

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3
4 **MUR: 6992**

5 COMPLAINT FILED: Dec. 10, 2015

6 SUPPL. COMPLAINT FILED: Jan. 13, 2016

7 NOTIFICATION: Dec. 19, 2015

8 LAST RESPONSE: May 5, 2016

9 ACTIVATED: April 6, 2016

10
11 ELECTION CYCLE: 2016

12 EARLIEST SOL: Sept. 21, 2020

13 LATEST SOL: Dec. 4, 2020

14
15 **COMPLAINANT:**

Right to Rise PAC, Inc.

16
17 **RESPONDENTS:**

Donald J. Trump

Donald J. Trump for President, Inc. and Bradley T.

Crate in his official capacity as treasurer¹

The Trump Organization LLC²

21
22 **RELEVANT STATUTES**

52 U.S.C. § 30101(8)(A)(i), (ii)

23 **AND REGULATIONS:**

52 U.S.C. § 30101(8)(B)(i)

24 52 U.S.C. § 30104(b)

25 52 U.S.C. § 30116(f)

26 52 U.S.C. § 30118(a)

27 52 U.S.C. § 30125(e)

28 11 C.F.R. § 100.52(a)

29 11 C.F.R. § 100.54

30 11 C.F.R. § 100.74

31 11 C.F.R. § 110.1(g)(3)

32
33 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

34
35 **FEDERAL AGENCIES CHECKED:**

None

¹ Timothy Jost was the treasurer at the time of the activity in this matter. *See* Donald J. Trump for President, Inc., Amended Statement of Organization (Nov. 5, 2015). On January 20, 2017, the committee filed an amended Statement of Organization designating Bradley T. Crate as its treasurer. *See* Donald J. Trump for President, Inc., Amended Statement of Organization (Jan. 20, 2017).

² The Complaint named "The Trump Organization" as a respondent, alleging that it made prohibited corporate contributions to Donald J. Trump for President, Inc. The Trump Organization states in its response that the proper respondent in this matter is the Trump Organization LLC and we identify the company in this report accordingly. Trump Organization Resp. at 1 ("Trump Org. Resp.") (May 5, 2016).

1 **I. INTRODUCTION**

2 The Complaint and its supplement (collectively “Complaint”) allege that the Trump
3 Organization LLC (“Trump Organization”) made prohibited in-kind contributions to support
4 Donald J. Trump’s presidential campaign committee, Donald J. Trump for President, Inc. and
5 Bradley T. Crate in his official capacity as treasurer (the “Trump Committee”), when Trump
6 Organization General Counsel Alan Garten provided legal services to the campaign, and
7 Executive Vice President and Special Counsel Michael Cohen communicated with the press on
8 behalf of the Trump Committee.

9 While the Respondents assert that the legal services performed by Garten were rendered
10 to protect Trump’s brand and business, the available information demonstrates instead that these
11 services were performed to influence the primary election for the benefit of Trump’s candidacy.
12 The current record is unclear, however, whether Cohen’s communications with the press
13 regarding Trump’s candidacy and appearances at political events were undertaken as a Trump
14 Organization executive or, as the Respondents’ assert, as a campaign volunteer. Because the
15 value of the services provided by Garten and Cohen were likely *de minimis*, and in the case of
16 Cohen, may have been covered by the volunteer exception, we do not believe this matter
17 warrants the use of additional Commission resources. Accordingly, we recommend that the
18 Commission dismiss the Complaint in an exercise of prosecutorial discretion as outlined in
19 *Heckler v. Chaney*, 470 U.S. 821 (1985), and close the file.

1 **II. FACTUAL BACKGROUND**

2 The Trump Organization is a privately held conglomerate that owns, develops and
3 manages a variety of real estate holdings, including hotels, resorts, and other properties.³ At the
4 time of the actions described in the Complaint, Donald J. Trump served as the Chairman, CEO,
5 and sole owner of the Trump Organization.⁴ On June 16, 2015, Trump announced his candidacy
6 for the Republican presidential nomination and established the Trump Committee as his principal
7 campaign committee.⁵

8 **A. Cease and Desist Letters**

9 During Trump's primary campaign, Garten issued two cease and desist letters on
10 company letterhead in an effort to stop or pre-empt the dissemination of communications
11 opposing Trump's candidacy.⁶ On September 21, 2015, Garten issued the first "CEASE &
12 DESIST DEMAND" letter to Club for Growth President David McIntosh with the subject line
13 "[y]our Defamatory Attack Ad."⁷ The letter, which was sent via Federal Express and copied to

³ THE TRUMP ORGANIZATION HOMEPAGE, <http://www.trump.com>.

⁴ According to publicly available information, prior to January, 2017, Trump was the sole member of the Trump Organization LLC and owned 100% of the LLC's shares. *See* United States Office of Government Ethics, Executive Branch Personnel Public Financial Disclosure Record, OGE Form 278e (March 2014) ("OGE Form") at Part 2, A19, 37 (July 15, 2015). He was also the Chairman and CEO of the Trump Organization, Inc. *Id.* Reportedly, in January 2017, Trump ceded control of this business empire to his sons, Donald Jr. and Eric, and placed his assets in a trust. *See* Jordan Fabian, *Trump to Hand Over Businesses to Sons*, THE HILL, Jan. 11, 2017, <http://thehill.com/homenews/administration/313779-trump-to-hand-over-businesses-to-sons>.

⁵ Trump Committee Resp. at 1 ("Trump Comm. Resp.") (Mar. 14, 2016); *see also*, Donald J. Trump, Statement of Candidacy (June 22, 2015); Donald J. Trump for President, Inc. Amended Statement of Organization (Nov. 5, 2015).

⁶ *See* Compl., Cease & Desist Demand from Alan Garten, General Counsel, The Trump Organization to David McIntosh, Club for Growth (Sept. 21, 2015), attached as Ex. A.; Letter from Alan Garten, General Counsel, The Trump Organization to Michael Fernandez, MBF Healthcare Partners, and James P. Robinson, Right to Rise PAC, Inc. (Dec. 4, 2015), attached as Ex. B.

⁷ *Id.*, Ex. A. According to its website, Club for Growth is a "free-enterprise advocacy group." *See* CLUB FOR GROWTH HOMEPAGE, <http://www.clubforgrowth.org/>. Club for Growth Action is an Independent Expenditure-Only Committee. *See* Club for Growth Action, Amended Statement of Organization (Jan. 29, 2015).

1 Trump personally, demanded that Club for Growth's political arm, Club for Growth Action, stop
2 airing a television advertisement called "Politician" and stop disseminating "misleading or
3 inaccurate information" relating to Trump, or risk a "multi-million dollar lawsuit."⁸ The
4 "Politician" advertisement, which began airing on or about September 17, 2015, stated that
5 Trump was "just another Politician" who supports higher taxes, national healthcare, and the Wall
6 Street bailout.⁹ The advertisement also includes several scenes of Trump behind a podium
7 displaying the campaign's website address and campaign slogan — "Make America Great" — as
8 well as a clip from CNN in which Trump states that "in many ways, I identify as a Democrat."¹⁰
9 In addition, the letter stated that candidate Trump planned to release a tax plan "later this
10 week."¹¹

11 On December 4, 2015, Garten issued a second cease and desist letter via Federal Express
12 to Jeb Bush supporter Michael Fernandez and the multicandidate committee, Right to Rise PAC,
13 Inc. ("Right to Rise PAC"), which was copied to Trump personally.¹² It appears that the cease

⁸ Compl., Ex. A. The Cease and Desist Demand letter also references allegedly libelous statements McIntosh made to the press regarding Trump's tax policy, and claims that Club for Growth opposed Trump's participation in the August 6, 2015, Fox News Republican Presidential Debate because Trump refused to give the organization a one million dollar donation in exchange for its endorsement. *Id.*

⁹ See *Politician*, Club for Growth Action, YOUTUBE (Sept. 15, 2015), https://www.youtube.com/watch?v=_OEijvTi0NE; Robert Farley, *Club for Growth vs. Trump*, THE WIRE (Sept. 25, 2015), <http://www.factcheck.org/2015/09/club-for-growth-vs-trump/>.

¹⁰ Club for Growth Action, *supra* note 8.

¹¹ Compl., Ex. A.

¹² *Id.*, Ex. B. During the 2016 election cycle, Fernandez (whose first name appears to be Miguel) contributed over three million dollars to Right to Rise USA and \$2,700 to Jeb Bush's 2016 presidential campaign. See Right to Rise USA, 2015 Mid-Year Report at 348, 349; 2015 Year End Report at 54; Jeb 2016, Inc., 2015 October Quarterly Report, at 891. It is not clear why the cease and desist letter was sent to Right to Rise PAC, which is registered with the Commission as a non-connected, multi-candidate committee. See Right to Rise PAC, Inc., Amended Statement of Organization (Mar. 22, 2016). Right to Rise PAC did not sponsor advertising during the election, although a related Super PAC, Right to Rise USA, reported making independent expenditures totaling \$25,163.13 in opposition to Trump. See Right to Rise USA, 24-Hour Report (Feb. 17, 2016; Right to Rise USA, 48-Hour Report (Feb. 14, 2016).

1 and desist letter was issued to Fernandez in response to an unpublished full-page advertisement
2 addressed to “My fellow Americans” opposing Trump’s candidacy that he intended to publish in
3 a number of Miami, Las Vegas, and Des Moines newspapers in early December 2015.¹³ The
4 short cease and desist letter, which included the subject line “Anti-Trump Advertisements,”
5 cautions Fernandez and Right to Rise PAC about producing or disseminating “certain radio,
6 television and newspaper advertisements directly and personally attacking my client,” and
7 threatens legal action should the advertisements contain false information concerning Trump,
8 “his business or his brand.”¹⁴

9 The Complaint alleges that these cease and desist letters resulted in the use of Trump
10 Organization resources to defend Trump’s presidential candidacy and promote Trump’s
11 campaign during the 2016 Republican primary election.¹⁵ The Complaint states that the
12 provision of these legal services are evidence that Trump misused corporate resources to benefit
13 his presidential campaign and constituted prohibited and unreported in-kind contributions to the
14 Trump Committee in violation of 52 U.S.C. §§ 30118(a) and 30125(e).¹⁶

15 The Respondents deny the allegations and request that the matter be dismissed. The
16 Respondents deny that the Trump Committee requested or suggested that Garten issue the cease
17 and desist letters to Club for Growth or Right to Rise PAC and assert that the company’s actions

¹³ See Marc Caputo, *Bush’s Biggest Donor: Trump is a ‘Bullyionaire,’* POLITICO, Dec. 4, 2015, <http://www.politico.com/story/2015/12/jeb-bush-supporter-anti-trump-ads-216434>. We found no indication that Fernandez’s advertisement was even published in a newspaper, but it is available on-line. See Alex Leary, *Donald Trump Lawyer Threatens Mike Fernandez Over Anti-Trump Campaign*, TAMPA BAY TIMES, Dec. 7, 2015, <http://www.tampabay.com/blogs/the-buzz-florida-politics/donald-trump-lawyer-threatens-mike-fernandez-over-anti-trump-campaign/2256822>.

¹⁴ Compl., Ex. B.

¹⁵ *Id.* at 1-2; Supp. Compl. at 1-2 (Jan. 13, 2016).

¹⁶ Compl. at 1-2; Supp. Compl. at 1-2.

1 were separate and independent from the Trump campaign.¹⁷ Respondents argue that federal
2 candidates are lawfully permitted to wear multiple hats, and that Trump was entitled to be a
3 presidential candidate as well as a business executive without triggering the Act and converting
4 business activities into in-kind contributions.”¹⁸

5 The Trump Organization asserts that its primary responsibility is to build, maintain, and
6 defend the “‘Trump’ brand name,” of which Trump is the “physical embodiment.”¹⁹ According
7 to the Trump Organization, the cease and desist letters were issued to defend the Trump
8 Organization’s intellectual property (the Trump brand) from attacks by the Club for Growth,
9 Fernandez, and Right to Rise PAC.²⁰ The Response suggests the specific language used in each
10 letter — such as the statement in the letter to Club for Growth that the advertisement “could
11 cause damage to [Mr. Trump’s] reputation and business interests.” and the warning to Right to
12 Rise PAC that the company would sue if advertisements were aired that compromise Trump, his
13 business or the “brand” — proves that the subject cease and desist letters would have been issued
14 regardless of Trump’s candidacy.²¹

15 The Respondents also assert that the two company-issued cease and desist letters
16 provided little or no value to the campaign and few company resources were used in generating

¹⁷ See Trump Org. Resp. at 2; Trump Comm. Resp. at 1-2.

¹⁸ Trump Org. Resp. at 6-9; Trump Comm. Resp. at 7-8.

¹⁹ Trump Org. Resp. at 1.

²⁰ *Id.* at 3-5.

²¹ *Id.* at 4-5. The Trump Organization also asserts that the two cease and desist letters are consistent with the company’s well-documented history of aggressively responding to anyone who disparages or defames the company or Trump. *Id.* at 4. The Trump Organization’s response refers to the recipients of the cease and desist letters as “potential defendants in any eventual lawsuit;” *id.*; to date, neither Trump nor the Trump Organization has filed suit against Club for Growth, Fernandez, or Rise to Rise PAC.

1 the letters.²² According to the Trump Organization, the company did not expend any company
 2 resources “beyond a few minutes preparing and sending” the letters.²³ In addition, the Trump
 3 Organization argues that such *de minimis* use of corporate resources to send the letters is
 4 permissible under the Act and that, to the extent any Trump Organization resources were used,
 5 they were Trump’s assets as the sole owner of the LLC.²⁴

6 **B. Media Appearances**

7 While the Trump Committee’s disclosure reports do not reflect any disbursements to
 8 Cohen, the record indicates that he made numerous appearances in support of Trump’s
 9 presidential campaign during the 2016 primary period. Cohen appeared as a guest on a variety
 10 of cable news programs answering questions regarding Trump’s candidacy and the campaign,
 11 including but not limited to, the Trump Committee’s organization, voter outreach, and polling
 12 numbers, as well as Trump’s positions on immigration and his unreleased tax returns.²⁵ Cohen

²² *Id.* at 9-10; Trump Comm. Resp. at 8-9.

²³ Trump Org. Resp. at 9.

²⁴ *Id.* at 10.

²⁵ For example, Cohen was interviewed by CNN’s Chris Cuomo, Michael Smerconish, Fox News’ Sean Hannity, and appeared as a frequent guest on cable television programs including the Erin Burnett Show, The Situation Room, and CNN’s New Day Live. See *Chris Cuomo*, CNN (July 13, 2015), <http://forward.com/news/312123/meet-michael-cohen-donald-trumps-jewish-wingman/>; *CNN Weekend, host Michael Smerconis*, CNN, YOUTUBE (July 11, 2016), <https://www.youtube.com/watch?v=Tilrte-9ZDw&t=400s>; *The Sean Hannity Show*, FOX NEWS, YOUTUBE (Aug. 11, 2015), <https://www.youtube.com/watch?v=rZ4x6HYUZM4>; *Erin Burnett Show*, CNN, YOUTUBE (Aug.10, 2016), https://www.youtube.com/watch?v=Rxubuobx_gE; *The Situation Room with Brianna Keilar*, YOUTUBE (Aug. 12, 2016), <https://www.youtube.com/watch?v=gpm-NKFtZLw>; *The Situation Room with Wolf Blitzer*, CNN, YOUTUBE (Aug. 11, 2016), <https://www.youtube.com/watch?v=ZB-N2TO9fe0>; *The Situation Room with Brianna Keilar*, CNN, YOUTUBE (Aug. 17, 2016), <https://www.youtube.com/watch?v=IAdGYYSg7yc>; *New Day Live*, CNN, YOUTUBE (Oct. 3, 2015), https://youtube.com/watch?v=9nhjqnom_41.

1 also participated in campaign events, including a mid-week campaign rally in Cleveland, Ohio,
2 at which he provided a nine-minute introduction for the candidate.²⁶

3 The Complaint, citing two examples, alleges that Cohen's interactions with the press
4 constituted substantive campaign work and prove that the Trump Organization and the Trump
5 Committee were "virtually indistinguishable."²⁷ In the first instance, Cohen reportedly told
6 CNN's Chris Cuomo that the campaign's use of video footage of Morocco instead of Mexico in
7 a Trump television advertisement about open borders was a "mistake" and that he was going to
8 contact the responsible vendor, specifically by "sending him a letter very soon on behalf of Mr.
9 Trump."²⁸ In the second instance, Cohen directly responded to an email inquiry that a *Daily*
10 *Beast* reporter had sent to Trump Committee spokesperson Hope Hicks regarding a certain
11 allegation made by Ivana Trump during the campaign.²⁹ During the course of Cohen's
12 conversation with the reporter, he "repeatedly read from" the reporter's email "suggesting that it
13 had been forwarded between the Trump campaign and [Trump's] corporate organization."³⁰

14 The Trump Organization denies that the company directed or encouraged Cohen's
15 activities in support of Trump's candidacy.³¹ The Trump Organization contends that Cohen,
16 who had a "flexible schedule," volunteered for the Trump campaign during his spare time and

²⁶ See *Michael Cohen Introduces Donald Trump, Cleveland, OH, 9/21/2016*, ABC News, YOUTUBE (Sept. 21, 2016), <https://www.youtube.com/watch?v=b3B2QQQHepE>.

²⁷ Supp. Compl. at 1-2.

²⁸ *Id.* at 2 (citing Eliza Collins, *Team Trump All Over the Map on Morocco 'Mistake,'* POLITICO (Jan. 5, 2016), attached as Ex. A.) In an apparent effort to distance himself from his remarks to CNN, Cohen emailed Politico and stated that he did "not speak for Mr. Trump or the campaign." See *supra* Collins at 1.

²⁹ Supp. Compl. at 2 (citing Rosie Gray, *Trump Aide's Outburst Raises Questions About his Ambiguous Role,* BUZZFEED, July 28, 2016), attached as Ex. B).

³⁰ *Id.* at 2 (citing Gray, *supra* note 29)

³¹ Trump Org. Resp. at 10.

1 that any related and incidental use of corporate facilities is permissible under the Act.³² The
2 Trump Committee states that Cohen played no role in the campaign, controlled his own
3 schedule, and has a First Amendment right to support the candidate of his choice.³³

4 **II. LEGAL ANALYSIS**

5 The Act defines “contribution” to include “any gift . . . of money or anything of value
6 made by any person for the purpose of influencing any election for Federal office.”³⁴ “Anything
7 of value” covers all in-kind contributions, including the provision of goods and services without
8 charge or at less than the usual and normal charge.³⁵ “Contribution” also includes the “payment
9 by any person of compensation for the personal services of another person which are rendered to
10 a political committee without charge for any purpose.”³⁶ The Commission has previously found
11 that legal services are contributions subject to the Act when the underlying dispute arises out of
12 an election, or if a candidate or political committee are the intended beneficiaries of the legal
13 services.³⁷ Political committees must regularly file reports disclosing their receipts, including in-
14 kind contributions.³⁸

15 The Act and Commission regulations prohibit any corporation from making a
16 contribution to a political committee in connection with a federal election, and further prohibit

³² *Id.* at 10-12.

³³ Trump Comm. Resp. at 9.

³⁴ 52 U.S.C. § 30101(8)(A)(i). In the context of corporations, the Act also defines contribution as “anything of value” given “to any candidate, campaign committee, or political party or organization, in connection with any election” 52 U.S.C. § 30118(b)(2).

³⁵ 11 C.F.R. § 100.52(d)(1).

³⁶ 52 U.S.C. § 30101(8)(A)(ii).

³⁷ *See* Commission Certification, at ¶ 3 c.-d., MUR 6494 (Rep. Jeannette H. Schmidt, *et al.*) (Jan. 14, 2015).

³⁸ 52 U.S.C. § 30104(b)(2)-(3); 11 C.F.R. §§ 104.3(a)(3)-(4).

1 any candidate or political committee from knowingly accepting or receiving such a
2 contribution.³⁹ Moreover, a federal candidate or an entity established, financed, maintained, or
3 controlled by a candidate is prohibited from spending funds in connection with an election for
4 federal office unless those funds are subject to the contribution limits and source prohibitions of
5 the Act.⁴⁰

6 For purposes of contribution source prohibitions, a limited liability company (“LLC”) is
7 treated as a corporation if it has publicly traded shares or if it has elected to be treated as a
8 corporation with the Internal Revenue Service (“IRS”).⁴¹ “A contribution by an LLC with a
9 single natural person member that does not elect to be treated as a corporation by the IRS. . .
10 shall be attributed only to that single member and subject to the contribution limits of that sole
11 member.”⁴² Commission regulations permit a candidate to use his or her personal funds to make
12 unlimited contributions to his campaign.⁴³

13 **A. Alan Garten’s Legal Services**

14 In this matter, the available information demonstrates that the legal services provided by
15 Garten in connection with the two cease and desist letters qualify as in-kind contributions subject
16 to the restrictions of the Act because they were paid for by the Trump Organization and provided
17 to the Trump Committee for the purpose of influencing the 2016 Republican primary election.⁴⁴

³⁹ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

⁴⁰ 52 U.S.C. § 30125(e)(1)(A).

⁴¹ 11 C.F.R. § 110.1(g)(3).

⁴² *Id.* § 110.1(g)(4); *see also* Advisory Op. 2009-2 (True Patriot Network, LLC). The individual contribution limit for the 2015-2016 election cycle was \$2,700 per election. Political committees are prohibited from accepting excessive contributions. 52 U.S.C. § 30116(f).

⁴³ 11 C.F.R. § 110.10; *see also* Advisory Op. 1988-7 (Bakal).

⁴⁴ 52 U.S.C. § 30101(8)(A)(i), (ii) ; 11 C.F.R § 100.54.

1 Depending on the tax status of the Trump Organization, the provision of these services would
2 constitute either a prohibited corporate contribution, if the Trump Organization elected tax
3 treatment as a corporation, or a contribution from Trump as the sole member of a single member
4 LLC, if the Trump Organization did not elect to be treated as a corporation.

5 Respondents concede that the letters were written by Garten as General Counsel of the
6 Trump Organization (and thus paid for by the Trump Organization) but argue that the services
7 were directed at protecting the business interests of the Trump Organization and not provided for
8 the purpose of influencing the primary election.⁴⁵ Both the timing and the content of the cease
9 and desist letters, however, demonstrate that Garten's legal services were provided for the
10 purpose of influencing, and for the benefit of, Trump's candidacy. The two cease and desist
11 letters, issued several months after Trump announced his candidacy, were in direct response to
12 (or an attempt to preempt) political communications, *i.e.*, "attack ads" sponsored by political
13 actors: a high profile political advocacy group, a registered political committee, and a Jeb Bush
14 supporter who opposed Trump's candidacy. The "Politician" and Fernandez advertisements
15 focused exclusively on Trump as a candidate and not on the Trump Organization, its various
16 businesses, or Trump's position as an executive. These advertisements were created and
17 disseminated only because Trump was a candidate in the 2016 Republican primary election, and
18 the cease and desist letters, in turn, were specifically intended to counter the advertisements'
19 negative messaging and benefit Trump's political campaign.

20 Furthermore, Trump was "cc'd" on both cease and desist letters, and the letter to Club for
21 Growth explicitly states that "Mr. Trump has authorized our legal team to take all necessary and

⁴⁵ Trump Org. Resp. at 2-5; Trump Comm. Resp. at 1-2, 6-7.

1 appropriate actions to bring an immediate halt to your defamatory Attack Ads.”⁴⁶ These facts
2 indicate that Trump personally directed that company resources be used to respond to Club for
3 Growth’s advertisement opposing his candidacy. If the Trump Organization is a corporation,
4 Trump’s personal and material involvement in the Club for Growth letter and the Trump
5 Committee’s receipt of these impermissible legal services would constitute a violation of both
6 52 U.S.C. § 30118(a) and 30125(e). In addition, a review of the Trump Committee’s disclosure
7 reports confirms that the Trump Committee did not disclose its receipt of in-kind contributions
8 from the Trump Organization for legal services provided by Garten over the relevant time
9 period.⁴⁷ The Trump Committee’s disclosure reports indicate only that the campaign disbursed a
10 total of \$24,137 to Garten for “payroll” between June 11, 2016 and November 12, 2016, and that
11 Garten made a \$3,750 in-kind contribution on July 7, 2016 for a “filing fee.”⁴⁸

12 Respondents argue that Trump is legally entitled to “wear two hats,” *i.e.* run for president
13 while continuing to operate his business, and suggests that the letters were consistent with the
14 Trump Organization’s history of protecting its “intellectual property.”⁴⁹ While it is true that a
15 candidate may wear two hats, those hats must remain separate, or in-kind contributions may

⁴⁶ Compl, Ex. A-B.

⁴⁷ 52 U.S.C. § 30104(b); 11 C.F.R § 104.13(a)(1) and (2).

⁴⁸ Donald Trump for President, Inc.: Amended July Monthly report (Sept. 12, 2016); Amended August Monthly report (Oct. 12, 2016); Amended September Monthly report (May 15, 2017); Amended 2016 Pre-General report (May 12, 2107); Amended 2016 Post-General report (May 12, 2017).

⁴⁹ Trump Comm. Resp. at 6-8; Trump Org. Resp. at 8-9 (both citing Advisory Op. 2003-10 at 5 (Reid)).

1 result.⁵⁰ Here, the fact that the letters include stock phrases such as “damage to his reputation
2 and business interests” and Trump’s “businesses or his brand,” does not negate the political
3 nature of the activity.⁵¹ Both letters, which are a direct response to attacks from entities that
4 were on record opposing Trump’s candidacy, focus squarely on Trump as a candidate and do not
5 address his role as a businessman. The facts presented in this matter clearly demonstrate that
6 Trump was wearing his “candidate” hat in connection with his company’s issuance of the two
7 cease and desist letters as opposed to pursuing a business strategy designed to protect “the
8 brand” as asserted.

9 Finally, the Trump Organization contends that the company used few resources “beyond
10 a few minutes preparing and sending” the cease and desist letters, and that, in any event, Trump

⁵⁰ The Trump Organization also references litigation involving businessmen-candidates Jim Oberweis, Terry McAuliffe, Greg Orman, and Gregory Brannon to support its argument that overlap between an individual’s candidacy and a company’s efforts to protect its business interests does not trigger the Act. Trump Org. Resp. at 6, 7. However, the facts in the proffered examples are distinguishable from the instant case because those lawsuits were not related to those individuals’ actions as federal candidates. For example, Oberweis Dairy, Inc. (and not Oberweis) filed suit against the Democratic Congressional Campaign Committee’s for robocalls alleging the company hired illegal immigrants. *See Oberweis Dairy, Inc. v. DCCC*, Memorandum Op. and Order, No. 1:2008CV04345, Doc. 43, (N.D. Ill. 2009), <http://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2008cv04345/222264/23/>. Gubernatorial candidate McAuliffe was not a party to the libel suit filed by his former company, Green Tech Automotive, against a non-profit organization that published two on-line articles criticizing Green Tech Automotive’s business model. *See Frederick Knuckle, Car Company Founded by McAuliffe Files \$85 Million Suit Over Articles*, THE WASHINGTON POST, Apr. 12, 2013, https://www.washingtonpost.com/local/va-politics/car-company-founded-by-mcauliffe-files-85-million-suit-over-articles/2013/04/12/89059c00-a2df-11e2-82bc-511538ae90a4_story.html. Orman and Ringside, Inc. were sued in July 2012 for trademark infringement and breach of contract, several years before he became a candidate for the U.S. Senate. *See Bill Draper, Boxing Firm Suing Kansas Senate Hopeful Orman*, THE TOPEKA CAPITAL-JOURNAL, July 8, 2014, <http://cjonline.com/news/2014-09-08/boxing-firm-suing-kansas-senate-hopeful-orman#>; Orman for U.S. Senate, Inc., FEC Form 1, Statement of Candidacy (May 28, 2014). Six months before becoming a candidate for the U.S. Senate, Brannon was sued in state court for misleading investors in a technology start-up. *See Senate Candidate Brannon Defends Himself Against Allegations He Misled Investors*, WRAL.COM, Feb. 3, 2014. Brannon for U.S. Senate, FEC Form 1, Statement of Organization (Apr. 15, 2013); <http://www.wral.com/senate-candidate-brannon-defends-himself-against-allegations-he-mislead-investors/13354711/>.

⁵¹ Compl., Ex. A at 2, and B at 1.

1 was entitled to make unlimited expenditures in support of his candidacy.⁵² Respondents,
2 however, have provided no information on the Trump Organization's tax status, which is
3 necessary to establish that the Trump Organization's contributions could be attributed to Trump
4 personally.

5 The available information appears to support the conclusion that the Trump Organization,
6 through its General Counsel Alan Garten, rendered legal services to the Trump Committee in
7 connection with the two cease and desist letters and did so at Trump's direction, which
8 constituted in-kind contributions to the Trump Committee that the Trump Committee failed to
9 report.⁵³ However, it appears that the amount in violation is likely *de minimis* because it appears
10 that relatively few Trump Organization resources were used in generating the two cease and
11 desist letters. The value of Garten's individual services includes the time spent drafting the
12 letters, neither of which appears to have required substantive legal research. Both letters, which
13 are short and contain a significant amount of generic demand language, likely took little time to
14 prepare. Beyond the value of Garten's services, there appear to have been few other costs
15 associated with generating the two cease and desist letters apart from the use of corporate office
16 space in which he worked, the use of Trump Organization letterhead, and the FedEx bills

⁵² Trump Org. Resp. at 9-10 (citing *Internet Communications*, 71 Fed.Reg. 18,589, 18,600, (Apr. 12, 2006) (explanation and justification). The Trump Organization asserts that the cease and desist letters were sent via email and, therefore, "cannot constitute an in-kind contribution." *Id.* at 9. However, there is no basis to conclude that the internet regulations apply since the letters were sent via Federal Express and not email, and it appears that Garten drafted the two letters in the course of his employment with the Trump Organization. Commission regulations exempt volunteer internet activity, when provided by an individual without compensation, from the definition of "contribution" or "expenditure." 11 C.F.R. §§ 100.94, 100.155. There is no information to conclude that this exemption applies to the two cease and desist letters at issue in this matter.

⁵³ 52 U.S.C. §§ 30104(b), 30118(a), 30125(e).

1 accrued in sending the letters.⁵⁴ Accordingly, based on the available information, we
2 recommend that the Commission dismiss the allegations that Donald J. Trump, Donald J. Trump
3 for President, Inc. and Bradley T. Crate in his official capacity as treasurer, and the Trump
4 Organization LLC violated 52 U.S.C. §§ 30104(b), 30118(a) and 30125(e) in connection with
5 the legal services provided by Garten.⁵⁵

6 **B. Michael Cohen's Media Activities**

7 As discussed above, the available information indicates that Cohen spoke with the press
8 on behalf of the Trump Committee on numerous occasions during the primary campaign. The
9 Trump Organization argues that Cohen's media activities were uncompensated, done on his own
10 time, and constituted "garden-variety volunteer work," and therefore, fall within the
11 Commission's safe harbor from the corporate facilitation rules for volunteers.⁵⁶ The company
12 also denies that Cohen used company resources, and as an example states that that he typically
13 walked to his television interviews or received standard, complimentary transportation.⁵⁷ We do
14 not have sufficient information in the record to determine whether Cohen participated in these
15 activities in the capacity of a campaign volunteer, or if he did so at the direction of Trump and as
16 part of his employment with the Trump Organization (which would constitute an in-kind
17 contribution to the Trump Committee). We also do not have any information regarding the value

⁵⁴ See Commission Certification, at ¶ 1 MUR 6752 (Simpson for Congress) (Oct. 7, 2014) (dismissing matter where use of corporate name and logo on fundraising invitation considered *de minimis*); Commission Certification, at ¶ 2. MUR 6665 (Alex Pires for U.S. Senate, *et al.*) (Dec. 8, 2014) (dismissing matter where use of corporate space to gather signatures considered *de minimis*).

⁵⁵ *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁵⁶ Trump Org.Resp. at 10-12.

⁵⁷ *Id.* at 11.

1 of any Trump Organization resources (beyond Cohen's time) that were utilized in connection
2 with these appearances and communications with the press.

3 An investigation of Cohen's political activities during the primary election period would
4 be necessary to confirm whether his activities were in violation of the Act and Commission
5 regulations and to determine if Cohen used any Trump Organization resources in his efforts to
6 promote Trump's candidacy. We do not believe that the available information supports the use
7 of additional Commission resources to pursue such an investigation. Although Cohen made
8 multiple appearances in support of the Trump campaign, we do not have any information to
9 contradict the assertion of both Cohen and the Trump Organization that Cohen provided those
10 services as a campaign volunteer or to support a conclusion that Cohen used more than a *de*
11 *minimis* amount of Trump Organization resources in connection with his activities.⁵⁸

12 Accordingly, we recommend that the Commission dismiss the allegations that Donald J. Trump,
13 Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer, and
14 the Trump Organization LLC violated 52 U.S.C. §§ 30104(b), 30118(a) and 30125(e) in
15 connection with the services provided by Cohen.

16 **IV. RECOMMENDATIONS**

- 17 1. Dismiss, pursuant to *Heckler v. Chaney*, 470 U.S. 821(1985), the allegations that
18 Donald J. Trump, Donald J. Trump for President, Inc., and Bradley T. Crate in his
19 capacity as treasurer, and the Trump Organization LLC violated 52 U.S.C.
20 §§ 30104(b), 30118(a) and 30125(e);
- 21 2. Approve the attached Factual and Legal Analysis;
- 22 3. Approve the appropriate letters; and
- 23

⁵⁸ The Trump Committee reported payroll and pre-paid payroll disbursements to other Trump Organization employees during the relevant time period, but did not report any such disbursements to Cohen. *See* First Gen. Counsel's Rpt. at 4-5, MUR 7111 (Donald J. Trump, *et al.*).

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4. Close the file.

Lisa J. Stevenson
Acting General Counsel

10/20/17
Date

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