



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

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JUL - 2 2019

RE: MURs 6960 & 6991
SW Technologies, LLC
Roger A. Stone

Dear Messrs. Svoboda and Sandstrom:

On July 19, 2017, your client, SW Technologies, LLC d/b/a Advocacy Data ("SWT"), was notified that the Federal Election Commission found reason to believe that SWT violated 52 U.S.C. § 30111(a)(4) of the Federal Election Campaign Act of 1971, as amended (the "Act") by compiling a commercial mailing list with names and addresses of contributors obtained from FEC disclosure reports. At that time, the Commission did not take any action with respect to allegations that your client, Roger A. Stone, violated 52 U.S.C. § 30111(a)(4) in his individual capacity. On June 25, 2019, the Commission determined to enter into negotiations with SWT directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Further, the Commission voted to dismiss the allegations regarding Mr. Stone and close the file as to him. The Factual and Legal Analysis, which formed a basis for the Commission's finding with respect to Mr. Stone is enclosed for your information.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter with respect to SWT. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 60 days, you should respond to this notification as soon as possible.

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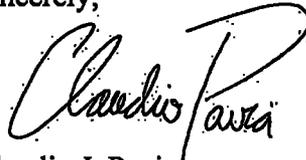
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During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within 60 days. See 52 U.S.C. § 30109(a); 11 C.F.R. Part 111 (Subpart A). Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 694-1597 or cpavia@fec.gov.

Sincerely,



Claudio J. Pavia
Attorney

Enclosures
Factual and Legal Analysis for Roger A. Stone

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 Respondent: Roger A. Stone

MURs 6960 & 6991

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7 **I. INTRODUCTION**

8 These matters were generated by complaints filed with the Federal Election Commission
9 by the Republican National Committee (“RNC”) and the National Republican Congressional
10 Committee (“NRCC”). They allege that SW Technologies, LLC d/b/a Advocacy Data (“SWT”) 1084444-1084444
11 violated 52 U.S.C. § 30111(a)(4), the “sale and use” provision of the Federal Election Campaign
12 Act of 1971, as amended (the “Act”) by compiling a commercial mailing list with the names and
13 addresses of contributors obtained from their FEC disclosure reports. Further, the complainants
14 allege that Roger A. Stone, SWT’s founder, president, and CEO, individually violated the sale
15 and use provision.

16 For the reasons stated below, the Commission dismisses the allegations that Roger A.
17 Stone violated 52 U.S.C. § 30111(a)(4), as a matter of prosecutorial discretion, pursuant to
18 *Heckler v. Chaney*, 470 U.S. 821 (1985).

19 **II. FACTUAL SUMMARY**

20 Between December 2014 and August 2015, SWT rented a commercial mailing list to
21 political customers called the Republican Elite Donors (“RED”) List that was generated by
22 “narrowing down” the 190 million names in SWT’s “voter file” database to the approximately
23 200,000 names comprising the RED List who were deemed most likely to donate to Republican
24 or conservative organizations.¹ This was accomplished, in part, by matching the pre-existing

¹ Letter from Mike Wittenwyler and Nate Zolik, Godfrey & Kahn S.C., to CJ Pavia, Attorney, FEC ¶ (B)(2) (Sept. 6, 2017) (“Sept. 2017 Post-RTB Resp.”); Stone Dep. Tr. at 33:4-8, 99:16-17 (Oct. 25, 2018); MUR 6991 Compl. (Dec. 7, 2015), Ex. B at 2 (RED List data card).

1 names in the voter file to disclosure reports obtained from the Commission's website that were
2 filed by the RNC and NRCC, and identifying known political contributors.² SWT explained that
3 its object in reviewing the RNC and NRCC data was to match the information with the pre-
4 existing list of names in the voter file, not to copy new names or addresses.³

5 Complainants include "salted" names on their FEC disclosure reports to deter illegal use
6 of their contributor information.⁴ In June 2015, the RNC received solicitation packages that
7 were addressed to salted names from the National Rifle Association and Jeb 2016.⁵ The RNC
8 contacted the mailing vendor and discovered that it had used the RED List.⁶ SWT was alerted by
9 the RNC that the RED List appeared to contain FEC data.⁷ SWT deleted only those records that
10 had been added as part of a recent update and continued to rent the RED List to customers.⁸
11 Several weeks later, in late June, July, and August of 2015, the RNC received additional
12 solicitation packages addressed to salted names from Jeb 2016 and Carson America that were
13 also traced back to the RED List.⁹ Meanwhile, in August 2015, the NRCC received a solicitation
14 package addressed to a salted name from Cruz for President.¹⁰ The NRCC contacted Cruz for

² Stone Dep. Tr. at 49:21-25; see Letter from Brian Svoboda and Karl Sandstrom, Perkins Coie LLP, to CJ Pavia, Attorney, FEC ¶¶ 1(c)-(d), 3(a) (Oct. 10, 2018) ("Oct. 2018 Subpoena Resp.").

³ Stone Dep. Tr. at 74:23.

⁴ MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); see also 52 U.S.C. § 30111(a)(4) (providing that political committees may submit up to ten fictitious names, *i.e.*, "salted" names, on each disclosure report for the purpose of determining whether the names and addresses of their contributors are being used without consent to solicit contributions or for commercial purposes); 11 C.F.R. § 104.3(e) (same).

⁵ MUR 6991 Compl. at 2.

⁶ *Id.*

⁷ MUR 6991 Resp. at 2 (Jan. 19, 2015); MUR 6991 Compl., Ex. D; see Stone Dep. Tr. at 58:16-60:12.

⁸ Stone Dep. Tr. at 58:11-15, 70:8-72:11; Sept. 2017 Post-RTB Resp. ¶ (C)(2).

⁹ MUR 6991 Compl. at 2.

¹⁰ MUR 6960 Compl. at 1.

1 President and discovered that it had similarly used the RED List to compile addresses for the
2 solicitation.¹¹ SWT was alerted by the NRCC that the RED List appeared to contain FEC data
3 and pulled the list from the market entirely.¹²

4 The MUR 6960 Complaint (August 2015) and the MUR 6991 Complaint (January 2016)
5 included the salted names at issue.¹³ SWT used the salted names to perform a targeted search of
6 its system, which revealed that the raw FEC data files containing disclosure reports filed by the
7 RNC and NRCC — intended to be matched with the voter file, as described above — had been
8 transmitted to the company responsible for marketing the RED List and handling individual
9 client orders, and added to the RED List.¹⁴ SWT was unable to establish precisely how or when
10 this occurred, but concluded that the raw FEC data files had been “inadvertently” transmitted.¹⁵
11 SWT deleted the raw FEC data files from its system, removed the notations in the voter file
12 showing contribution histories, and also discontinued sales of the RED List.¹⁶ SWT asserts that
13 using FEC data is “no longer a part of [its] business model.”¹⁷

14 III. LEGAL ANALYSIS

15 The Act requires political committees to report the name, mailing address, occupation,
16 and employer of each person who makes an aggregate contribution in excess of \$200 within the

¹¹ *See id.*

¹² MUR 6960 Compl., Ex. D; MUR 6991 Resp. at 2; Stone Dep. Tr. at 72:23-73:12.

¹³ MUR 6960 Compl., Ex. A; MUR 6991 Compl., Exs. E, F.

¹⁴ Stone Dep. Tr. at 73:17-74:4; 75:4-77:16.

¹⁵ Stone Dep. Tr. at 89:20-90:6; MUR 6991 Resp. at 2; Sept. 2017 Post-RTB Resp. at 6; *see* Stone Dep. Tr. at 57:9-58:1, 78:8-16.

¹⁶ Stone Dep. Tr. at 52:18-53:11, 81:25-82:16; Sept. 2017 Post-RTB Resp. at 6; SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data); *see* Stone Dep. Tr. at 53:12-14 (confirming that “the voter file is in a state right now as if the FEC database doesn’t exist”).

¹⁷ Stone Dep. Tr. at 96:13.

1 calendar year (or election cycle, in the case of an authorized committee), together with the date
2 and amount of any such contribution.¹⁸ Further, the Act requires that the Commission make all
3 such reports available for public inspection and copying, except that information copied from
4 such reports “may not be sold or used by any person for the purpose of soliciting contributions or
5 for commercial purposes, other than using the name and address of any political committee to
6 solicit contributions from such committee.”¹⁹

7 The sale and use provision applies to “any person” who sells or uses FEC data for the
8 purpose of soliciting contributions or for commercial purposes.²⁰ Stone, the executive officer
9 from SWT responsible for managing the RED List, had 30 years of experience in politics and
10 with Commission regulations, and was aware that simply copying and selling names from the
11 FEC database would run the risk of mailing a salted name.²¹ The RED List was owned by SWT
12 as a corporate asset, not by Stone personally.²² Moreover, Stone testified that he was unaware
13 that names and addresses from the FEC database had been added to the RED List,²³ and SWT
14 produced emails showing that Stone initiated and participated in efforts to correct the problem
15 and voluntarily delete FEC data from SWT’s system.²⁴ Although Stone directed FEC data to be
16 matched with pre-existing names in the voter file to identify known contributors for the purpose

¹⁸ 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A).

¹⁹ *Id.* § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a).

²⁰ 52 U.S.C. § 30111(a)(4).

²¹ MUR 6960 Resp. at 1 (Oct. 20, 2015); Stone Dep. Tr. at 59:9-19 (“I’ve been working with lists since 1986.”). Stone said that he understood the provision to restrict the sale and use of names and addresses, and that it did not restrict the matching of contribution histories to pre-existing names to target solicitation prospects. *See id.* at 96:14-98:1.

²² Sept. 2017 Post-RTB Resp. ¶ (A)(1).

²³ Stone Dep. Tr. at 59:23-60:12.

²⁴ *E.g.*, SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data).

1 of potentially targeting or flagging those individuals as solicitation prospects, Stone attests that
2 he did not understand this to be a violation of the law because it did not involve the direct sale of
3 names and addresses from the FEC database.²⁵

4 The Commission has generally refrained from pursuing violations of the sale and use
5 provision against individuals who acted in their official capacity and without knowledge of
6 illegality.²⁶ The Commission's interest in safeguarding its data, under these circumstances, is
7 served by enforcing the sale and use provision against the corporation. Therefore, the
8 Commission dismisses the allegations that Stone violated 52 U.S.C. § 30111(a)(4) in his
9 individual capacity, as a matter of prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470
10 U.S. 821 (1985).

²⁵ Stone Dep. Tr. at 96:14-98:1.

²⁶ See, e.g., Factual & Legal Analysis at 1, 3-4, MUR 6290 (Gillette) (dismissing allegations against an official from a non-profit corporation because it appeared she had "acted solely in her capacity as an agent" of the corporation and "not in her own independent personal interest"). In matters where the complaint did not specifically name any corporate officials as respondents, the Commission has generally not sought to personally notify such corporate officials. See, e.g., MUR 6334 (Aristotle Int'l, Inc.).