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by Kathryn Ross

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Cunningham | Levy | MuseCunningham Levy Muse LLP
1250 Connecticut Ave NW, Suite 700
Washington, DC 20036

T (202) 845-3215

F (202) 261-3508

cunninghamlevy.com

October 17, 2018

via Electronic Mail**CONFIDENTIAL**

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
1050 First Street, N.E.
Washington, D.C. 20002

Re: MUR 7449

Dear Mr. Jordan:

On behalf of Fusion GPS, we respond to the FEC's August 8, 2018 letter regarding MUR #7449 ("the MUR Letter"), based on an FEC complaint filed by the Coolidge Reagan Foundation, on August 2, 2018 ("the Complaint"). In the MUR Letter, the FEC stated that the Complaint "indicates Fusion GPS may have violated the Federal Election Campaign Act of 1971, as amended ('the Act')." MUR Letter at 1. The FEC advised that we would have until today to respond to the MUR Letter. For the reasons set forth below, Fusion GPS respectfully requests that the Commission take no action against Fusion GPS in this matter.

The Complaint does not name Fusion GPS as a Respondent. None of the Complaint's seven counts alleges that Fusion GPS has violated any laws. When we asked for guidance as to which of the counts Fusion GPS may have violated, the FEC said it was unable to provide us with that information.¹ We therefore will explain why Fusion GPS has not violated any of these counts. While many of the Complaint's factual allegations are false, we will, for purposes of this response, assume *arguendo* that they are true and explain why, even under those alleged facts, Fusion GPS does not violate any of the Complaint's seven counts.

In short, the Complaint alleges that the Respondents violated various provisions of the Act and some of its accompanying FEC regulations because two of the Respondents (*i.e.*, Hillary for America and

¹ See e-mails from J. Jordan to J. Levy, Sept. 24, 2018, 3:23 PM; Sept. 25, 2018, 1:05 PM.

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the Democratic National Committee), through counsel, contracted with Fusion GPS for research on Donald Trump and, through this arrangement, subcontracted some of that research to former UK intelligence official Christopher Steele, which he provided to the other Respondents. Any adoption of this legal theory would not only ignore FEC law, but would also render protected activity under the First Amendment unlawful.

An existing FEC advisory opinion and other FEC regulations have made clear that a campaign can hire foreign nationals as campaign vendors at fair market rates, and that such work is not a contribution or donation to the campaign.² That is what the Complaint alleges Fusion GPS to have done: Perkins Coie LLP paid Fusion GPS the full fair market value for its services, and Fusion GPS, in turn, paid Mr. Steele, a foreign national, the fair market value in the ordinary course of business for his research services, as the Complaint concedes. Compl. at para. 12 (alleging he was paid \$168,000). Indeed, the law permits foreign nationals to participate in campaigns and party committees, in a variety of ways.³ Thus, Fusion GPS acted lawfully.⁴

Further, when contracting with Mr. Steele, when tasking him to perform his duties under the contract, and when providing information to Perkins Coie LLP, Fusion GPS acted at the direction and under the advice of Perkins Coie LLP, one of the nation's pre-eminent election law firms, which is a defense to any alleged "knowing and willful" violations,⁵ and should be a defense to any alleged violation.⁶

² See Advisory Opinion 2007-22 (Hurysz), at 2-6. See also 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

³ See, e.g., FEC Advisory Opinion 2007-22 (Hurysz); FEC Advisory Opinion 2004-26 (Weller); FEC Advisory Opinion 2014-20 (Make Your Laws PAC); First General Counsel's Report, Matter Under Review 6015 (Jan. 26, 2009); First General Counsel's Report, Matter Under Review 5998 (Sept. 8, 2008).

⁴ Additionally, the Complaint alleges that Mr. Steele, after the Election and on his own, provided "the dossier" to news reporter David Corn of *Mother Jones*, in violation of an FEC regulation. As a matter of law, that cannot be, because the FEC cannot prohibit activity protected by the First Amendment. Even though the Complaint does not allege that Fusion GPS helped Mr. Steele provide information to Mr. Corn, such conduct would have been protected by the First Amendment.

⁵ See, e.g., Gen. Counsel's Rep. at 6, MURs 4568, 4633, 4634, 4736 (Triad Management) (Mar. 20, 2002), <http://eqs.fec.gov/eqsdocsMUR/28044194014.pdf>; First Gen. Counsel's Rep. at 10, MUR 5410 (Oberweis Dairy, Inc.) (Nov. 11, 2004), <https://www.fec.gov/files/legal/murs/5410/00005D3B.pdf>; First Gen. Counsel's Rep., MURs 7014/7017/7019/7090, at 11 n.35 (DE First Holdings, et al., Feb. 10, 2017), <http://eqs.fec.gov/eqsdocsMUR/18044443668.pdf>.

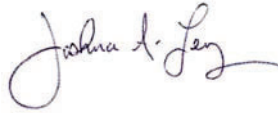
⁶ See, e.g., Statement of Reasons of Commrs. Petersen, Hunter & Goodman, MURs 6485, 6487, 6488, 6711, 6930, at 13 n.70 (Tread Standard et al., Apr. 1, 2016), http://eqs.fec.gov/eqsdocsMUR/6968_2.pdf; Gen. Counsel's Rep. No. 2, MUR 5549 at 2-3 (Stephen Adams, Oct. 25, 2006), <http://eqs.fec.gov/eqsdocsMUR/29044224582.pdf>; Factual and Legal Analysis, MUR 5637 at 5 (21st Century Democrats, Oct. 28, 2008), <http://eqs.fec.gov/eqsdocsMUR/28044221240.pdf>.

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For all of these reasons, the FEC should take no action against Fusion GPS.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua A. Levy". The signature is fluid and cursive, with the first name "Joshua" being the most prominent part.

Joshua A. Levy
Rachel M. Clattenburg