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June 27, 2018

Christal Dennis
Office of Complaints Examination
  & Legal Administration
Office of General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20002

     Re: MUR 7403 (Dr. John Joyce for Congress)

Dear Ms. Dennis,

     The following response to the Complaint designated MUR 7403 is submitted by the undersigned counsel. The Complaint fails to allege sufficient specific facts that, even if shown to be true, would constitute a violation of the Act and should be dismissed pursuant to the standard set forth in the Statement of Reasons issued by the majority in MUR 4960 (Clinton). As that Statement makes clear, "[u]nwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true." MUR 4960 (Clinton), Statement of Reasons.

     The Complaint alleges: "Given that both Dr. John Joyce for Congress and Defending Main Street SuperPAC Inc. are using the same media and political consulting firm – Red Maverick Media – in the same congressional race, it appears that there is illegal coordination between Dr. John Joyce's campaign and the Defending Main Street SuperPAC Inc. through a common vendor. 11 C.F.R. § 109.21(d)." Complaint at 2. This is not how the regulation works. The mere existence of a common vendor does not violate any provision of the Act or Commission regulations, nor does it create a presumption of coordination. *See* Final Rule on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 436 (Jan. 3, 2003) (explaining that the Commission "disagrees with those commenters who contended the proposed standard created any 'prohibition' on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination."); *see also* MUR 6050, First General Counsel's Report at 9 ("the use of a common vendor, in and of itself, has not been found by the Commission to be sufficient to meet the 'conduct' prong of the coordination test").

     A violation of the Act under the Complainant's theory requires demonstrating that the common vendor provided certain services to a candidate or political party during the previous 120 days, and then used or conveyed to the person paying for a public communication

information about the campaign plans, projects or needs of the clearly identified candidate or the candidate's opponent, **and that** the information used or conveyed was material to the creation, production, or distribution of the communication. 11 C.F.R. § 109.21(d)(4)

Here, the Complainant alleges only the existence of a common vendor, and then speculates that "[g]iven the limited size of Red Maverick Media, it is likely they do not have prior 'firewall' procedures." Again, this is not how the regulation works. Even if it was true that Red Maverick Media did not have a "firewall" in place, that would not demonstrate, or even provide evidence of, any violation of the Act. A firewall is only a safe harbor; it is not a requirement. Claiming the absence of a firewall does not serve as a substitute for providing actual evidence that makes the showing detailed in the paragraph above.

Nevertheless, the Complainant's allegations about the lack of a firewall are factually incorrect. First, Red Maverick Media's public website shows that at least 16 individuals work for the firm – obviously more than enough to allow for a firewall between two clients. Second, Red Maverick Media operated with a written firewall policy in place in connection with its work for the two named respondents. *See* Affidavit of Raymond Zaborney.

The Complaint provides no evidence that even suggests that any information flowed between Red Maverick Media employees or consultants who provided services to the two named respondents. There is no "specific information indicat[ing] that, despite the firewall, information about the candidate's ... campaign plans, projects, activities, or needs that [was] material to the creation, production, or distribution of the communication was used or conveyed to the person paying for the communication." 11 C.F.R. § 109.21(h).

In summary, the Complainant alleges facts that, even if taken as true, do not constitute a violation of the Act. Using a common vendor does not violate the Act, a "firewall" is not a legal requirement, and the Complainant provides no evidence suggesting that the firewall in place was ineffective or otherwise breached. Accordingly, the Complaint must be dismissed.

Please feel free to contact us if you have any questions or require any additional information.

Sincerely,
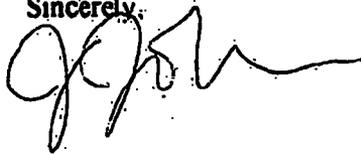
Jessica Furst Johnson
Holtzman Vogel Josefiak Torchinsky PLLC
Counsel to Dr. John Joyce for Congress

★★★

AFFIDAVIT OF RAYMOND ZABORNEY

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Comes the Affiant, Raymond Zaborney, and after have first been duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to maker this Affidavit.

2. I am President of Red Maverick Media ("RMM"). RMM provides political consulting, strategy and media services to candidates, political parties and advocacy groups across the country. It has a staff of approximately 22 persons at all times relevant to the events described in the Complaint.

3. Red Maverick Media has adopted and implemented a written Common Vendor Coordination Firewall Policy pursuant to and compliant with 11 CFR 109.21(h). The current revision of the Policy was adopted August 10, 2016 and consists of 5 pages (eight including appendices).

4. This Policy is "adopted and implemented to comply with 11 CFR 109.21(h) by prohibiting the flow of information between those providing services for the person paying for the communication and those currently or previously providing services to the candidate or a political party committee."

5. The Policy is implemented, *inter alia*, (1) by distribution to all employees, officers and directors of RMM, and to all clients, contractors and consultants of RMM, (2) by mandatory compliance training designed and presented by counsel (D. Eric Lycan of Dinsmore & Shohl, LLP) for all employees and staff on at least an annual basis, the most recent of which occurred on April 17, 2018, and (3) by a designated Compliance Officer who is responsible for evaluating each potential client engagement and implementing specific procedures outlined in the Policy to ensure compliance.

6. On April 27, 2018, RMM was asked to perform services for Defending Main Street SuperPAC, Inc. ("DMS"), in Pennsylvania's 13th congressional district. Because RMM was engaged at the time by a candidate for Congress in that District, Dr. John Joyce For Congress, RMM applied the Policy to these clients.

7. Separate staff was assigned to each client and they were instructed not to communicate or share information between these clients, pursuant to the Policy. RMM's IT consultant created two separate server pathways that could only be accessed by identified members of each team. All art files, data files and invoicing information for each client were kept on these separate server areas to which only assigned team members had access.

8. A Graphic Design consultant and a print and mail fulfillment vendor were thereafter selected to produce work for DMS. The Policy was provided to each and they were instructed how to abide by its provisions, including to include only specific staff on correspondence and proofs.

9. The Policy was adhered to at all times. No information about the campaign plans, projects, activities or needs of Dr. John Joyce for Congress, or information previously used by the RMM in serving Dr. John Joyce for Congress, was shared with DMS or any RMM employee, contractor or vendor providing services to DMS, that was in any way material to the creation, production or distribution of any communication.

Further, Affiant sayeth naught.
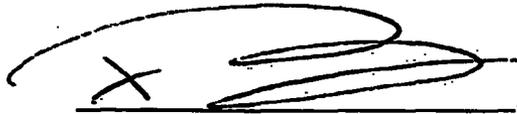
Raymond Zaborney

Commonwealth of Pennsylvania
County of _Dauphin_

Signed and sworn to before me on _27th Jun 2018_ by _Ray Zaborney_

Signature of Notarial Officer

Title of office

My commission expires

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
SHEILA REED FLICKINGER, Notary Public
Harrisburg City, Dauphin County
My Commission Expires May 31, 2010