotz) wearing campaign t-shirts and holding campaign  
16 signs at the event.<sup>4</sup> Another press report indicated that campaign staff also persuaded tourists in  
17 the area to be part of the crowd.<sup>5</sup>

18 Extra Mile is a New York corporation and Gotham is a New York limited liability  
19 company.<sup>6</sup> On its website, Extra Mile describes itself as a casting agency founded "to target the  
20 abundant need of casting directors booking background talent in the New York City Metropolitan  
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<sup>4</sup> Couch, *supra* note 2; see also [http://www.imdb.com/name/nm7401575/?ref\\_=fn\\_al\\_nm\\_1](http://www.imdb.com/name/nm7401575/?ref_=fn_al_nm_1) and [http://www.imdb.com/find?ref\\_=nv\\_sr\\_fn&q=courtney+klotz&s=all](http://www.imdb.com/find?ref_=nv_sr_fn&q=courtney+klotz&s=all) (listing bios for both actors). According to the press reports cited in the Complaint, the original source of these allegations appears to be an anti-Trump blogger named Angelo Carusone, who located the photographs of the actors at the Trump event through social media sites. See Angelo Carusone, *Donald Trump Hired Paid Actors to Attend Presidential Launch Event*, @GOANGELO (June 16, 2015), <https://medium.com/@GoAngelo/donald-trump-hired-paid-actors-to-attend-presidential-launch-event-7c65e8fadea0#fhws0v956> (last visited Jan. 28, 2016). Carusone states that a source verified that the actors in these photographs were indeed paid to attend the Trump event. *Id.*

<sup>5</sup> Terris, *supra* note 1 (stating that a campaign staff member offered free t-shirts to passersby who agreed to attend the event).

<sup>6</sup> See New York Department of State, Division of Corporations, State Records & UCC, [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html).

<sup>7</sup> <http://www.extramilenyc.com/document/who-we-are.html>.

1 Committee.<sup>8</sup> According to Gotham's website, it is a "government relations firm" whose clients  
2 include various profit and non-profit entities.<sup>9</sup> The Trump Organization, a limited liability  
3 company headed by Trump as its Chairman and President,<sup>10</sup> is listed on Gotham's website as a  
4 client, but the Committee is not. Gotham's YouTube channel, however, does include a two-  
5 minute video called "trump announce 061615" that it produced, which consists of a montage of  
6 footage taken at Trump's announcement event.<sup>11</sup> The video shows camera crews setting up,  
7 supporters holding campaign signs and making positive statements about Trump, a person  
8 encouraging a crowd to chant and cheer for Trump, and a portion of Trump's speech.<sup>12</sup>

9 The Complaint alleges violations of the Act because the Committee's 2015 July Quarterly  
10 Report, which covers the period from April 1 through June 30, 2015, did not disclose any  
11 payments to Extra Mile, Gotham, or either of the identified actors, even though it appeared that  
12 they had provided services to the Committee related to the event.<sup>13</sup> According to the Complaint,  
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<sup>8</sup> <http://www.extramilenyc.com/document/clients.html>.

<sup>9</sup> <http://gothamgr.com/>.

<sup>10</sup> See New York Department of State, Division of Corporations, State Records & UCC, [https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=2447088&p\\_corpid=2405651&p\\_entity\\_name=trump&p\\_name\\_type=A&p\\_search\\_type=BEGINS&p\\_srch\\_results\\_page=](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=2447088&p_corpid=2405651&p_entity_name=trump&p_name_type=A&p_search_type=BEGINS&p_srch_results_page=). Trump is listed as Chairman and President on The Trump Organization website. See <http://www.trump.com/biography/>.

<sup>11</sup> <https://www.youtube.com/watch?v=TsFYmyImvXM>.

<sup>12</sup> *Id.*

<sup>13</sup> Compl. at 3.

<sup>14</sup> *Id.* at 4.

1 disclosed a disbursement to Gotham because Extra Mile's casting call stated that Gotham hired it  
2 to recruit the actors.<sup>15</sup>

3 According to available information, the Committee has stated that it did not retain Extra  
4 Mile, had "no knowledge" of that firm, and did not hire or authorize hiring actors. It appears that  
5 the Committee hired Gotham to perform services for which it paid \$12,000 on October 8, 2015,  
6 which the Respondent states was "within a commercially reasonable time."<sup>16</sup> There is no  
7 available information on the specific services that Gotham performed or an explanation why the  
8 Committee paid the firm for these services almost four months after the event. According to  
9 Gotham, the Committee planned to disclose the payment to Gotham on its 2015 Year End Report  
10 due on January 31, 2016, which it did, listing "Event Consultant" as the purpose for the  
11 disbursement.

12 Gotham denies the allegations, stating that it provided services at Trump's announcement  
13 event "[a]s part of its communication and media practice," for which it was paid \$12,000 on  
14 October 8, 2015.<sup>17</sup> Gotham attached a copy of the check to its response.<sup>18</sup> Gotham also denies  
15 hiring actors but acknowledges retaining Extra Mile to help it provide "administrative staff" for  
16 Trump's announcement.<sup>19</sup> Gotham avers, however, that it had no knowledge regarding the

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<sup>15</sup> *Id.* at 5.

<sup>16</sup> Gotham Resp at 1.

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.*, Attach.

<sup>19</sup> *Id.* at 3.

specific individuals Extra Mile hired.<sup>20</sup> In *The Hollywood Reporter* article, a representative for Extra Mile denied knowing about the e-mail casting call.<sup>21</sup>

### B. Legal Analysis

The Act prohibits contributions from an individual to a candidate or an authorized committee in excess of \$2,700 per election.<sup>22</sup> The Act also prohibits corporations from making contributions to candidates or their committees.<sup>23</sup> A "contribution" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value."<sup>24</sup> "Anything of value" includes in-kind contributions, such as the provision of goods or services without charge, or at a charge less than the usual and normal charge.<sup>25</sup> A commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.<sup>26</sup> Depending on the

<sup>20</sup> *Id.* Both the Committee and Gotham also argue that the Complaint was speculative and should be dismissed because it served as "nothing more than an attempt to shift the burden to the Respondents through the use of innuendo and conjecture." Comm. Resp. at 2; Gotham Resp. at 2.

<sup>21</sup> Couch, *supra* note 2.

<sup>22</sup> 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

<sup>23</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(a).

<sup>24</sup> 52 U.S.C. § 30118(b)(2); *see also id.* § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>25</sup> 11 C.F.R. § 100.52(d)(1).

<sup>26</sup> 11 C.F.R. § 116.3(a). *See also* 11 C.F.R. § 116.3(b) (nearly identical rule regarding extensions of credit by corporate commercial vendors). In assessing whether a commercial vendor extended credit in the ordinary course of business, and thus did not make a contribution, the Commission will consider: (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade. 11 C.F.R. § 116.3(c).

1 circumstances under which an extension of credit is made, such an extension may, or may not,  
2 constitute a contribution.

3 The Commission has interpreted “anything of value” broadly under the Act, focusing on  
4 whether the goods and services at issue provided a benefit to the candidate or committee that  
5 received them.<sup>27</sup> We believe that the service at issue here — assembling a crowd of attendees for  
6 a candidacy announcement — provided a benefit to the Trump campaign.<sup>28</sup> It is not uncommon  
7 for campaigns to hire companies or casting agencies like Extra Mile to generate a crowd at an  
8 event.<sup>29</sup> In this matter, the available information indicates that the Committee retained Gotham  
9 as an event consultant, and Gotham, in turn, subcontracted with Extra Mile to provide extra  
10 administrative support at Trump’s announcement, including the provision of at least some of the  
11 rally crowd.

12 The Complaint alleges that Gotham did not receive payment for the services it provided  
13 at Trump’s candidacy announcement. While there had been no such payment at the time the  
14 Complaint was filed, the Committee did pay Gotham \$12,000 about a month later, in early

<sup>27</sup> For example, the Commission has found that stocks and commodities, an activist’s contact list, and the production elements for a benefit concert — including the services of an orchestra, gospel choir, talent assistants, make-up and hair artists, and publicists, would be considered contributions. *See* Advisory Op. 2000-30 (pac.com) (stock); First Gen. Counsel’s Rpt. at 10, MUR 5409 (Grover Norquist, *et al.*) (Aug. 31, 2004) (finding reason to believe that master contact list of activists was something of value under Act even though it lacked commercial or market value and despite difficulty in quantifying its precise worth); PC Brief at 7-8, MUR 5225 (New York Senate 2000) (July 5, 2005) (probable cause finding by Comm’n Oct. 20, 2005) (detailing approximately \$395,000 worth of in-kind contributions related to joint fundraising concert event that were unreported).

<sup>28</sup> *See, e.g.*, First Gen. Counsel’s Rpt. at 12-13, 17-18, 22, MUR 6651 (Murray Energy Corp.) (collecting cases regarding the meaning of “anything of value,” recommending that the Commission find that assembling a crowd for a political rally would be a thing of value, but also recommending dismissal). Our Office also recommended that the Commission find no reason to believe that the corporation facilitated contributions related to the rally, but ultimately the Commission was equally divided over how to proceed and closed the file. Certification, MUR 6651 (June 18, 2015).

<sup>29</sup> *See*, Schneider, *supra* note 2, and Extra Mile’s website, <http://www.extramilenyc.com/document/who-we-are.html>.



1 October, for unspecified services. Despite the payment, however, the allegations still raise the  
2 question whether Gotham's apparent four-month extension of credit became a contribution to the  
3 Committee. But there is limited information to make such a determination.

4 First, there is no information to help determine if the \$12,000 the Committee paid for  
5 Gotham's services was "usual and normal." The only information before the Commission about  
6 the services Gotham provided are a check and the entry on the Committee's Year-End report  
7 describing Gotham as an "Event Consultant." And while Gotham's response alludes to  
8 "staffing" the event, the Committee has merely stated that Gotham provided "services," without  
9 any more detail.

10 Similarly, the record is scant as to whether Gotham extended credit to the Committee  
11 outside the ordinary course of business.<sup>30</sup> The Commission has typically decided whether an  
12 extension of credit resulted in an in-kind contribution based upon an analysis of whether a vendor  
13 followed its ordinary course of business and whether the payment was made in a commercially  
14 reasonable time.<sup>31</sup> The Commission has usually investigated extensions of credit involving

<sup>30</sup> As a limited liability company, Gotham may be subject to the prohibition against corporate contributions, depending on whether it elects to be treated as a partnership or corporation by the Internal Revenue Service. 11 C.F.R. 110.1(g). If treated as a partnership, it is possible that Gotham made an excessive in-kind contribution to the Committee in violation of 52 U.S.C. § 30116 when it allowed the Committee almost four months to pay for its services. If Gotham elected tax treatment as a corporation, it may have violated 52 U.S.C. § 30118(a) if allowing the Committee four months to pay was not commercially reasonable.

<sup>31</sup> Compare MURs 5069 and 5132 (Acevedo Vila) (authorizing an investigation where the record contained conflicting information about whether it was normal industry practice for advertising agencies to advance the money for media buys to campaigns, there did not appear to be a written agreement specifying the terms of the extension of credit, and there was insufficient information regarding the vendor's past dealings with the candidate or the committee), with MUR 6141 (Friends of Dave Reichert) (finding no reason to believe where the media vendor submitted a sworn statement that it followed its own past practice as well as industry practice in its credit arrangements with the committee, there was publicly available information regarding the vendor's ordinary course of business, and there was no available information to contradict respondents' contentions), and MUR 6023 (John McCain 2008) (finding no reason to believe where the committee and its vendor provided detailed documentation concerning a renegotiated debt, which accounted for the time delays and supported the respondents' contentions that the reduction of the committee's bill was done in a commercially reasonable manner).

1 substantial amounts in violation and lengthy repayment periods.<sup>32</sup>

2 Here, the record is clear that the Committee paid Gotham almost four months after the  
3 event, and more than a month after the complaint was filed. But there is no available information  
4 supporting the Committee's assertion that the time it took to make the \$12,000 payment to  
5 Gotham was commercially reasonable, or that Gotham followed its established credit practices  
6 and would have made the same accommodations to similarly situated clients. However, the  
7 apparent amount in question, \$12,000, is relatively modest and we have no information  
8 suggesting that the amount involved was more substantial. Press reports and video footage show  
9 that the event was held in the atrium of Trump Tower,<sup>33</sup> instead of a larger venue, and that there  
10 were hundreds, not thousands, of attendees.<sup>34</sup>

11 Therefore, the Commission exercises its prosecutorial discretion and dismisses the  
12 allegation that Gotham may have made an excessive or prohibited contribution to Trump and the  
13 Committee in connection with Gotham's services at the June event.

<sup>32</sup> See, e.g., MUR 5396 (Bauer for President 2000) (entering into conciliation agreement to resolve, *inter alia*, excessive and prohibited corporate contribution violations resulting from extensions of credit from three different vendors totaling over \$700,000 and owed for periods between 105 to 235 days) and MURs 5069 and 5132 (Acevedo Vila) (investigating matter involving \$655,896 in debt for media and advertisement costs, almost half of which remained outstanding over a year after the debt was initially incurred).

<sup>33</sup> See <http://www.trumptowerny.com/trump-events-venues> (stating that the atrium could accommodate 75 to 350 guests).

<sup>34</sup> See Corcoran, *supra* n. 2; see also Carusone, *supra* n. 4 (publishing photo of "practically empty room"); Erik Durkin and Adam Edelman, *Donald Trump Enters 2016 Presidential Race with Bizarre Speech Insulting Mexican Immigrants, Lambasting Obama*, N.Y. DAILY NEWS (June 17, 2015), <http://www.nydailynews.com/news/politics/donald-trump-entering-2016-presidential-race-article-1.2259706> (noting a "crowd that appeared to number in the hundreds"); Jeffrey Tomik, *2016 Presidential Announcements, Ranked by Entertainment Value*, WASH. POST (June 17, 2015), <https://www.washingtonpost.com/express/wp/2015/06/17/2016-presidential-announcements-ranked/> (stating that the Trump event was not a "big-budget announcement," noting no pyrotechnics, no musical guests and no grand entrance via helicopter). See also <https://www.youtube.com/watch?v=TsFYmylmvXM>; <http://www.dailymail.co.uk/news/article-3128230/Did-Donald-Trump-hire-PAID-ACTORS-presidential-campaign-launch-Claims-professionals-extras-brought-pose-supporters.html>; <http://abcnews.go.com/Politics/donald-trump-rode-escalator-2016-presidential-announcement/story?id=31801433>.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 **RESPONDENTS:** Extra Mile, Inc.

**MUR: 6961**

5  
6  
7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission  
9 (the "Commission"). *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges that Donald J. Trump  
10 for President, Inc. ("Committee") paid actors to attend Trump's candidacy announcement on  
11 June 16, 2015, but payments to those actors or to the companies that hired them were not  
12 disclosed. Thus, the Complaint alleges that Extra Mile, Inc. ("Extra Mile") violated the Federal  
13 Election Campaign Act of 1971, as amended ("the Act") by making a prohibited contribution to  
14 the Committee. Available information indicates that the Committee paid Gotham Government  
15 Relations & Communications LLC ("Gotham") \$12,000 for its services at the June event on  
16 October 8, 2015, and that Extra Mile allegedly hired the actors. Available information indicates  
17 that Gotham hired Extra Mile as a subcontractor to provide administrative support at Trump's  
18 announcement.

19 Based on the information in the record the Commission has decided to exercise its  
20 prosecutorial discretion and dismisses the allegation that Extra Mile made a prohibited  
21 contribution to Trump and the Committee.

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **A. Factual Background**

24 Donald J. Trump is a candidate for the Republican Presidential nomination in 2016.

1 Trump announced his candidacy at an event held at Trump Tower in New York City on June 16,  
2 2015, and filed his Statement of Candidacy with the Commission on June 22, 2015.<sup>1</sup> Based  
3 largely on press reports, the Complaint alleges that the Committee hired actors to be part of the  
4 audience at Trump's candidacy announcement and failed to report the related transactions.<sup>2</sup>  
5 According to press reports cited in the Complaint, Extra Mile issued a casting call e-mail for  
6 actors "to wear t-shirts and carry signs and help cheer [Trump] in support of his announcement"  
7 in exchange for a payment of \$50. One cited article from *The Hollywood Reporter* purports to  
8 reprint a redacted version of that e-mail, which reads as follows:<sup>3</sup>

9 Hi there—We are working helping one of are [sic] associates out at Gotham GR -  
10 <http://gothamgr.com/> with a big event happening on TUESDAY 6/16/15. This is  
11 an event in support of Donald Trump and an upcoming exciting announcement he  
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13 America." The entire group is a pro-small business group that is dedicated to  
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16 Mile, had "no knowledge" of that firm, and did not hire or authorize hiring actors. It appears that

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<sup>10</sup> See New York Department of State, Division of Corporations, State Records & UCC, [https://appext20.dos.ny.gov/corp\\_public/CORPSEARCH.ENTITY\\_INFORMATION?p\\_nameid=2447088&p\\_corpid=2405651&p\\_entity\\_name=trump&p\\_name\\_type=A&p\\_search\\_type=BEGINS&p\\_srch\\_results\\_page=](https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=2447088&p_corpid=2405651&p_entity_name=trump&p_name_type=A&p_search_type=BEGINS&p_srch_results_page=). Trump is listed as Chairman and President on The Trump Organization website. See <http://www.trump.com/biography/>.

<sup>11</sup> <https://www.youtube.com/watch?v=TsFYmylmvXM>.

<sup>12</sup> *Id.*

<sup>13</sup> Compl. at 3.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5.

1 the Committee hired Gotham to perform services for which it paid \$12,000 on October 8, 2015.

2 There is no available information on the specific services that Gotham performed or an  
3 explanation why the Committee paid the firm for these services almost four months after the  
4 event. According to information, the Committee planned to disclose the payment to Gotham on  
5 its 2015 Year End Report due on January 31, 2016, which it did, listing "Event Consultant" as  
6 the purpose for the disbursement.

7 Information in the record indicates that Gotham provided services at Trump's  
8 announcement event as part of its communication and media practice, for which it was paid  
9 \$12,000 on October 8, 2015. It seems that Gotham may not have known about the actors but did  
10 retain Extra Mile to help it provide "administrative staff" for Trump's announcement. Based on  
11 available information, it appears that Gotham had no knowledge regarding the specific  
12 individuals Extra Mile hired.

13 Extra Mile did not submit a response. In *The Hollywood Reporter* article, a  
14 representative for Extra Mile denied knowing about the e-mail casting call.<sup>16</sup>

15 **B. Legal Analysis**

16 The Act prohibits contributions from an individual to a candidate or an authorized  
17 committee in excess of \$2,700 per election.<sup>17</sup> The Act also prohibits corporations from making  
18 contributions to candidates or their committees.<sup>18</sup> A "contribution" includes "any direct or  
19 indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or

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<sup>16</sup> Couch, *supra* note 2.

<sup>17</sup> 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b).

<sup>18</sup> 52 U.S.C. § 30118(a) ; 11 C.F.R. § 114.2(a).

1 anything of value.”<sup>19</sup> “Anything of value” includes in-kind contributions, such as the provision of  
2 goods or services without charge, or at a charge less than the usual and normal charge.<sup>20</sup> A  
3 commercial vendor may extend credit to a candidate, a political committee or another person on  
4 behalf of a candidate or political committee provided that the credit is extended in the ordinary  
5 course of the vendor’s business and the terms are substantially similar to extensions of credit to  
6 nonpolitical debtors that are of similar risk and size of obligation.<sup>21</sup> Depending on the  
7 circumstances under which an extension of credit is made, such an extension may, or may not,  
8 constitute a contribution.

9 The Commission has interpreted “anything of value” broadly under the Act, focusing on  
10 whether the goods and services at issue provided a benefit to the candidate or committee that  
11 received them.<sup>22</sup> We believe that the service at issue here — assembling a crowd of attendees for  
12

<sup>19</sup> 52 U.S.C. § 30118(b)(2); *see also id.* § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

<sup>20</sup> 11 C.F.R. § 100.52(d)(1).

<sup>21</sup> 11 C.F.R. § 116.3(a). *See also* 11 C.F.R. § 116.3(b) (nearly identical rule regarding extensions of credit by corporate commercial vendors). In assessing whether a commercial vendor extended credit in the ordinary course of business, and thus did not make a contribution, the Commission will consider: (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit; (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor’s trade. 11 C.F.R. § 116.3(c).

<sup>22</sup> For example, the Commission has found that stocks and commodities, an activist’s contact list, and the production elements for a benefit concert — including the services of an orchestra, gospel choir, talent assistants, make-up and hair artists, and publicists, would be considered contributions. *See* Advisory Op. 2000-30 (pac.com) (stock); First Gen. Counsel’s Rpt. at 10, MUR 5409 (Grover Norquist, *et al.*) (Aug. 31, 2004) (finding reason to believe that master contact list of activists was something of value under Act even though it lacked commercial or market value and despite difficulty in quantifying its precise worth); PC Brief at 7-8, MUR 5225 (New York Senate 2000) (July 5, 2005) (probable cause finding by Comm’n Oct. 20, 2005) (detailing approximately \$395,000 worth of in-kind contributions related to joint fundraising concert event that were unreported).



1 a candidacy announcement — provided a benefit to the Trump campaign.<sup>23</sup> It is not uncommon  
2 for campaigns to hire companies or casting agencies like Extra Mile to generate a crowd at an  
3 event.<sup>24</sup> In this matter, the available information indicates that the Committee retained Gotham  
4 as an event consultant, and Gotham, in turn, subcontracted with Extra Mile to provide extra  
5 administrative support at Trump's announcement, including the provision of at least some of the  
6 rally crowd.

7 There remain questions regarding the arrangements with Extra Mile. The record,  
8 however, indicates that the Committee paid \$12,000 to Gotham, and it is at least possible that  
9 Gotham used that money to pay its subvendors and employees, including Extra Mile.<sup>25</sup>  
10 Accordingly, the Commission has decided to exercise its prosecutorial discretion and dismisses  
11 the allegations that Extra Mile made a prohibited corporate contribution to Trump and the  
12 Committee in connection with the services provided for the candidacy announcement event.

<sup>23</sup> See, e.g., First Gen. Counsel's Rpt. at 12-13, 17-18, 22, MUR 6651 (Murray Energy Corp.) (collecting cases regarding the meaning of "anything of value," recommending that the Commission find that assembling a crowd for a political rally would be a thing of value, but also recommending dismissal). Our Office also recommended that the Commission find no reason to believe that the corporation facilitated contributions related to the rally, but ultimately the Commission was equally divided over how to proceed and closed the file. Certification, MUR 6651 (June 18, 2015).

<sup>24</sup> See, Schneider, *supra* note 2, and Extra Mile's website, <http://www.extramilenyc.com/document/who-we-are.html>.

<sup>25</sup> The Complaint does not allege that the Committee's payment to Gotham was intended to conceal that Extra Mile was the true recipient of the payment in violation of 52 U.S.C. § 30104(b)(5), which requires committees to identify the name and address of the recipient of any expenditure in excess of \$200. The Commission has determined that merely reporting the immediate recipient of a committee's payment will not satisfy the requirements of 52 U.S.C. § 30104(b)(5) when the facts indicate that the immediate recipient is merely a conduit for the intended recipient of the funds. See, e.g., MUR 4872 (Jenkins) (finding that the committee made payments intended for a specific vendor through an unrelated vendor acting as an intermediary in order to avoid any association with the first vendor). Here, the Committee denies any association with Extra Mile, and Gotham acknowledges that it hired Extra Mile on its own for additional support for the event. There is nothing available to contradict those assertions. Indeed, it appears that the Gotham provided a broader range of services to the Committee in connection with the candidacy announcement event than Extra Mile did by providing paid attendees.