### KAUFMAN LEGAL GROUP A PROFESSIONAL CORPORATION

Digitally signed by Kathryn Ross X Date: 2018.09.28 09:50:20 -04'00'

September 27, 2018

Direct: (213) 452-6550

#### **VIA U.S. MAIL AND E-MAIL**

Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20436
Email: CELA@fec.gov

**Re:** <u>FEC MUR 7448</u>

Dear Mr. Jordan:

We are writing as counsel to Citizens for Waters and its Treasurer, David L. Gould, in response to the complaint filed by the National Legal and Policy Center on or about August 1, 2018 ("the "Complaint"), in MUR 7448.

#### Introduction

The Complaint was filed against Citizens for Waters and Mr. Gould; the California Democratic Party ("CDP") and its Treasurer, Katherine Moret; and Kamala Harris for Senate and its Treasurer, Stephen J. Kaufman, alleging violations of the contribution limits set forth in Sections 431(8)(A)(i), 432(e)(3) and 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 CFR 100.52. The Complaint alleges that a \$35,000 payment made by the CDP to Citizens for Waters for a slate mailer featuring Kamala Harris was an illegal "coordinated" contribution exceeding the Party's \$5,000 contribution limit to Kamala Harris for Senate. The Complaint is unclear about the violations involving Citizens for Waters.

However, the Complaint completely overlooks and fails to acknowledge the existence of the CDP's separate "coordinated party expenditure" limit, which allowed the CDP to make the payment to Citizens for Waters on behalf of Kamala Harris for Senate in connection with the November 8, 2016 General Election. (See 52 U.S.C. 30116(d) and 11 C.F.R. 109.30, 109.32-109.34.) The payment was within the CDP's coordinated expenditure limit for the U.S. Senate race during the 2016 General Election, and was timely and properly disclosed by Citizens for Waters and the CDP on their campaign reports. Therefore, the Complaint does not provide any basis for asserting a violation of the Act or Commission regulations, and the Commission should immediately dismiss the complaint as to all respondents.

<sup>&</sup>lt;sup>1</sup> The Complaint refers to the prior statutory provisions. These sections have been renumbered as 52 U.S.C. §§ 30101(8)(A)(i), 30102(e)(3) and 30116(a)(2)(A).

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Moreover, the Complaint does not provide any basis for the FEC to conduct an audit of Citizens for Waters, and complainant's request to the Commission for such an audit should be soundly rejected.

#### **Analysis**

Citizens for Waters (FEC ID#C00167585) is the principal campaign committee of Congresswoman Maxine Waters, and David L. Gould serves as the committee's Treasurer. In accordance with California law, Citizens for Waters produces and distributes a "slate mailer" known as the Congresswoman Maxine Waters Sample Ballot and Voter Recommendations, featuring federal and non-federal candidates appearing on the ballot. Pursuant to the FEC in Advisory Opinion 2004-37 (Waters), a payment made by a federal candidate to Citizens for Waters for the proportionate costs of his or her appearance in the slate mailer is not considered a contribution to Citizens for Waters.

The CDP (FEC ID#C00105668) is the federally registered state party committee of the Democratic Party in California. A state party committee may contribute up to \$5,000 per election to a U.S. Senate candidate. Separate and in addition to this contribution limit, a state party committee may make "coordinated party expenditures" in connection with the general election of a federal candidate. (52 U.S.C. 30116(d); 11 C.F.R. 109.30, 109.32-109.34.) A state party committee may pay for goods or services (including communications) on behalf of a federal candidate, up to the applicable "coordinated party expenditure" limit.

The Commission has provided guidance explaining the difference between the party's use of its contribution limit and its coordinated party spending authority, as follows: "In making a coordinated party expenditure, the party committee pays for goods or services in coordination with a candidate but does not give the money directly to the candidate or candidate committee. For example, the payment of a campaign bill could be treated and reported as a coordinated party expenditure . . ." Accordingly, the Act, FEC regulations and Commission guidance are all clear that a state party can use its coordinated spending authority outside of its \$5,000 per election contribution limit, to pay a bill on behalf of a general election candidate for U.S. Senate in the state.

The coordinated party expenditure limit for a Senate candidate is calculated as follows: state voting age population x 2 cents, increased by the COLA; or \$20,000 increased by the COLA, whichever is greater. (52 U.S.C. 30116(d); 11 C.F.R. 109.32.) Based on the statutory formula, the CDP's "coordinated party expenditure" limit during the 2016 election cycle applicable to a candidate for United States Senate was \$2,886,500. (https://transition.fec.gov/info/charts cpe 2016.shtml.)

In 2016, Kamala Harris was the endorsed candidate of the CDP and the Democratic nominee for the office of United States Senator in the November 8, 2016 General Election.<sup>3</sup> Kamala Harris

<sup>&</sup>lt;sup>2</sup> Federal Election Commission, Campaign Guide for Political Party Committees at 48 (Aug. 2013), available at <a href="https://www.fec.gov/resources/cms-content/documents/partygui.pdf">https://www.fec.gov/resources/cms-content/documents/partygui.pdf</a> (emphasis added).

<sup>&</sup>lt;sup>3</sup> Because of California's "Top Two" primary system, Senator Harris was actually one of two Democrats competing in the November 8, 2016 General Election.

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prevailed in the general election and is now a current United States Senator from California. Kamala Harris for Senate (FEC ID# C00571919) is Senator Harris' principal campaign committee.

For the November 6, 2018 general election, Citizens for Waters requested payment from Kamala Harris for Senate in the amount of \$35,000, for the proportionate cost of the slate mailer attributable to Kamala Harris. Citizens for Waters received a \$35,000 payment from the CDP on October 17, 2016 for Sen. Harris' appearance in the general election slate mailer. The CDP disclosed that payment as a "Coordinated Party Expenditure" on Schedule F for Line 25 of the CDP's 12 Day Pre-General Report for the period 10/1/16-10/19/16. The report indicated that the payment was made on behalf of Kamala Harris, and described the payment as "Fair share of slate mailer." (A true and correct copy of the cover page and relevant page from the CDP's 12 Day Pre-General Report is attached hereto as Exhibit "A.")<sup>4</sup>

As is evident from the Complaint, Citizens for Waters disclosed the \$35,000 payment received from the CDP as a slate mailer payment on Schedule A for Line 15 (offset to operating expenditures) on its 12 Day Pre-General Report, and on its Slate Mailer Organization Campaign Statement (Form 401) filed under California law. (See relevant pages of Citizens for Waters reports, submitted with the Complaint and reattached here for convenience collectively as Exhibit "B.")<sup>5</sup>

The Complaint alleges that the payment made by the CDP to Citizens for Waters for the appearance of Kamala Harris on the slate mailer was an excess contribution that did not qualify as an "exempt party activity." (see 11 CFR §§100.80, 100.140.) The slate mailer produced and distributed by Citizens for Waters is not an "exempt party activity," nor does FEC Advisory Opinion 2004-37, which authorizes this activity, make any suggestion that it should be — as the Complaint implies. However, as is evident from this response and the supporting materials — including the Complaint itself — the \$35,000 payment made by the CDP to Citizens for Waters was a proper "coordinated party expenditure" under 52 U.S.C. § 30116(d), and was properly and timely disclosed by the CDP and Citizens for Waters. Therefore, the Complaint is baseless.

#### Conclusion

For the reasons described herein, the Complaint does not contain any factual or legal basis for asserting a possible violation of the Act by respondents. The CDP made a proper payment for the general election on behalf of Kamala Harris within its "coordinated party expenditure" limit, and the payment was properly disclosed by Citizens for Waters as an offset to operating expenditures on its 12 Day Pre-General Report. In filing this Complaint, the National Legal and Policy Center has either completely misconstrued the law or purposefully chosen to ignore the key statute and regulations providing the basis for this payment.

<sup>&</sup>lt;sup>4</sup> The CDP originally described the expenditure as a "slate mailer" payment and then amended its 12 Day Pre-General Report to add the "Fair Share" language.

<sup>&</sup>lt;sup>5</sup> Citizens for Waters reported the payment on its 12 Day Pre-General Report as received from the Democratic State Central Committee of California FFA, the name on the bank account used by the CDP for its federal program.

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Therefore, we respectfully request that the Commission find no reason to believe a violation has occurred, and dismiss this Complaint in its entirety with no further action against respondents.

Very truly yours.

Stephen J. Kaufman

Enclosures

## EXHIBIT "A"

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#### SCHEDULE F (FEC Form 3X).

### ITEMIZED COORDINATED PARTY EXPENDITURES MADE BY POLITICAL PARTY COMMITTEES OR DESIGNATED AGENT(S) ON BEHALF OF CANDIDATES FOR FEDERAL OFFICE

PAGE 349 OF . 397 FOR LINE 25 OF FORM 3X (To be used only by Political Committees in the General Election) NAME OF COMMITTEE (In Full) California Democratic Party Full Name of Subordinate Committee Has your committee been designated to make coordinated expenditures by a political party committee? X YES NO Mailing Address If YES, name the designating committee: California Democratic Party ZIP Code ☐ Memo Item Full Name (Last, First, Middle Initial) of Each Payee Purpose of Expenditure 001 **Finance Consulting** Bertolina & Barnato Consulting Category/ Mailing Address 1005 12th Street Туре Date Suite H Zip Code State City 13 2016 10 95814-3940 Sacramento CA Name of Federal Candidate Supported Office Sought: House State: CA **Amount** Senate Harris, Kamala, , , District: 850,00 **Presidential** Aggregate General Election 784399.27 Expenditure for this Candidate Transaction ID : EDTFALC7293 Full Name (Last, First, Middle Initial) of Each Payee Purpose of Expenditure ☐ Memo Item 001 salary Caple, Elena, , , Category/ Mailing Address 5600 Wilshire Blvd.#434 Type Date State Zip Code City 10 2016 CA 90036 Los Angeles Name of Federal Candidate Supported Office Sought: House State: CA Amount Senate Harris, Kamala, . . District: Presidential 2029.16 Aggregate General Election 784399,27 Expenditure for this Candidate Transaction ID: EDTFALC7294 Full Name (Last, First, Middle Initial) of Each Pavee Purpose of Expenditure ☐ Memo Item 001 **Citizens For Waters** Payment for Fair share of slate mailer Category/ (K.Harris, USSen) Type Malling Address 3700 Wilshire Blvd. **Suite 1050B** Date State Zip Code Citv 10 90010-3015 Name of Federal Candidate Supported Office Sought: House State: CA Amount Harris, Kamala, , , . Senate District: Presidential 35000.00 Aggregate General Election 784399.27 Expenditure for this Candidate > Transaction ID: EDTFALC7292 37879.16 SUBTOTAL of Expenditures This Page (optional)... TOTAL This Period (last page this line number only).....

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#### FEC FORM 3X

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#### SCHEDULE F (FEC Form 3X)

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#### SCHEDULE A (FEC Form 3) ITEMIZED RECEIPTS

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true and correct.  Executed on 10/25/2016	~	By David L. Gould	
DATE	CITY AND STATE		SIGNATURE OF RESPONSIBLE OFFICER
Name of Responsible Officer	David L. Gould	Title: Treasurer	
FOR INFORMATION REQUIRED TO BE PROVIDED TO YOU PU	FOR INFORMATION REQUIRED TO BE PROVIDED TO YOU PURSUANT TO THE INFORMATION PRACTICES ACT OF 1877, SEE	WATION MANUAL ON CAMPAIGN DISCLOSURE PROVI	INFORMATION MANUAL ON CAMPAIGN DISCLOSURE PROVISIONS OF THE POLITICAL REFORM ACT FOR SLATE MALLER CRIGANIZATIONS.

Schedule A					SCHEDULE A
	sets Deceived		Statement covers period	od CALIFORNIA	
Faylli	rayments neceived		from 09/25/2016	16 1992 FORM	<b>™</b> 401
i i			through 10/22/2016	16 2/6	
NAME OF S	NAME OF SLATE MAILER ORGANIZATION:			I.D NUMBER	
CITIZENS	CITIZENS EOB WATERS			1271833	
(3)	(2)	(3)		(4)	(5)
	**	(a)	(9)		
DATE RECEIVED	IDENTIFICATION OF PERSONS FROM WHOM \$100 OR MORE HAS BEEN RECEIVED THIS PERIOD (SEE IMPORTANT INSTRUCTIONS ON REVERSE)	NAME, OFFICE SOUGHT, AND JURISDICTION OF CANDIDATE/ NAME, JURISDICTION, AND NUMBER OR LETTER OF BALLOT MEASURE SUPPORTED OR OPPOSED (IF DIFFERENT THAN COLUMN 2)	WAS RI WAS RI RT OR TE OR I	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE AMOUNT RECEIVED SINCE JANUARY 1 PER CANDIDATE
40/42/2046	Vine Manness feet A Consider Court	Zim Manuson	SUPPORT SUPPORT	10000.00	20000.00
)102/21/01 1	Nim nguyen tar LA Supenor Court Judge 2016		×		
-		Superior Court Judge			
	Los Angeles CA 90017 Reference No:	Los Angeles County			
10/15/2016	10/15/2016 Californians for Lower Drug Prices.		×	20000.00	20000.00
_		Statewide	·		
-	Los Angeles CA 90028 Reference No:			-	·
10/15/2016 	For Adult Industry Responsibility Committee		×	20000.00	20000.00
	Los Angeles CA 90028 Reference No:	09		-	ייים אינוניי
Summary	2		SUBTOTAL	₩.	<u>.</u>
1. Amoun (Include	1. Amount Received - Payments of \$100 or More (Include all Schedule A subtotals)	9	155000,00		
2. Amount Recei (Not itemized)	Amount Received - Payments of Less than \$100 (Not Itemized)	\$	0.00		
3. Total Pa Column	Total Payments Received (Line 1 + Line 2) Enter here and in Column A, Line 1, of the Summary of Payments section on Page 1	r here and in section on Page 1\$	155000.00		

Schedule A	uleA					SCHEDULEA
Pavm	Payments Received		Stateme	Statement covers period	(ANTITOTING)	
			from	09/25/2016	(१९९२/५०) होत	
SEE:INSTR	RUCTIONS ON REVERSE		through	10/22/2016	3/6	60
NAME OF	NAME OF SLATE MAILER ORGANIZATION:			) 	1.D NUMBER	
CITIZENS	CITIZENS FOR WATERS				1271833	
(1)	(2)	(8)			(4)	(5)
DATE RECEIVED	IDENTIFICATION OF PERSONS FROM WHOM \$100 OR MORE HAS BEEN RECEIVED THIS PERSON (SEE IMPORTANT INSTRUCTIONS ON REVERSE)	IAME, OFFICE SOUGHT, AND JURISDICTION OF CANDIDATE! NAME, JURISDICTION, AND NUMBER OR LETTER OF BALLOT MEASURE SUPPORTED OR OPPOSED (IF DIFFERENT THAN COLUMN 2)	CHECK BOX TO INDICATE I PAYMENT WAS RECEIVED I SUPPORT OR OPPOSE CANDIDATE OR MEASURE INCLUDED IN STATE MODELS	CHECK BOX TO INDICATE IF PAYMENT WAS RECEIVED TO SUPPORT OR OPPOSE CANDIDATE OR MEASURE INCLUDED IN SLATE MALLER	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE AMOUNT RECEIVED SINCE JANUARY 1 PER CANDIDATE
10/17/201	10/17/2016 Democatic State Central Committee of California FFA	Kamala Harris	×	200	35000.00	35000.00
_		Other - US. Senate				
	Sacramento CA 95811 Reference No:					·
10/17/2016	10/17/2016 Susan Jung Townsend for Judge 2016	Susan Jung Townsend	×		10000.00	20000.00
-		Superior Court Judge				
-	Long Beach CA 90802 Reference No:	Los Angeles County				
10/19/2016	10/19/2016 Hall for Congress 2016	Isadore Hall	×		7500.00	27500.00
		Other - U.S. House of Representatives				
	Long Beach CA 90802 Reference No:			· ·		
Summer				SUBTOTAL \$		
1. Amount (Include	1. Amount Received - Payments of \$100 or More (Include all Schedule A subtotals)	\$				
2. Amount (Not itel	2. Amount Received - Payments of Less than \$100 (Not itemized)	•				
3. Total Pa Column	<ol> <li>Total Payments Received (Line 1 + Line 2) Enter here and in Column A, Line 1, of the Summary of Payments section on Page 1</li> </ol>	r here and in section on Page 1				

Schedule A	uleA				SCHEDULEA
Pavme	Payments Received		Statement covers period		CAUTIONING AND
			from 09/25	09/25/2016 1992年	neer form and I
SEEINSTR	SUCTIONS ON REVERSE		through 10/22	10/22/2016	4/6
NAME OF	NAME OF SLATE MAILER ORGANIZATION:			I.D NUMBER	ER
CITIZENS	CITIZENS FOR WATERS			1271833	
3	(2)	(6)		(4)	(2)
	L	(n)	æ		
. DATE RECEIVED	IDENTIFICATION OF PERSONS FROM WHOM \$100 OR MORE HAS BEEN RECEIVED THIS PERIOD (SEE IMPORTANT INSTRUCTIONS ON REVERSE)	NAME, OFFICE SOUGHT, AND JURISDICTION OF CANDIDATE/ NAME, JURISDICTION, AND NUMBER OR LETTER OF BALLOT MEASURE SUPPORTED OR OPPOSED (IF DIFFERENT THAN COLUMN 2)	K TO II	TO RECEIVED THIS THIS EE PERIOD	CUMULATIVE AMOUNT RECEIVED SINCE JANUARY 1 PER CANDIDATE
			SUPPORT OPPOSE		
10/19/2016	Safe, Clean Neighborhood Parks And Open Space for All		×	7500.00	7500.00
<del>-</del>		Lòs Angeles County		<del></del>	
	Los Angeles CA 90017: Reference No:	< <			
10/19/2016	Yes On The Los Angeles County Traf - fic Improvement Plan		×	35000.00	35000.00
-		Los Angeles County			
	Los Angeles CA 90017 Reference No:	2			
10/21/2016		Saves Lives California, A Coalition of Doctors, Denlists, Health Plans, Labor, And Non-Profit Health Advocate Organizations	×	10000.00	10000.00
<b>-</b>		Statewide			
į	Sacramento .CA 95814 Reference No:	56			
			SUBTOTAL	AL \$ 155000.00	. 0
Summary	<b>7</b>				
1. Amount	1. Amount Received - Payments of \$100 or More (Include all Schedule A subtotals)	· 6			
2. Amount Recei (Not itemized)	Amount Received - Payments of Less than \$100 (Not itemized)	9		·	
3. Total Pa Column	Total Payments Received (Line 1 + Line 2) Enter here and in Column A, Line 1, of the Summary of Payments section on Page 1	er here and in s section on Page 1			
	•				

Schedule B		SCHEDULEB
Payments Made	Statement covers period	CAUTEDIAM ALA
	from 09/25/2016	TERESTAND (TAN )
SEE INSTRUCTIONS ON REVERSE	through 10/22/2016	9/9
NAME OF SLATE MAILER ORGANIZATION: CITIZENS: FOR:WATERS		I.D NUMBER 1271833
NAME AND STREET ADDRESS OF PAYEE	DESCRIPTION OF PAYMENT	AMOUNT PAID
Gould & Orellana, L.L.C	Political Reporting Services:	2500.00
Long Beach CA 90802 Reference No:		

Summary	SUBTOTAL S	2500.00
1. Payments of \$100 or More (Include all Schedule B subtotals)	2500:00	
2. Payments under \$100 This Period (Not Itemized)\$	0.00	
3. Total Payments This Period (Line 1 + Line 2). Enter here and in Column A, Line 2, of the Summary of Payments section on Page 1.	2500:00	

SCHEDULEC

# Schedule C Persons Rec \$1,000 Or Mo

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Persons Receiving	Statement covers period	
\$1,000 Or More	from 09/25/2016	
SEE INSTRUCTIONS ON REVERSE	through 10/22/2016	9/9
NAME OF SLATE MAILER ORGANIZATION:		I.D. NUMBER
CITIZENS FOR WATERS		1271833

You must identify each individual listed on your Statement of Organization (Form 400) who received, directly or indirectly, \$1,000 or more from the organization during the period. (See instructions on reverse regarding "indirect" payments.)

NAMES OF INDIVIDUALS RECEIVING \$1,000 OR MORE	AMOUNT THIS PERIOD	CUMULATIVE SINCE JANUARY 1
Gould & Orellana, L.C.	.2500.00	2500.00