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October 5, 2016

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BY HAND

Jeff S. Jordan, Esq.
 Supervisory Attorney
 Complaints Examination & Legal Administration
 Federal Election Commission
 999 E Street, N.W.
 Washington, D.C. 20463

Re: MUR 7125

Dear Mr. Jordan:

On behalf of our clients, SKDKnickerbocker and Hilary Rosen (“Respondents”), we write in response to the Complaint in MUR 7125, which was filed by Tim Canova. For the reasons set forth below, the Complaint alleges no violation of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101 *et seq.* (2015) (the “Act”) by Respondents. The Commission should find no reason to believe Respondents violated the Act and should dismiss the Complaint.

SKDKnickerbocker (“SKDK”) is a strategic communications consulting firm with offices in Washington, DC. Ms. Rosen is one of its managing directors. During the time relevant to the Complaint, SKDK, through Ms. Rosen, provided communications consulting services to the DNC Services Corporation (“the DNC”).

The Complaint asserts two supposed violations by SKDK and Ms. Rosen:

First, the Complaint claims that Ms. Rosen participated in an email discussion on May 21, 2016 about how to respond to the fact that U.S. Senator Bernie Sanders, a Democratic presidential candidate, endorsed Mr. Canova in his Congressional primary campaign against Representative Debbie Wasserman Schultz, who was DNC Chair. The Complaint presents only one email that it claims to have been authored by Ms. Rosen, in which she provides a single sentence of advice about how to deliver a statement responding to the endorsement. *See* Complaint Exh. 4. The Complaint claims that Ms. Rosen’s participation in that email discussion represented a contribution from the DNC to Representative Wasserman Schultz’s campaign. *See* Complaint ¶ 19.

Second, the Complaint alleges that SKDK and Ms. Rosen, by helping Representative Wasserman Schultz’s campaign to the supposed detriment of Mr. Canova, engaged in fraudulent misrepresentation of campaign authority under 52 U.S.C. § 30124. *See* Complaint ¶ 39.

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Neither of these claims has any merit:

First, the Complaint presents no evidence that the DNC made a contribution to Representative Wasserman Schultz's campaign in any circumstance involving SKDK or Ms. Rosen. The DNC engaged SKDK to provide strategic communications advice. In the middle of the Democratic presidential primaries, a Democratic candidate for president endorsed the DNC Chair's opponent. That the DNC would seek Ms. Rosen's advice to respond to this development would have been entirely consistent with her ordinary duties, irrespective of any intent to benefit Representative Wasserman Schultz or her campaign.¹

Second, the Complaint misreads the Act's prohibition on fraudulent misrepresentation of campaign authority and presents no violation of 52 U.S.C. § 30124. That statute prohibits federal candidates, their employees and agents from misrepresenting themselves as acting on behalf of **other** candidates, other parties, or their employees or agents, on matters damaging to those other persons. *See* 52 U.S.C. § 30124(a)(1). The statute's purpose is to prevent fraud by impersonation—for example, to keep the DNC's agents from purporting to act on behalf of the RNC, or Representative Wasserman Schultz's agents from purporting to act on behalf of Mr. Canova. Yet the Complaint glosses over the core element of misrepresentation and looks only to whether the conduct was damaging to Mr. Canova.

SKDK and Ms. Rosen meet none of the elements of § 30124. The Complaint presents no evidence that they ever represented themselves as acting on behalf of anyone besides the DNC. It presents no evidence of any thing they said or did that was actually damaging to Mr. Canova. Finally, it presents no facts to support its conclusion that SKDK or Ms. Rosen participated in or conspired toward any sort of scheme. The only supposed evidence the Complaint presents of anything Ms. Rosen said or did is a single sentence in a single email. *See* Compl. Exh. 4.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaint as to them and take no further action.

¹ Even if the advice ascribed to Ms. Rosen by the Complaint could be understood as benefiting Representative Wasserman Schultz's campaign and not the DNC, there still would have been multiple bases on which she could have provided that same advice, without triggering any sort of contribution by the DNC. First, Commission rules provide that the DNC's day-to-day operating costs, like its general engagement with SKDK, do not result in any contribution to a federal candidate, unless made on behalf of that candidate and directly attributable to that candidate. *See* 11 C.F.R. § 106.1(c)(1). Second, an SKDK employee like Ms. Rosen may still engage in personal volunteer activities in support of a federal candidate, and indeed may make unlimited use of her work email to do so, so long as she remains able to complete her normal amount of work, does not increase SKDK's overhead or operating costs, and has not been coerced. *See id.* §§ 100.94(b), 114.9(a)(2)(ii).

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Very truly yours,



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