

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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 3 In the Matter of)
 4)
 5 DNC Services Corp./Democratic National)
 6 Committee and Virginia McGregor in her) **MURs 7291 & 7449**
 7 official capacity as treasurer)
 8 Hillary for America and Elizabeth Jones)
 9 in her official capacity as treasurer)

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 11 **SECOND GENERAL COUNSEL'S REPORT**

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 14 **I. ACTIONS RECOMMENDED**

15 We recommend that the Commission: (1) authorize pre-probable cause conciliation with
 16 the DNC Services Corporation/Democratic National Committee and Virginia McGregor in her
 17 official capacity as treasurer ("DNC"), and with Hillary for America and Elizabeth Jones in her
 18 official capacity as treasurer ("HFA"), in connection with violations of 52 U.S.C.
 19 § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R § 104.3(b)(3)(i) and (b)(4)(i); and (2) approve
 20 the attached proposed conciliation agreements.

21 **II. DISCUSSION**

22 These matters arose from complaints alleging that the DNC and HFA failed to file
 23 accurate disclosure reports when they mischaracterized the payee and purpose of certain
 24 disbursements disclosed as made to Perkins Coie LLP ("Perkins Coie") for legal services, when
 25 in fact the payments were passed through to the research firm Fusion GPS ("Fusion") for the
 26 purpose of opposition research and should have been disclosed as such.¹ The DNC and HFA
 27 contended that the disbursements at issue were properly disclosed because Perkins Coie hired

¹ MUR 7291 Compl. ¶¶ 1-2 (Oct. 25, 2017); MUR 7331 Compl. at 2 (Feb. 26, 2018); MUR 7449 Compl. at 2, 10-14 (Aug. 2, 2018). These allegations in MUR 7331 were severed from MUR 7331 and merged into MUR 7291. *See* Certification ¶ 14.a, MUR 7331 (Apr. 29, 2019).

1 Fusion to support its provision of legal services to them, and the Committees did not contract
2 with or make payments to Fusion GPS.²

3 On July 23, 2019, the Commission found reason to believe that the DNC and HFA
4 violated 52 U.S.C. § 30104(b)(5)(A) and (b)(6)(B)(v) and 11 C.F.R § 104.3(b)(3)(i) and (b)(4)(i)
5 by misreporting the purpose of funds paid to Fusion through Perkins Coie LLP.³ The
6 Commission also approved the use of compulsory process.⁴ During the subsequent
7 investigation, Fusion, the DNC, and HFA provided responses to the Commission's Subpoenas
8 and Orders,⁵ and we have reviewed the invoices, account statements, copies of checks, and wire
9 transfers between Fusion, HFA, the DNC, and Perkins Coie.⁶ The investigation revealed that the
10 total amount that the DNC spent on Fusion's opposition research but reported as "legal and

² MUR 7291 Hillary for America Resp. at 2-8 (Dec. 14, 2017); MUR 7291 DNC Services Corp./Democratic National Committee Resp. at 2-8 (Dec. 14, 2017); MUR 7331 Hillary Victory Fund/Hillary for America/DNC Services Corp./Democratic National Committee Joint Resp. at 2, 4-5, 11-17 (June 4, 2018); MUR 7449 Hillary for America/DNC Services Corp./Democratic National Committee/Perkins Coie LLP/Mark Elias Joint Resp. at 2-9 (Oct. 3, 2018).

³ Certification ¶ 2.a, MURs 7291 &7449 (DNC & HFA) (July 26, 2019).

⁴ *Id.* ¶ 2.g. Additionally, the Commission took no action at that time as to the allegations that: Fusion violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20; Christopher Steele violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(b), (f), (g), and (i); and Marc Elias and Perkins Coie LLP and HFA violated 11 C.F.R. § 110.20(b) and (h)(1).

⁵ On August 9, 2019, Respondents were notified of the Commission's findings, provided with their respective Factual and Legal Analyses, and served with informal discovery. Letter to Marc E. Elias, Counsel for HFA, from Chair Ellen L. Weintraub, FEC (Aug. 9, 2019); Letter to Marc E. Elias and Graham M. Wilson, Counsel for DNC, from Chair Ellen L. Weintraub, FEC (Aug. 9, 2019). On October 23, 2019, Respondents submitted a joint response to the Commission's reason to believe finding requesting the Commission reconsider its findings. Letter to Anne Robinson, FEC, from Marc E. Elias and Graham M. Wilson, Counsel for Respondents (Oct. 23, 2019). On February 4, 2020, Respondents notified OGC that they were not going to respond to the discovery requests considering the lack of quorum. Letter to Anne Robinson, FEC, from Marc E. Elias, Counsel for HFA and the DNC (Feb. 4, 2020). When the Commission regained a quorum, it approved OGC's proposed subpoenas. Certification, MURs 7291 &7449 (DNC & HFA) (Feb. 10, 2021).

⁶ Respondents objected to most of the discovery requests, asserting attorney-client and attorney work privileges as well as objecting to the breadth and scope of the requests. However, Respondents provided sufficient evidence of the violations to enable the Commission to conciliate this matter.

1 compliance consulting” was \$777,907.97.⁷ Similarly, the investigation revealed that the total
2 amount that HFA spent on Fusion’s opposition research but reported as “legal services” was
3 \$180,000.⁸ The DNC and HFA both provided charts of payments that each entity made to
4 Perkins Coie, which included funds paid to Fusion GPS.⁹ Additionally, the DNC and HFA each
5 provided the underlying invoices from Perkins Coie for each of the payments.¹⁰ Fusion also
6 provided invoices sent to Perkins Coie for the services rendered on behalf of the DNC and
7 HFA.¹¹ These invoices list a monthly retainer fee plus additional fees labeled as “Russia
8 Research” or “Russian language researcher.”¹² Fusion provided copies of checks and wire

⁷ The total amount the DNC paid to Perkins Coie for Fusion’s opposition research was \$844,407.97. *See* the DNC Response to Discovery Requests at 6-7 (Apr. 13, 2021). The DNC paid a somewhat higher amount to Perkins Coie in connection with Fusion, \$889,407.97, a figure including a \$5,000 per month fee paid to Perkins Coie, but not passed on to Fusion. *See* DNC Documents 1-28 attached to the DNC Response to Discovery Requests. The DNC disclosed \$66,500 of those funds paid to Perkins Coie on August 16, 2016, as “research consulting.” DNC Amended 2016 September Monthly Report at 4241 (June 1, 2017); *see also* MUR 7291 DNC Resp. to Compl. at 2 n.2, 8 (stating that the August payment was “for legal services that had been subcontracted to Fusion”); MUR 7291 Compl. ¶ 9.

⁸ *See* HFA Response to Discovery Requests at 6 (Apr. 13, 2021) (listing the payments and amounts to Perkins Coie from HFA). These documents are available

⁹ *See id.*; DNC Response to Discovery Requests at 6-7.

¹⁰ *See* DNC Response Documents to Discovery Requests at DNC-FEC-001 to DNC-FEC-0028; HFA Response Documents to Discovery Requests at HFA-FEC-001 to HFA-FEC-0024 (Apr. 13, 2021)

¹¹ *See* Fusion Response Documents to Discovery Requests at LFM000001 to LFM000040 (Mar. 29, 2021)

¹² *Id.* at LFM000004, LFM000006, LFM000008, LFM000010.

1 transfers reflecting payments Fusion made to its sub vendors, Nellie Ohr,¹³ Graham Stack,¹⁴
2 Edward Austin Limited,¹⁵ and Orbis Business Intelligence Ltd.,¹⁶ as part of the services rendered
3 to Perkins Coie. These sub vendors are known to have contributed to Fusion's research
4 regarding Donald Trump and Russia.¹⁷ Comparing the invoices from Perkins Coie with those
5 from Fusion make clear that Perkins Coie billed the DNC and HFA for 100% of the services
6 rendered by Fusion to Perkins Coie, because the amounts and dates of the invoices match.
7 Accordingly, the documentary evidence provided in discovery confirms the violations the
8 Commission found at the reason to believe stage. The invoices demonstrate that Fusion was
9 providing opposition research services related to Trump and Russia, and there is no evidence that
10 Fusion provided services other than this opposition research.

11 The information provided by the DNC and HFA during the investigation thus establishes
12 the extent of the Committees' reporting violations.

¹³ *Id.* at LFM000011 to LFM000015. Nellie Ohr was a contractor for Fusion GPS and reportedly worked on research and analysis of Donald Trump as well as open source research on Russian oligarchs. *See* Jerry Dunleavy, *Hundreds of Pages of Emails Show Nellie Ohr Researched Trump-Russia Connections*, WASHINGTON EXAMINER (Aug. 25, 2019), <https://www.washingtonexaminer.com/news/hundreds-of-pages-of-emails-show-nellie-ohr-researched-trump-russia-connections>; Jeremy Herb, *Fusion GPS Contractor Nellie Ohr Doesn't Say Much At House Interview*, CNN (Oct. 19, 2018), <https://www.cnn.com/2018/10/19/politics/nellie-ohr-fusion-gps-congress-gps>.

¹⁴ Fusion Response Documents to Discovery Requests at LFM000024, LFM000028, LFM000032, LFM000036. Stack was a contractor for Fusion GPS who reportedly worked on opposition research relating to Trump and Russia. *See* Chuck Ross, *Former Fusion GPS Employee Shreds Firm's Work On Paul Manafort*, DAILY CALLER (Sept. 18, 2018), <https://dailycaller.com/2018/09/18/fusion-gps-paul-manafort/>.

¹⁵ Fusion Response Documents to Discovery Requests at LFM000020, LFM000028. Edward Baumgartner reportedly has a degree in Russian language and runs Edward Austin Limited, a research consulting firm with a focus on Russia and Ukraine and was hired by Fusion to meet with Natalia Veselnitskaya for the purpose of opposition research. *See* Natasha Bertrand, *Meet The Russia Specialist Who Worked On 2 Of Fusion GPS' Most Controversial Projects*, BUSINESS INSIDER (Jan. 14, 2018), <https://www.businessinsider.com/ed-baumgartner-fusion-gps-christopher-steele-russia-projects-2018-1>.

¹⁶ Fusion Response Documents to Discovery Requests at LFM000032, LFM000036, LFM000040. Orbis Business Intelligence Ltd. is the investigative research firm co-founded by Michael Steele. *See* First Gen. Counsel's Rpt. at 5, MURs 7291 and 7449.

¹⁷ *See supra* nn. 13-16.

MURs 7291 and 7449 (DNC Services Corp./Democratic National Committee, *et al.*)

Second General Counsel's Report

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3 **VI. RECOMMENDATIONS**

4 1. Authorize pre-probable cause conciliation with DNC Services Corporation/
5 Democratic National Committee and Virginia McGregor in her official capacity
6 as treasurer and approve the attached conciliation agreement;

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8 2. Authorize pre-probable cause conciliation with Hillary for America and Elizabeth
9 Jones in her official capacity as treasurer and approve the attached conciliation
10 agreement; and

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3. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

June 24, 2021
Date

Charles Kitcher
Charles Kitcher
Acting Associate General Counsel for
Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Richard Weiss
Richard L. Weiss
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