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Jeff S. Jordan, Esq.
Assistant General Counsel
Federal Election Commission
Office of Complaints Examination and Legal Administration
999 E Street, NW
Washington, DC 20463

RE: MUR 7266 / Response of Jared Kushner to Complaint

Dear Mr. Jordan:

We represent Mr. Jared Kushner. On behalf of our client, we write this letter in response to the Complaint in the above-referenced MUR. The Complaint alleges that our client solicited a contribution, or provided substantial assistance in the solicitation of a contribution, from a foreign national, in violation of 52 U.S.C. §20121(a)(2) or 11 C.F.R. § 110.20(h)(1). The Commission should dismiss the Complaint and close the file in this matter, as the Complaint on its face is insufficient and provides no reason to believe that a violation of the federal campaign finance laws occurred. In short:

1. The Complaint fails to allege that information allegedly offered to a person(s) affiliated with a presidential campaign committee about its election opponent by a foreign national constituted a "contribution" or "anything of value" under 52 U.S.C. § 30101(8)(A);
2. Mr. Kushner's merely being forwarded a long email chain with a line indicating a time and place for a meeting and his late arrival and brief attendance at a group meeting with a foreign national do not constitute "solicitation" of a contribution from a foreign national under 52 U.S.C. § 30121; and
3. Mr. Kushner's mere attendance at the meeting with the foreign national could not constitute "substantial assistance" under 11 C.F.R. § 110.20(h)(1).

Under the Federal Election Campaign Act and the Commission's regulations, a complaint must state a "clear and concise recitation of the facts which describe a violation of statute or regulation

over which the Commission has jurisdiction.”¹ The Commission must dismiss a complaint when the complaint fails to allege facts amounting to a violation of law. The instant Complaint does not come close to meet the Commission’s requirements, and therefore the Complaint must be dismissed.

FACTUAL BACKGROUND

The Complaint alleges that during President Donald J. Trump’s 2016 campaign, the campaign committee, Donald J. Trump for President, Inc., and persons affiliated with the committee, including Donald Trump Jr., Jared Kushner, and Paul Manafort, solicited, or provided substantial assistance in the solicitation of, a contribution from a foreign national. According to the Complaint, in June 2016, Mr. Trump Jr. arranged a meeting at Trump Tower with a Russian lawyer and others.² The Complaint alleges that the meeting was prompted by an email to Mr. Trump Jr. from an associate, Rob Goldstone, who suggested that the “Crown prosecutor of Russia” had offered to provide “some official documents and information that would incriminate Hillary [Clinton].”³

The Complaint alleges that Donald Trump Jr. asked Mr. Kushner to attend the meeting, which was originally scheduled to take place on June 9, 2016 at 3:00 PM.⁴ There is no allegation in the Complaint that Mr. Trump Jr. told Mr. Kushner anything about the substance of that proposed meeting.⁵ Subsequently, Mr. Trump Jr. changed the time of that meeting to 4:00 PM.⁶ To notify Mr. Kushner that the time had been changed, on June 8, 2016, Mr. Trump Jr. forwarded an email to Mr. Kushner saying, “Meeting got moved to 4 tomorrow at my offices.”⁷ This email was at the top of a long email chain, and there is no allegation that Mr. Kushner read anything at the time other than the notice of the changed schedule for the meeting.

The Complaint alleges that the meeting began with an exchange of pleasantries, after which a woman identified as Natalia Veselnitskaya claimed to have information that individuals connected to Russia were funding the Democratic National Committee and supporting Secretary Clinton.⁸ After making this vague claim, without offering further supporting information, Ms. Veselnitskaya

¹ 11 C.F.R. § 111.4(d)(3).

² Complaint at ¶ 7.

³ Complaint at ¶ 15.

⁴ Complaint at ¶ 9; see also Jared Kushner’s Statement on Russia to Congressional Committees (July 24, 2017), available at <http://www.cnn.com/2017/07/24/politics/jared-kushner-statement-russia-2016-election>.

⁵ Complaint at ¶ 9.

⁶ Complaint at ¶ 21.

⁷ *Id.*

⁸ Complaint at ¶ 10.

changed the subject to the adoption of Russian children.⁹ The Complaint does not allege any further discussion relating to Secretary Clinton or any alleged opposition research. There is no allegation concerning when Mr. Kushner arrived at the meeting, or that he participated in any way.¹⁰

The following are clear from the allegations (and the lack thereof) in the Complaint:

- Mr. Kushner did not arrange the June meeting;
- Mr. Kushner did not provide any assistance in arranging the meeting;
- Mr. Kushner did not invite anyone to the meeting or set the agenda for the meeting;
- Mr. Kushner did not take any action after the meeting to facilitate further contact or receipt of any information about Secretary Clinton; and
- Mr. Kushner did not engage in any discussion at the meeting about opposition research or any derogatory information about Secretary Clinton. There are no allegations that Mr. Kushner spoke at the meeting about the campaign at all.

LEGAL ANALYSIS

The claims in the Complaint against Mr. Kushner are premised solely on his alleged attendance at a single meeting with a foreign national. As discussed below, the alleged facts provide no reason to believe that Mr. Kushner solicited anything before, during, or after this meeting. Nor do the alleged facts provide any reason to believe that Mr. Kushner's mere attendance at the meeting constituted substantial assistance of an improper solicitation. Indeed, the alleged facts – taken on their face – fail to establish that the foreign national's offer of derogatory information about candidate Trump's opponent constitute a "contribution" under the applicable law.

First and foremost, the answer to the Complaint is that our client was not involved in any conduct -- no matter what transpired among or between others before and during the meeting -- that could rise to the level of activity covered by the campaign laws. However, even as to the allegations as

⁹ Complaint at ¶ 11.

¹⁰ According to press reporting of Mr. Kushner's statement to Congressional Committees, see *supra* n. 4. at 5, Mr. Kushner arrived late to the meeting, after it had already begun. When he arrived Ms. Veselnitskaya was talking about U.S. adoptions of Russian children. Mr. Kushner had no idea why that topic was being raised, and quickly determined that his time was not well-spent at the meeting. After about ten minutes, he emailed his assistant and asked her to call him on his cell phone because he "need[ed] an excuse to get out of meeting." Mr. Kushner left the meeting soon after. See *id.* While informative, the instant Complaint fails even without reference to these additional facts.

presented, that is, as if he did attend a meeting in which anything campaign-related was discussed, the Complaint would still have to be dismissed.

I. THE ALLEGED INFORMATION OFFERED BY A FOREIGN NATIONAL AT THE MEETING WAS NOT A CONTRIBUTION OR ANYTHING OF VALUE UNDER 52 U.S.C. § 30101(8)(A)

The Complaint is based on the erroneous premise that the alleged offer to provide negative information about candidate Hillary Clinton during the 2016 presidential election campaign was a "contribution" or a donation of a "thing of value" under 52 U.S.C. § 30121. It was not.

52 U.S.C. § 30121 prohibits the solicitation of a "contribution or donation of money or other thing of value" from a "foreign national."¹¹ The Act defines "contribution" to mean "any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."¹² "Anything of value" includes in-kind contributions, such as the provision of goods or services without charge or at a charge that is less than the usual and normal charge.¹³

Not all conversations about political opponents or opposition research amounts to in-kind contributions under the statute. Indeed, the Commission distinguishes information that has a distinct market or monetary value from general information and exchanges of ideas. For example, the Commission has treated information about a political opponent as a "thing of value" or an "in-kind contribution" only when the information exchanged or sought to be exchanged is offered by a commercial vendor and possesses an actual monetary value, such as professional data for which a campaign would normally pay, but instead was provided free of charge or at a discounted rate.¹⁴

On the other hand, the Commission has held that mere exchanges of general information, without an exchange of the underlying data, research, or professional work product for which one would normally pay, is not sufficient to prove an "in-kind contribution" under the statute. For example, in *In the Matter of Senator Claire McCaskill, et al.*, the Commission held that an alleged conversation with a hired pollster about the effectiveness of a television advertisement on an opponent's election results in "broad generalities" did not amount to an in-kind contribution of "opinion poll

¹¹ 52 U.S.C. § 30121.

¹² 11 C.F.R. § 100.51-56.

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ See e.g., Notification with Factual and Legal Analysis to Rep. Russell Carnahan, *In the Matter of Congressman Russ Carnahan, et al.*, MUR 6414 (July 17, 2012) (finding that some investigative services that were provided by a professional research firm to the congressional committee free of charge and/or for a discounted price raised the possibility that the committee accepted a "contribution," however because of the small amounts potentially in violation, the Commission exercised its prosecutorial discretion and dismissed the matter).

results." While the Commission recognized that specific polling questions and polling results and detailed analysis of that data could amount to an in-kind contribution, the Commission held that "general advice informed by a poll" would not apply in the enforcement context.¹⁵ The Commission continued, "that which makes the provision of poll results to a committee something 'of value' – and thus a 'contribution' under the Act – is in the recipient's access to the detailed, raw data generated from the poll."¹⁶ In contrast, conversations in "broad generalities" are not something of value.¹⁷

The Commission's distinction between general exchanges of information and information that has an ascertainable market value is a meaningful one. First, the Complainant's view that any negative information exchanged or sought about an opponent during an election constitutes a "contribution" or a "thing of value," would raise considerable First Amendment concerns as it would infringe on the ability of speakers to engage in protected political speech and the public right to receive that information.¹⁸ Second, this interpretation would have considerable practical effects on campaigns going forward. For example, any time an interest group, industry organization, or other group met with a campaign to discuss information and ideas they had developed or researched (including information that would bear negatively on an opponent), such meetings would be considered a "contribution." Never before has the Commission considered this exchange of ideas to be a "contribution" and should not do so now.

In this case, the Complainant has failed to allege any facts that the information allegedly offered by the foreign national was anything more than general information about the campaign committee's opponent. There is no allegation that the foreign national was in the business of providing opposition research, nor is there any allegation that the information to be provided had any monetary or commercial value. Indeed, the Complaint alleges that the information supposedly provided at the meeting was "vague," and no details or supporting information was offered.¹⁹ The Commission would be hard-pressed to satisfactorily place any monetary value on the communication or the information sought, based on the allegations in the Complaint. The general allegation that persons associated with a candidate sought negative information about his/her opponent, without more, cannot amount to an effort to seek a "contribution" under the statute and in accordance with prior Commission decisions.

II. MR. KUSHNER DID NOT, DIRECTLY OR INDIRECTLY, SOLICIT A THING OF VALUE FROM A FOREIGN NATIONAL

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7.

¹⁸ See generally, *Citizens United v. FEC*, 558 U.S. 310, 325 (2010).

¹⁹ Complaint at ¶ 10.

The Complaint claims that Mr. Kushner “knowingly solicited” a prohibited contribution from a foreign national. Even assuming *arguendo* that the information allegedly offered by the foreign national could constitute an “in-kind contribution,”²⁰ the Complainant has not presented any facts that demonstrate Mr. Kushner personally solicited that contribution, directly or indirectly.

The Commission defines “solicit” broadly to mean “to ask, request, or recommend, explicitly or implicitly that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”²¹ A solicitation “contains a clear message asking, requesting, recommending” a contribution either directly or indirectly. A review of the Commission’s actions relating to the “solicitation” provision under 52 U.S.C. § 30121 (formerly 2 USC § 441e(a)(2)), over the past two decades, shows that the only time the Commission has gone forward with a complaint in this area is when the complaint established that the Respondent (1) requested funds from a foreign national directly, such as in person, through email, or printed promotional materials; or (2) coordinated with others to request funds from foreign nationals and provided directions for making that contribution.²²

Even assuming all of the facts in the Complaint are true, there is no evidence that Mr. Kushner acted in a way that would meet the Commission’s broad definition of solicitation. There is no allegation that Mr. Kushner sent a message to the foreign national containing a “clear message asking, requesting, recommending” a contribution. Quite the opposite. Mr. Kushner had nothing to do with setting up the meeting nor was Mr. Kushner a party to any communication arranging the meeting with the foreign national. There is no allegation that Mr. Kushner had any communication with the foreign national at all before the meeting on June 9, 2016 – nor is there any reason to believe that Mr. Kushner said anything beyond common pleasantries during the time that he was present at the meeting.

Similarly, there is no reason to believe that Mr. Kushner coordinated with anyone else to solicit the alleged opposition research. There is no allegation that Mr. Kushner asked Mr. Trump Jr. or Mr. Goldstone to set up the meeting with Ms. Veselnitskaya. The Complaint does not allege that Mr. Kushner provided Mr. Trump Jr. or Mr. Goldstone directions to set up such a meeting. Finally, the

²⁰ Complaint at ¶ 3.

²¹ 11 C.F.R. § 300(m).

²² See e.g., First General Counsel’s Report, *In the Matter of Michael Grimm for Congress et al.*, MUR 6528 (Oct. 30, 2014); Second General Counsel’s Report, *In the Matter of Michael Grimm for Congress et al.*, MUR 6528 (Sept. 24, 2015) (During the Congressional election period, candidate Michael Grimm emails known foreign nationals telling them how much money he is seeking and how to make the contribution, sometimes directing foreign nationals to wire the money through intermediaries); *In the Matter of Matthew Fong et al.*, MUR 4530 (Feb. 18, 2000) (During the California State Treasury election, candidate Matt Fong, at various times approached members of the Chinese-American community, including a prominent Asian businessman, and asked them to contribute to his campaign.); First General Counsel’s Report, *In the matter of Hillary for America et al.*, MUR 6962 (Jan. 18, 2017).

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Complaint does not allege that anyone spoke at the meeting with Ms. Veselnitskaya about obtaining opposition research on Secretary Clinton at all, particularly while Mr. Kushner was present. To the contrary, the only discussion was about adoptions. Indeed, it is also not disputed in the Complaint that Mr. Kushner did not know any of the attendees other than Mr. Manafort and Mr. Trump Jr. before the meeting and never spoke or interacted with the other attendees again.

The Complaint claims solely that Mr. Kushner solicited the contribution by "participating in Trump Jr.'s arrangements to accept the foreign national contribution at an in-person meeting. . . ." ²³ This is nonsensical. The facts are clear that Mr. Kushner only "participated" by agreeing to attend the meeting, invited to do so by his brother-in-law with no knowledge of its purpose or attendees. He did nothing more. Kushner did not solicit a contribution from a foreign national, either directly or indirectly.

III. MR. KUSHNER DID NOT PROVIDE "SUBSTANTIAL ASSISTANCE"

The Complaint also alleges that Mr. Kushner provided substantial assistance in the solicitation of the allegedly improper contribution, in violation of 11 C.F.R. § 110.20(h)(1). For the reasons discussed above, the Complaint provides no reason whatsoever to support this claim.

As discussed in the prior section, there are no facts to support that Mr. Kushner provided any "assistance" to anyone to solicit anything. He had no role at all in organizing, arranging, or facilitating the June meeting. Nor does the Complaint allege any facts to remotely suggest that Mr. Kushner took any steps at all to arrange, organize, facilitate, or otherwise help anyone solicit anything from the foreign national before or after. All the alleged facts are to the contrary.

To the extent the Complainant argues that Mr. Kushner's participation in the meeting somehow constituted "assistance," it was hardly "substantial." While the regulations do not define "substantial assistance," the Commission has interpreted the term as being analogous to a "but for" cause. For example, in *In the matter of Hillary for America et al.*,²⁴ the Commission's General Counsel reported that the Respondent violated the Act by knowingly providing substantial assistance to a foreign national in making a contribution.²⁵ In that case, the Respondent was standing in line to buy Hillary Clinton merchandise during the presidential election.²⁶ While in line, Respondent stood next to someone she knew to be a Canadian national.²⁷ After the Canadian national was told she could not buy campaign merchandise at a rally because it would be an improper donation, the Respondent accepted the Canadian national's money, and made the

²³ Complaint at ¶ 42.

²⁴ First General Counsel's Report, *In the matter of Hillary for America et al.*, MUR 6962 (Jan. 18, 2017).

²⁵ *Id.* at 7.

²⁶ *Id.* at 4.

²⁷ *Id.*

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donation in her own name.²⁸ The General Counsel's report said, "*But for* [Respondent's] assistance, the Canadian national could not have made a contribution to the Committee."²⁹

In the instant case, Mr. Kushner's mere attendance at the meeting was hardly a "but for" cause of the alleged solicitation. To the contrary, the meeting was arranged and organized by others, and Mr. Kushner took no steps before, during, or after the meeting to facilitate the alleged contribution. Mr. Kushner did not set up the meeting. Mr. Kushner did not communicate with Ms. Veselnitskaya or any other party to schedule the meeting. All Mr. Kushner is alleged to have done was to show up. The Complaint fails to allege any "assistance" in soliciting a contribution from Ms. Veselnitskaya, let alone "substantial assistance."

For the foregoing reasons, Mr. Kushner respectfully submits that the Complaint should be dismissed and the file closed in this matter.

Respectfully,



Abbe David Lowell

²⁸ *Id.* at 4-5.

²⁹ *Id.* at 7 (emphasis added).