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BEFORE THE FEDERAL ELECTION COMMISSION
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MUR # 7165

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CATHERINE HINCKLEY KELLEY
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v.

MUR No. _____

GREAT AMERICA PAC
Dan Backer, Treasurer
107 S. West St Suite 555
Alexandria, VA 22314

ERIC BEACH
107 S. West St Suite 555
Alexandria, VA 22314

JESSE BENTON
107 S. West St Suite 555
Alexandria, VA 22314

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Great America PAC (I.D. C00608489), Eric Beach and Jesse Benton have solicited contributions from foreign nationals in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.*
2. Specifically, based on published reports, complainants have reason to believe that Great America PAC, Beach, and Benton violated FECA's ban on soliciting from a foreign national a contribution in connection with a Federal, State, or local election, 52 U.S.C. § 30121(a)(2), and the ban on providing substantial assistance in the solicitation or

making of a foreign national contribution, 11 C.F.R. § 110.20(h)(1), by working with purported agents of a Chinese national to make a \$2 million contribution to Great America PAC routed through non-profit and for-profit entities.

3. “If the Commission, upon receiving a complaint ... has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] ... [t]he Commission shall make an investigation of such alleged violation” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

FACTS

4. Great America PAC is an independent expenditure-only political committee (*i.e.*, a “super PAC”), originally called “TrumpPAC,” that filed its statement of organization with the Commission on February 8, 2016.¹ Eric Beach is Great America PAC’s co-chair.² Jesse Benton has been described as Great America PAC’s “chief strategist,”³ although after his conviction in May on federal campaign finance charges Great America PAC has described him as a “volunteer.”⁴
5. On October 24, 2016, *The Telegraph UK* reported that two undercover reporters approached Beach about contributing \$2 million from a fictitious Chinese national into Great America

¹ Great America PAC Statement of Organization, FEC Form 1 (filed February 8, 2016), <http://docquery.fec.gov/pdf/345/201602080300048345/201602080300048345.pdf>.

² Alex Isenstadt, *Pro-Trump Super PAC Ramps Up, Hires Top Political Operative*, POLITICO (Mar. 1, 2016), <http://www.politico.com/blogs/2016-gop-primary-live-updates-and-results/2016/03/donald-trump-super-pac-ramps-up-220037>.

³ Nick Gass, *Key Figure in Trump Super PAC Convicted in Campaign Money Case*, POLITICO (May 5, 2016), <http://www.politico.com/story/2016/05/trump-super-pac-convicted-222853>.

⁴ Maggie Haberman, A Donald Trump ‘Super PAC’ Is Hit With Leadership Woes, N.Y. TIMES (May 6, 2016), <http://www.nytimes.com/2016/05/20/us/politics/super-pac-trump-supporters.html>.

PAC, and the two Great America PAC officials offered to provide assistance to the foreign national in doing so by having the contribution funneled through other entities.⁵

6. According to an October 25 article and accompanying video recordings, in early October the *Telegraph* reporters, posing as consultants for a Chinese businessman, spoke by telephone with Great America PAC co-chair Beach:

In the initial telephone call with the reporter Mr. Beach appeared interested in the proposal for receiving a \$2 million (£1.6 million) donation from the Chinese donor, despite raising concerns about his nationality and saying he would need to know the donor's identity.

He suggested the donation could be put through a social welfare organisation called a 501(c)(4) - or C4 - but said "any path we recommend is legal".

The reporter then received an email from Mr. Benton, a senior figure at the PAC until being convicted in May in connection with buying a senator's endorsement during the last presidential election, by paying him through a video production company.

The subject of Mr. Benton's email was "From Eric Beach" and the message stated: "Eric Beach asked me to reach out".

He said in discussions that he was a "consultant" and that Mr. Beach had not wanted a "paper trail" of contact.⁶

7. The undercover reporters then met in-person with Benton on October 13. *The Telegraph* reported that, in order to avoid public disclosure of the foreign national's illegal contribution:

Mr. Benton proposed channelling the donation through his own company [Titan Strategies LLC] to mask its origin. It would then be passed on to two C4s before

⁵ Investigations Team, *Exclusive Investigation: Donald Trump Faces Foreign Donor Fundraising Scandal*, THE TELEGRAPH (Oct. 24, 2016), <http://www.telegraph.co.uk/news/2016/10/24/exclusive-investigation-donald-trump-faces-foreign-donor-fundrai/>.

⁶ Investigations Team & Ruth Sherlock, *Exclusive: Pro-Trump Campaign Group Should Face Inquiry Over 'Foreign Donor,' Leading Election Lawyer States*, THE TELEGRAPH (Oct. 25, 2016), <http://www.telegraph.co.uk/news/2016/10/25/exclusive-pro-trump-campaign-group-should-face-inquiry-over-fore/>.

being donated by them to the PAC, or simply used to fund projects the PAC had already planned.⁷

8. In a video that accompanied the stories, Benton says, “I’ll actually probably send money from my company to both” 501(c)(4)s.⁸ One of the 501(c)(4)s was reportedly Vision for America, which is run by Eric Beach.⁹
9. In the video, one undercover reporter asks, “I’m just thinking about logistics, how this is actually going to work – that is the 501(c)(4) that the money is going into, yeah?”¹⁰ Benton answers, “correct.”¹¹ The reporter then confirms, “and that’s through your company?”¹² Benton answers, “that’s correct.”¹³ The reporter asks, “how much is going to be passed onto the super PAC,” and Benton replies, “all of it.”¹⁴
10. According to the video, Benton told the undercover reporters the foreign national’s \$2 million contribution “will definitely allow us to spend two million more dollars on digital and television advertising for Mr. Trump,” and emphasized that the expenditures would be made by the super PAC.¹⁵ Benton also assured the undercover reporters that the fact of the Chinese donor’s contribution would be “whispered into Mr. Trump’s ear whenever your client feels that is appropriate.”¹⁶ The Telegraph also reported:

Mr. Benton said: “I don’t know if you ever hear journalists wring their hands about ‘dark money’ in politics—they’re talking about 501(c)(4)s.”

⁷ Investigations Team (Oct. 24, 2016), *supra* note 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

He told the reporters: “There’s no prohibition against what we’re doing, but you could argue that the letter of the law says that it is originating from a foreign source and even though it can legally go into a 501(c)(4) then it shouldn’t be done”.

11. Following that meeting, *The Telegraph* reported that “After a telephone conversation with Mr. Beach, Mr. Benton said that the PAC wished to invite the reporters to a party the group was hosting in Vegas on October 19, the night of the final presidential debate.”¹⁷ However, Benton warned that he would have to stay away because “everything that we’re doing is legal by the book but there’s perceptions and some grey areas.”¹⁸
12. As to *The Telegraph*, the undercover reporters met with Beach at the October 19 event.¹⁹ Benton had said Beach needed to be kept “deliberately ignorant” of the “exact arrangements,” but at the event Beach indicated that he was aware of the plan discussed with Benton.²⁰
13. In a video of the conversation, Beach told the undercover reporters to communicate to the Chinese donor that “you’re going to get credit but your ‘non-disclosed’ [donation] is not disclosed. Not just for your benefit, but for everyone’s benefit . . . I would never let you guys give to the PAC, to give to the C4, because that is illegal.”²¹
14. Beach also added “I’m not gonna twist your arm or anything, I just think that there’s no way that this group, and you guys have been participating indirectly or directly, won’t be remembered.”²²
15. Both Beach and Benton stated that it would be illegal for a foreign national to give to the super PAC, but claimed that this arrangement was legal.²³

17 *Id.*
 18 *Id.*
 19 *Id.*
 20 *Id.*
 21 *Id.*
 22 *Id.*

SUMMARY OF THE LAW

16. Federal law prohibits a foreign national from directly or indirectly making a contribution or donation in connection with a Federal, State, or local election, 52 U.S.C. § 30121(a)(1), and prohibits any person from soliciting a foreign national to make such a contribution or donation, *id.* § 30121(a)(2).
17. “Contribution” is defined as “any gift ... of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. 30101(8)(A)(i).
18. “Foreign national” is defined as “an individual who is not a citizen of the United States or a national of the United States.” 52 U.S.C. § 30121(b)(1-2).
19. The Commission has promulgated regulations at 11 C.F.R. § 110.20 implementing the statutory foreign national solicitation ban. Those regulations provide that “[n]o person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation” to a political committee in connection with U.S. elections. *Id.* § 110.20(g).
20. Commission regulations additionally provide that “[n]o person shall knowingly provide substantial assistance in the solicitation [or] making . . . of a contribution or donation” prohibited under this section. *Id.* § 110.20(h)(1).
21. Commission regulations define a “solicitation” as “an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution.” 11 C.F.R. § 300.2(m).²⁴ Solicitations may be made directly or indirectly. *Id.* Examples of

²⁴ The “solicit” definition at 11 C.F.R. § 300.2(m) is the relevant definition for section 110.20. *See* 11 C.F.R. § 110.20(a)(6).

such solicitations include a “communication that provides instructions on how or where to send contributions.” *Id.* § 300.2(m)(1)(ii).

22. A solicitation prohibited under 11 C.F.R. § 110.20 is made “knowingly” if the person is “aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry.” *Id.* § 110.20(a)(4)(iii). A solicitation is also made “knowingly” if a person is “aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national.” *Id.* § 110.20(a)(ii).

CAUSES OF ACTION

JESSE BENTON HAS KNOWINGLY AND WILLFULLY ILLEGALLY SOLICITED CONTRIBUTIONS FROM FOREIGN NATIONALS

23. Federal law and Commission regulations prohibit any person from soliciting direct or indirect contributions from a foreign national, 52 U.S.C. § 30121(a)(2), 11 C.F.R. § 110.20(g), or from providing substantial assistance for the making or soliciting of a foreign national contribution, *id.* § 110.20(h)(1).
24. “Solicitation” is broadly defined to include any direct or indirect request or recommendation that another person make a contribution, 11 C.F.R. § 300.2(m) (emphasis added), and includes any “communication that provides instructions on how or where to send contributions,” *Id.* § 300.2(m)(1)(ii). A person violates the foreign solicitation ban if they are “aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited ... is a foreign national.” *Id.* § 110.20(a)(ii).

25. Based on published reports and videotaped meetings, there is reason to believe that Jesse Benton has violated the foreign national solicitation ban by knowingly recommending that a foreign national indirectly make a contribution to Great America PAC, and by providing substantial assistance in developing a recommended plan for how the foreign national could make the illegal contribution.²⁵
26. Benton was aware that the Chinese donor described by *The Telegraph* was a foreign national. Benton recommended that the foreign national—purportedly represented by the undercover *Telegraph* reporters—channel the contribution to Great America PAC through Benton’s company, and Benton in turn would pass the funds to two 501(c)(4)s, which would then ultimately pass the funds to Great America PAC. Benton assured the undercover reporters that the foreign national’s contribution would arrive in the super PAC’s coffers: the reporter asked, “how much is going to be passed onto the super PAC,” and Benton replies, “all of it.” Benton also provided assurances that the foreign national’s contribution would be spent by the super PAC to influence the presidential election; he said the contribution “will definitely allow us to spend two million more dollars on digital and television advertising for Mr. Trump.”
27. Therefore, based on published reports, there is reason to believe that Jesse Benton has solicited contributions from foreign nationals, and knowingly provided substantial assistance for the making or soliciting of a foreign national contribution, in violation of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).

²⁵ If this plan had been executed, it would have violated FECA’s prohibition on making a contribution in the name of another, 52 U.S.C. § 30122.

28. Further, based on the published reports, there is reason to believe that Jesse Benton knew that soliciting foreign contributions for a super PAC was illegal. Therefore, the violations were knowing and willful, 52 U.S.C. § 30109(a)(6)(C).

GREAT AMERICA PAC AND ERIC BEACH HAVE KNOWINGLY AND ILLEGALLY SOLICITED CONTRIBUTIONS FROM FOREIGN NATIONALS

29. According to published reports and videotaped meetings,, there is reason to believe that Great America PAC and its co-chair Eric Beach have violated the prohibition on soliciting contributions from foreign nationals, 52 U.S.C. § 30121(a)(2), 11 C.F.R. § 110.20(g), and the prohibition on providing substantial assistance for the making or soliciting of a foreign national contribution, *id.* § 110.20(h)(1), by knowingly recommending that a foreign national indirectly make a contribution to Great America PAC.²⁶
30. The undercover *Telegraph* reporters first reached out directly to Beach, as a representative of Great America PAC, to propose a \$2 million contribution from a Chinese foreign national. According to the *Telegraph*, Beach apparently recognized that a foreign national could not legally contribute, and instead recommended that the foreign national indirectly make a contribution to Great America PAC “through a social welfare organization called a 501(c)(4).”
31. After Beach’s telephone conversation, Jesse Benton emailed the undercover *Telegraph* reporters, writing “Eric Beach asked me to reach out.” The undercover reporters then met in person with Benton, who described a plan to funnel the foreign national’s contribution to Great America PAC through Benton’s own company and two 501(c)(4)s—one of which is run by Beach.

²⁶ If this plan had been executed, it would have additionally violated FECA’s prohibition on making a contribution in the name of another, 52 U.S.C. § 30122.

32. Beach then met personally with the undercover reporters, and indicated he was aware of the plan that Benton had discussed, and that a foreign national would be making a contribution to Great America PAC.²⁷ Beach encouraged the undercover reporters to tell their purported foreign national client to make the contribution, emphasizing that the foreign national is “going to get credit” for the contribution, but that the contribution “is not disclosed, not just for your benefit, but for everyone’s benefit.” Beach also acknowledged that the foreign national donor would be supporting Great America PAC “indirectly or directly.”
33. Therefore, based on published reports, there is reason to believe that Great America PAC and its agent Eric Beach have solicited contributions from foreign nationals, and knowingly provided substantial assistance for the making or soliciting of a foreign national contribution, in violation of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).
34. Further, based on the published reports, there is reason to believe that Great America PAC and Eric Beach knew that soliciting foreign contributions for a super PAC was illegal. Therefore, the violations were knowing and willful, 52 U.S.C. § 30109(a)(6)(C).

PRAYER FOR RELIEF

35. Wherefore, the Commission should find reason to believe that Great America PAC, Eric Beach, and Jesse Benton have knowingly and willfully violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30121, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin the respondents from any and all

²⁷ Beach also noted that “I would never let you guys give to the PAC, to give to the C4, because that is illegal.”

violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

October 26, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence M. Noble", written over a horizontal line.

Campaign Legal Center, by
Lawrence M. Noble
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Washington, DC 20005
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A handwritten signature in blue ink, appearing to read "Catherine Hinckley Kelley", written over a horizontal line.

Catherine Hinckley Kelley
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Washington, DC 20005
(202) 736-2200

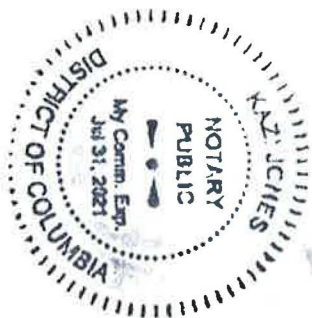
Lawrence M. Noble
Brendan M. Fischer
The Campaign Legal Center
1411 K Street, NW, Suite 1400
Washington, DC 20005

Counsel to the Campaign Legal Center

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

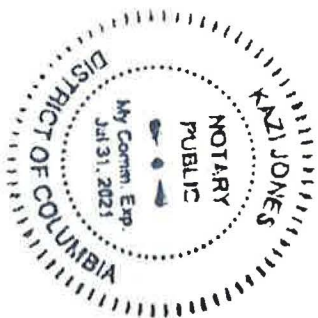
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center

Lawrence M. Noble

Sworn to and subscribed before me this 26 day of October 2016.

Notary Public

For Complainant Catherine Hinckley Kelley

Catherine Hinckley Kelley

Sworn to and subscribed before me this 26 day of October 2016.

Notary Public