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September 28, 2018

CONFIDENTIAL
COMMUNICATION

VIA E-MAIL TO CELA@FEC.GOV

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

Re: Matter Under Review 7427

Dear Office of Complaints Examination & Legal Administration:

On behalf of Cory Gardner for Senate and Treasurer Lisa Lisker, enclosed is a response to the Complaint in the above-captioned matter.

Very truly yours,



Megan Sowards Newton

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

)
) **MUR 7427**
)

**RESPONSE OF CORY GARDNER FOR SENATE
 AND TREASURER LISA LISKER TO THE COMPLAINT**

Cory Gardner for Senate and Treasurer Lisa Lisker (“the Campaign”) hereby submit this response to the Complaint in the above-captioned MUR, which the Commission should dismiss immediately as to the Campaign because it fails to assert any particular facts that state a violation of law and actually concedes that the Campaign did *not* violate the law.

A. Complainants Concede that the Campaign Did Not Violate the Law

The Complaint fails to allege that the Campaign has violated the Federal Election Campaign Act or FEC regulations. To the contrary, the Complaint openly recognizes that the Campaign did not engage in prohibited coordination under 11 C.F.R. § 109.21. *See* Compl. ¶ 53 n.103 (citing 11 C.F.R. § 109.21(b)). The Complaint instead baldly asserts, without citing to any particular facts, that that the Campaign’s media vendor (OnMessage, Inc.) may have used non-public, strategic information derived from its work for the Campaign to develop certain communications for two outside groups because it formed a new entity that consulted on certain independent expenditures (Starboard Strategic, Inc.). *Id.* ¶¶ 53–54. Although Complainants spill a great deal of ink about an overlap between two vendors (OnMessage, Inc. and Starboard Strategic, Inc.), even if true, the Complaint does not describe any facts that showing that agents of the Campaign violated the coordination regulations. The Complaint does not proffer any evidence that any agent of the Campaign requested or suggested that an outside group air a communication. And despite conclusory statements to the contrary, the Complaint does not provide any facts that demonstrate that any agent of the Campaign conveyed strategic, non-

public information regarding the Campaign's plans, projects, or needs to any entity making independent expenditures in the 2014 Colorado Senate race.

B. Use of a Common Vendor Is Not A Violation

Although Complainants invite the Commission to find reason to believe solely on the basis of a common vendor, the use of a common vendor is not a per se violation of the coordination regulations. Indeed, in promulgating its common vendor regulations, the Commission stated unequivocally that vendors "are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders" provided that they do not share "information about plans, projects, activities or needs of a candidate or political party . . . to the spender who pays for a communication." *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 436 (2003).

C. Purely Speculative Charges Do Not Form a Basis To Find Reason to Believe

Because the Complaint is utterly devoid of any facts that state a violation of law against the Campaign, the Commission must follow its longstanding position that the reason to believe standard found at 52 U.S.C. § 30109(a)(2) "means more than merely a reason to suspect." MUR 7135 (Donald J. Trump for President), Statement of Reasons of Chair Caroline C. Hunter and Commissioner Matthew S. Peterson at 6 n. 31. In that matter, as in many others, the Commissioners recognized that "a complaint must still *show* more than a mere possibility of unlawful conduct." *Id.* (citing to *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). *See also* MUR 6296 (Buck for Colorado), Statement of Reasons of Vice-Chair Caroline Hunter and Commissioners Donald F. McGahn and Matthew S. Peterson at 7 ("[T]he Act's complaint requirements and limits on Commission investigative authority serve no purpose if the Commission proceeds anytime it can imagine a scenario under which a violation may have

occurred.”); MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n. 12 (“[T]he RTB standard is not met if the Commission simply ‘did not have ... sufficient information to find *no* reason to believe’ ... The Commission must have more than unanswered questions before it can vote to find RTB and thereby commence an investigation.”).

Under FECA, a complaint must satisfy specific requirements in order to be deemed legally sufficient. Specifically, a complaint must contain a “clear and concise recitation of the facts which describe a violation of statute or regulation over which the Commission has jurisdiction.” 11 C.F.R. § 111.4(d)(3). Absent such a “clear and concise recitation of the facts,” a complaint is legally deficient and must be dismissed. *See* MUR 6554 (Friends of Weiner), Factual and Legal Analysis at 5 (“The Complaint and other available information in the record do not provide information sufficient to establish [a violation].”). As in those matters, Complainants have failed to include any evidence that a violation of law has occurred in this instance. For this reason alone, the Commission must dismiss the Complaint as legally deficient and find no reason to believe that a violation has occurred.

D. Conclusion

For the above-mentioned reasons, the Commission should dismiss the Complaint as to the Campaign and close the file.