BEFORE THE FEDERAL ELECTION COMMISSION

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) **MUR 6992**
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RESPONSE OF THE TRUMP ORGANIZATION TO THE COMPLAINT AND SUPPLEMENTAL COMPLAINT

By and through undersigned counsel, The Trump Organization (Respondent) responds to the Complaint in the above-captioned MUR. We respectfully request that the Commission find that there is no reason to believe a violation has occurred, dismiss the Complaint and Supplemental Complaint, and close the file.

I. BACKGROUND

Donald J. Trump announced his candidacy for President of the United States on June 16, 2015. Mr. Trump's principal campaign committee is Donald J. Trump for President, Inc. (the "Campaign"). The Trump Organization is an LLC of which Mr. Trump is the founder and chief executive. It is organized as an LLC, with Mr. Trump as its sole owner. *See* Donald J. Trump Personal Financial Disclosure Statement, at p. A37. The Trump Organization owns and administers countless investments around the world worth billions of dollars and is the entity with primary responsibility for building, maintaining, and defending the extraordinarily valuable "Trump" brand-name (the "Brand"). Mr. Trump is the physical embodiment of the Brand.

Donald Trump has been one of the world's most well-known businessmen for over three decades. His surname has become synonymous with success and has become one of the world's most recognizable, valuable brands. It is a Brand that is used to market everything from hotels, to golf courses, to television shows, to best-selling books, to wine.

Attacks on the Brand anywhere hurt the Brand everywhere. The Trump Organization's right to defend the intellectual property it owns is what this MUR is about.

Given the immense value of the Brand, the Trump Organization has always zealously and aggressively defended the Brand as well as Mr. Trump's name and reputation. Simply put, the Trump Organization, typically through its legal department, takes action against anyone who attacks the Brand directly, as well as anyone who besmirches Mr. Trump personally since attacks on the business prowess of Mr. Trump are attacks on the Brand itself.

For the past eight months, Mr. Trump has been running for President in addition to running the single-member LLC that is the Trump Organization and—as he inevitably does—representing the Brand that bears his name. Throughout that time, the Trump Organization has done what it always does to defend the Brand: It has taken action against those who denigrate the Brand as well as those who defame its physical embodiment. Those efforts have prompted the Complainant—the Leadership PAC of failed presidential candidate John Ellis "Jeb" Bush—to file a Complaint and Supplemental Complaint alleging that two different individuals employed by the Trump Organization caused that single-member LLC to make illegal corporate contributions to the Campaign by taking various actions that the Complainant characterizes as supporting the Campaign. Specifically, the Complaint alleges that the Trump Organization's legal department, led by its general counsel, Alan Garten, sent two cease-and-desist letters—one to a political advocacy group and one to the Complainant—demanding that both recipients discontinue advertising critical of the Trump Organization's President, Mr. Trump. It claims that these letters constituted an impermissible corporate contribution to the Campaign. The Supplemental Complaint, for its

part, alleges without detail or explanation that Mr. Michael Cohen, the Trump Organization's Executive Vice President and Special Counsel, made various public statements defending Mr. Trump that the Supplemental Complaint claims were likewise corporate contributions from the Trump Organization to the Campaign.

Neither complaint comes close to providing sufficient detail or explanation to support finding reason to believe that a violation has occurred. Both should be dismissed.

II. ANALYSIS

The Complaint fails to allege facts that amount to a legal violation, or that otherwise justify the expenditure of Commission resources in pursuit of further review. The Commission should therefore find no reason to believe that a violation has occurred, dismiss the Complaint and Supplemental Complaint, and close the file.

A. The Complaint Attacking The Trump Organization's Lawyers For Defending The Trump Organization And Its Brand Is Meritless And Should Be Dismissed.

One of the primary responsibilities of any general counsel is to aggressively defend the company and its officers from detractors. That is no different at the Trump Organization. If anything, the responsibility of the Trump Organization's lawyers to defend against defamation and other tortious public statements is even weightier than at most companies because part of the Trump Organization's value is derived from the gold-plated Brand it owns and uses to market a diverse array of products and services around the world. All attacks on that Brand must be taken seriously and addressed diligently to protect against any diminution in its multi-billion-dollar value.

1. It Is The Trump Organization's Longstanding Practice To Zealously Defend The Company And Its Valuable Brand.

The Complaint claims that the Trump Organization made an impermissible corporate contribution to the Campaign when its lawyers sent two short cease-and-desist letters to political groups demanding that they stop disparaging the Brand. That allegation is meritless. The Trump Organization has a lengthy, well-documented history of aggressively responding to anyone who denigrates the Trump Organization, who disparages the Brand, or who defames the man (Mr. Trump) who is the Brand's living embodiment. Critically, this long-standing practice predates Mr. Trump's candidacy by decades, and exists irrespective of it. As a result, the letters Complainant is complaining about are entirely consistent with the Trump Organization's longstanding practice and would have been sent regardless of whether Mr. Trump were a candidate for the presidency. The fact that the recipients of these letters—and the potential defendants in any eventual lawsuits—are political actors makes no difference. What matters is that the Trump Organization would have sent the same letters irrespective of Mr. Trump's candidacy. *See* 11 C.F.R. § 113.1(g) (distinguishing campaign expenditures from expenditures to "fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign"); FEC Advisory Opinion 2011-27 (Freedman Boyd Hollander Goldberg Ives & Duncan, P.A.), at p. 3 (explaining that corporate expenditures are not campaign contributions if they "would have been made 'irrespective of the candidacy'").

The actual content of the letters confirms this. For example, the letter to the Club for Growth explicitly states that the Club's defamatory attack ad could "cause damage to [Mr. Trump's] reputation and business interests"—*i.e.*, to the Brand and the Trump Organization—"by intentionally disseminating libelous statements." Complaint, Ex. A at p.

2. The letter itself, in other words, makes clear that it was sent in order to protect the Trump Organization's interests—not to boost Mr. Trump's separate and distinct presidential campaign. The same is true of the letter sent to Jeb Bush's Leadership PAC, which similarly cautions against "any false, misleading, defamatory, inaccurate, or otherwise tortious statements or representations concerning Mr. Trump, his business or his brand." Complaint, Ex. B at p.1.

Indeed, Complainant effectively conceded that it was the Brand that was the focus of the cease and desist letters sent by the Trump Organization when Complainant went out of its way to attack Mr. Trump's business record (the heart of the Brand) in its sarcasm-laden response. December 9, 2015 Spies Letter at p. 2. Complainant's silly, grandstanding attacks on the Brand eviscerate their claim that this is really about the Campaign; their venom is focused on wild claims about business dealings that long predate Mr. Trump's candidacy.

2. Private Companies Are Fully Entitled To Sue The Sponsors Of Political Advertisements.

The Trump Organization is fully entitled to defend itself against any and all attacks, as both it and its lawyers have done since long before the Campaign came into existence. It makes perfect sense for the chief in-house lawyer of a single-member LLC to send a letter designed to defend that LLC's business interests and protect its president (with whom it shares a name) whenever the LLC is attacked. Indeed, it would be foolish not to.

The dispositive question here is simple: Could the Trump Organization bring legal action against those who malign its president and therefore it? The answer is also simple: Of course it could. And a necessary corollary to the right to engage in litigation is the right to send cease-and-desist letters to putative civil defendants. If litigation—along with the cease-and-desist letters that generally precede litigation—is permissible, then it cannot

possibly matter what specific language those letters use to defend the Trump Organization and the Brand. Regardless of whether the letters could be read as defending Mr. Trump's business acumen or championing his policy views, the reality is that wide-ranging, multi-pronged defenses are standard fare in the rough-and-tumble world of litigation. The cease-and-desist letters here were designed to defend the Trump Organization's interests—interests which are currently (and seemingly perpetually) the subject of litigation. As the Trump Organization is on record explaining well before this complaint was filed litigation is "a natural part of doing business in this country."[1]

Political campaigns routinely overlap with businesses since political candidates are often successful businessmen whose businesses have to defend their reputations at the same time that the businessmen-candidates are promoting their candidacies. There are countless examples of such overlap,[2] none of which trigger the Act as long as the entities involved are acting to protect their business interests.[3]

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[1] https://en.wikipedia.org/wiki/Donald_Trump.

[2] *See, e.g.*, Michael Patrick Leahy, *Federal Judge Berates Kansas Senate Candidate Greg Orman in Boxing Equipment Lawsuit*, Breitbart.com (Sept. 10, 2014) ("On Friday, U.S. Magistrate Judge Kenneth G. Gale issued an order in a Wichita, Kansas Federal Court compelling Combat Brands, LLC, a firm organized and controlled by Independent U.S. Senate candidate Greg Orman...."), http://www.breitbart.com/big-government/2014/09/10/federal-judge-hits-kansas-senate-candidate-greg-orman-with-order-to-show-cause-to-avoid-sanctions/; Mark Binker, *Jury Finds GOP Senate Candidate Misled Investors*, WRAL.com (Feb. 18, 2014) ("A Wake County jury found Tuesday that Republican U.S. Senate candidate Dr. Greg Brannon misled investors in a technology start-up."), http://www.wral.com/jury-finds-gop-senate-candidate-misled-investors/13406154/; Tori Richards, *McAuliffe Car Company Sues Watchdog in Libel Claim*, Watchdog.org (April 11, 2013) ("A fledgling electric car company founded by Virginia gubernatorial candidate Terry McAuliffe has sued Watchdog.org following an investigation highlighting the automaker's use of a controversial government 'cash-for-visas' immigration program."), http://watchdog.org/79437/mcauliffe-car-company-sues-watchdog-in-libel-claim/.

[3] Here, the analysis is even easier, given that the Trump Organization is a single-member LLC solely owned by Mr. Trump. It is not a publicly-traded company, there is no board of directors, nor are there any of the types of corporate attributes that underlie the prohibition against corporate campaign contributions.

Indeed, the Commission has been schizophrenic when it comes to dealing with LLCs. Sometimes, they appear to be separate corporate entities. *See, e.g.*, 64 Fed. Reg. 37,397 (July 12, 1999) ("The new rules provide that LLCs will be treated as either partnerships or corporations for FECA purposes, consistent with the tax treatment they select under the Internal Revenue Code."). Other times, they do not. *See, e.g.*, Jonathan Swan, *Deadlocked FEC Allows Donors to Hide Behind Shell Companies*, The Hill (March 7, 2016) (explaining that Commission dismissed Complaint about donors using anonymous LLCs to mask political giving despite prohibition against giving in someone

For example, after a Federal candidate named James Oberweis fell victim to a negative ad sponsored by the Democratic Congressional Campaign Committee alleging that illegal immigrants worked for his company, that business sued the Committee.[4] No one suggested that this lawsuit was a violation of the Act. More recently, another Federal candidate's business dealings became an issue in his campaign for Senate, and his business was sued.[5] Again, no one suggested that defending the suit violated the Act. It is so common for candidates and their businesses to sue over attacks against them and their business dealings that current Virginia Governor Terry McAuliffe had his business sue a so-called ethics watchdog following its investigation into his electric car company.[6] Even though Governor McAuliffe's campaign was inextricably intertwined with his personal dealings in "green" businesses, no one suggested that his company's litigation somehow constituted an in-kind contribution to his gubernatorial campaign.[7] Nor has the Commission scoured the contents of every letter and filing in all of these many examples to determine whether the relevant companies were really—at all times—engaging in litigation to protect their business interests rather than to assist particular candidates for public office.

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else's name), http://thehill.com/blogs/ballot-box/fundraising/272135-deadlocked-fec-allows-donors-to-hide-behind-shell-companies.

[4] *Oberweis Dairy Sues Democratic Congressional Campaign Committee Over Ad Criticizing Jim Oberweis*, The Chicago Tribune (March 7, 2008) ("Oberweis Dairy went to state court Thursday to try to stop the Democratic Congressional Campaign Committee from continuing to air ads that claimed illegal immigrants worked at its stores."), http://articles.chicagotribune.com/2008-03-07/news/0803060931_1_jim-oberweis-oberweis-dairy-democrat-bill-foster.

[5] Michael Patrick Leahy, *Federal Judge Berates Kansas Senate Candidate Greg Orman in Boxing Equipment Lawsuit*, Breitbart.com (Sept. 10, 2014).

[6] Tori Richards, *McAuliffe Car Company Sues Watchdog in Libel Claim*, Watchdog.org (April 11, 2013).

[7] Equally common are lawsuits regarding the use of intellectual property and brand names in connection with political campaigns. *See, e.g.*, Eric David, *Fox News Sues U.S. Senate Candidate for Copyright Infringement*, Digital Media & Data Privacy Law (Sept. 27, 2010), http://www.newsroomlawblog.com/2010/09/articles/political-advertising/fox-news-sues-us-senate-candidate-for-copyright-infringement/; Nader's *Parody Ad Draws Lawsuit from MasterCard*, The New York Times (Aug. 17, 2000), http://www.nytimes.com/2000/08/17/us/nader-s-parody-ad-draws-lawsuit-from-mastercard.html. These suits are not somehow in-kind contributions to the candidates they benefit or the opponents of the candidates they challenge.

3. The Commission Has Sensibly Recognized That Individuals Engaged In Political Activity Often Wear Different Hats.

Similarly, the fact that the Trump Organization's efforts to protect the Brand may theoretically implicate politics is just the inevitable byproduct of Mr. Trump wearing the various hats of, among others, presidential candidate, business executive at the helm of his eponymous Organization, and physical embodiment of an international Brand. The Commission's regulations recognize that individuals engaged in political activities often "wear multiple hats," which is why, for example, the Act allows individuals "such as State party chairmen and chairwomen" that "also serve as members of the national party committees" to "raise non-Federal funds for the State party organizations without violating the prohibition against non-Federal fundraising by national parties." 67 Fed. Reg. at 49,083 (Explanation and Justification for the Commission's definition of "agent"); *see also, e.g.*, FEC Advisory Opinion 2003-10 (Rory Reid), at p. 5 ("Commissioner Reid, as a prominent state official in Nevada, may at different times act in his capacity as an agent on behalf of the State Party and act as an agent on behalf of Senator Reid."). Many political candidates are not lifelong, fulltime politicians; rather, they are individuals with separate careers and businesses that predate and continue during their candidacies. Under the Commission's regulations, activities taken by individuals or their companies because of the individual's non-political, non-candidate "hat" as a successful businessman (here, the hat of LLC President and embodiment of an international Brand) do not trigger the Act just because that individual sometimes wears the hat of political candidate (here, by running for President).

That makes sense. It cannot possibly be correct that an in-house counsel's strategic or tactical choices about how to defend business interests are determinative of whether federal election law applies. If Complainant's contrary claim were correct, that would mean

businesses affiliated with political candidates would be unable to bring certain claims, would be unable to make certain arguments, would be forbidden from introducing certain evidence, and might even be forbidden from asking certain questions at trial. The Commission has never suggested that individuals are disabling their companies from self-defense when those individuals decide to run for public office. And suggesting as much now would only make it even harder for people to seek public office without becoming professional politicians that jump eagerly into the pockets of every special interest imaginable.

Mr. Trump's decision to run for President did not eradicate the Trump Organization's right to defend its business interests. All that matters is whether the Trump Organization took the action it took for the purpose of boosting Mr. Trump's campaign, rather than to protect itself and its Brand. Clearly it did not. The Commission should therefore find no reason to believe a violation occurred and should dismiss the Complaint.

4. Even Assuming, *Arguendo*, That Complainant's Legal Theories Were Correct, There Was Still No Violation.

Finally, even if the two cease-and-desist letters at issue were somehow intended to aid the Campaign—which they were not—it would make no difference. The Complaint does not allege that the Trump Organization expended any resources beyond a few minutes preparing and sending the letters via email. And the Commission has already held that email cannot constitute an in-kind contribution. 71 Fed. Reg. 18589, 18600 (April 12, 2006) (Internet Communications Explanation and Justification) ("Exchanging hyperlinks, forwarding e-mail, and attaching downloaded PDF files are common ways most individuals who use the Internet exchange information. The Commission is taking this opportunity to make clear that such activity would not constitute in-kind contributions"). Nor does the Complaint allege that anyone did any substantive legal work to prepare the letters. In other

words, at the absolute worst, there was a *de minimis* use of the single-member LLC's resources[8]—a single-member LLC that, again, Mr. Trump wholly owns, which means that all of its assets are just Mr. Trump's assets anyway.

The Campaign thus did not obtain anything of any value as a result of the Trump Organization defending itself and its brand. For that reason, too, the Commission should find no reason to believe a violation has occurred and should dismiss the Complaint.

B. The Supplemental Complaint Attacking Michael Cohen For Expressing Support For Mr. Trump's Candidacy Is Meritless And Should Be Dismissed.

The Supplemental Complaint regarding various public statements by Michael Cohen is likewise legally deficient and must be dismissed. The Trump Organization has never asked, directed, or encouraged Mr. Cohen to make public statements supporting the Campaign. It does not compensate Mr. Cohen in any way, shape, or form for time spent making public statements. To the contrary, Mr. Cohen is an LLC executive who sets his own hours and who is entitled to do as he wishes with his free time. As Paul Ryan of the Campaign Legal Center stated in an article attached to the Supplemental Complaint: "In all likelihood, Mr. Cohen is a salaried individual who can simply say/decide when he is on and off the clock for the Trump Organization." Supplemental Complaint, Exhibit B. That is correct and the Commission's regulations specifically provide that, for a "salaried" employee, "no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or

[8] The Commission has repeatedly recognized that the *de minimis* use of corporate resources is permissible. *See, e.g.*, FEC Advisory Opinion 1984-23 (Associated Builders and Contractors, Inc.), at p. 2 (allowing corporate expenditures to announce a corporate endorsement "so long as the expenditures related thereto are *de minimis* and the announcement is not made a pretext for general electioneering").

completed by the employee within a reasonable time." 11 C.F.R. § 100.54(a). Mr. Cohen does his television interviews on his own time, typically in the early morning or in the evening. He does not use LLC resources to prepare for those interviews, or to travel to and from those interviews; rather, he either walks to the television studio or receives transportation from the media organization hosting the interview (consistent with standard practices). The Trump Organization simply has nothing to do with Mr. Cohen's private advocacy.

Just as Mr. Trump simultaneously wears the various hats of LLC head, Brand representative, and presidential candidate, Mr. Cohen wears the hats of officer in the Trump Organization and voluntary supporter of Mr. Trump's Campaign. Like anyone who works for any business, Mr. Cohen is entitled to engage in political activity on his own time. And like anyone with flexible hours, Mr. Cohen has discretion about when to engage in that unpaid political activity. The Act does not forbid (indeed, could not forbid) Mr. Cohen from—on his own time, in his personal capacity, and without being compensated for such activities—publicly sharing his genuine, heartfelt, personal belief that the executive to whom he has devoted his professional career would be an outstanding President. *See, e.g.*, FEC Advisory Opinion 2012-16 (Pierce Atwood LLP), at p. 4 ("The Act and Commission regulations specifically exempt certain uncompensated volunteer activities by individuals from constituting 'contributions.'"); FEC Advisory Opinion 1980-115 (O'Donnell), at p. 3 (employee compensation is not a "contribution" so long as that compensation is "exclusively in consideration of employment services performed").

Nor is there any allegation—because there could be no allegation—that Mr. Cohen uses LLC resources or funds in support of his private advocacy. But even if Mr. Cohen did make incidental use of LLC facilities, the Commission's regulations are unambiguous: Even

in the case of multi-national, publicly traded corporations, corporate personnel are allowed to make "incidental use" of corporate facilities when they volunteer for a political candidate. Such personnel are in *per se* compliance with the Act as long as their use of corporate facilities does not exceed "one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours." 11 CFR § 114.9(a)(2)(ii); see also FEC Advisory Opinion 1980-51 (First Farmers and Merchants National Bank of Columbia), at p. 2 ("Such activity which does not exceed one hour per work week or four hours per month is considered as 'occasional, isolated, or incidental use' of the facilities."). The Complaint does not allege—because it could not allege—that Mr. Cohen used the LLC's facilities at all, let alone for more than one hour in any given week.

In short, regardless of what Mr. Cohen does or does not say during his interviews, the mere provision of personal time without a business's subsidization or expenditure is garden-variety volunteer work that does not constitute "a contribution," 11 C.F.R. § 100.74, and that falls outside the Act's prohibition against corporate contributions. It is irrelevant how Mr. Cohen describes himself in these interviews, or how various television shows describe his role with respect to Mr. Trump. What matters is that the Supplemental Complaint does not allege the Trump Organization is paying Mr. Cohen to engage in public advocacy, the Trump Organization is not subsidizing that advocacy in any way, and any use by Mr. Cohen of LLC facilities falls well within the safe harbor discussed above.

The Supplemental Complaint is thus as meritless as the initial Complaint. The Commission should find no reason to believe a violation has occurred and should dismiss the Supplemental Complaint.

III. CONCLUSION

The Complaint and Supplemental Complaint fail to allege any actual or even potential violations of the Act. We respectfully request that the Commission find no reason to believe a violation occurred, dismiss the Complaint and Supplemental Complaint, and close the file.

Respectfully,

Alan Garten
General Counsel, The Trump Organization