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CONFIDENTIAL
COMMUNICATION

VIA E-MAIL TO CELA@FEC.GOV

Federal Election Commission
 Office of Complaints Examination & Legal Administration
 Attn: Kathryn Ross, Paralegal
 1050 First Street, N.E.
 Washington, DC 20463

Re: Matter Under Review 7379

Dear Office of Complaints Examination & Legal Administration:

On behalf of Donald J. Trump for President, Inc. and Treasurer Bradley T. Crate,
 enclosed is a response to the Complaint in the above-captioned MUR.

Very truly yours,



E. Stewart Crosland

Enclosure

cc: Megan Sowards Newton

BEFORE THE FEDERAL ELECTION COMMISSION

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) **MUR 7379**
)

**RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC. AND BRADLEY T.
CRATE, AS TREASURER, TO THE COMPLAINT**

By and through undersigned counsel, Donald J. Trump for President, Inc. and Treasurer Bradley T. Crate (collectively, “Respondents” or “the Campaign”) respond to the Complaint in the above-captioned MUR. The Complaint wrongly speculates, based on no evidence at all, that payments the Campaign made between October 2017 and January 2018 to the McDermott, Will & Emery law firm (“McDermott”) to defray certain legal expenses incurred by Michael Cohen may have been prohibited personal use of campaign funds. In truth, those payments were for legal costs Mr. Cohen incurred in 2017 from McDermott’s representation of him in connection with the investigations into alleged Russian interference in the 2016 presidential election. Those legal costs would not have existed “irrespective of” campaign activities – as the Complaint even admits – and the Campaign’s payments were appropriate.

Under the Federal Election Campaign Act and FEC regulations, candidate’s campaign committees “have wide discretion over the use of campaign funds.” *Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995). A campaign committee may use contributions for *any lawful purpose*, so long as the funds are not spent for “personal use.” 52 U.S.C. § 30114(a)(6); *accord* 11 C.F.R. § 113.2(e). “Personal use results” only when campaign contributions are “used to fulfill any commitment, obligation, or expense of a person that *would exist irrespective of* the candidate’s election campaign or individual’s duties as a holder of Federal office.” 52 U.S.C. § 30114(b)(2) (emphasis added); *accord* 11 C.F.R. § 113.1(g). “If campaign funds are used for a financial

obligation that is caused by campaign activity or the activities of an officeholder, that use is not personal use.” 60 Fed. Reg. at 7,863–64 (Feb. 9, 1995).

The Commission assesses a campaign’s use of funds to defray legal expenses on a case-by-case basis, reviewing the allegations in the underlying legal proceeding to determine the nature of the expenses. 11 C.F.R. § 113.1(g)(1)(ii); *see also FEC v. Craig for U.S. Senate*, 816 F.3d 829, 836–37 (D.C. Cir. 2016) (discussing “allegations standard”). “[A] candidate’s authorized committee may use campaign funds to pay legal fees and expenses . . . when the allegations in th[e] investigation are directly related to a candidate’s campaign activity or duties as a Federal officeholder.” Advisory Op. 2009-12 (Coleman) at 5 (June 26, 2009); *see also Craig for U.S. Senate*, 816 F.3d at 836. In other words, “[t]he Commission has long recognized” that no personal use results when a committee can “‘reasonably show that the expenses . . . resulted from campaign or officeholder activities.’” Advisory Op. 2009-20 (Visclosky for Congress) at 3 (quoting 60 Fed. Reg. at 7,867).

The Campaign’s payments at issue in the Complaint fall into this category. They defrayed legal costs incurred for services McDermott rendered Mr. Cohen between June and December 2017 in connection with the Special Counsel and congressional investigations into alleged Russian efforts to influence the 2016 election. *See* Compl. 2 (noting that Cohen retained McDermott “to help him navigate” the investigations (internal quotation marks omitted)). Those investigations would not have existed “irrespective of” the Campaign, and though Mr. Cohen had no formal role in the Campaign, he was a longtime employee of Mr. Trump’s and acted as a volunteer media surrogate at times prior to the 2016 election. Accordingly, the Campaign could, in the exercise of its “wide discretion,” use its funds to defray Mr. Cohen’s legal fees and

expenses related to these investigations into campaign activity – a fact even the complaint acknowledges. *See, e.g.*, Advisory Op. 2009-20 (Visclosky); *see also* Compl. 6–7.

* * *

Simply put, the Campaign’s payments to McDermott at issue in the Complaint were consistent with Commission regulations and precedents and entirely appropriate. Respondents therefore respectfully request that the Commission dismiss this matter and close the file.