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December 23, 2019

BY EMAIL AND U.S. MAIL

Jeff S. Jordan, Assistant General Counsel
Federal Election Commission
Office of Complaints Examination
& Legal Administration
1050 First Street, NE
Washington, D.C. 20463

Re: Matter Under Review 7647

Dear Mr. Jordan:

We write as counsel to Alexandra Chalupa and Chalupa & Associates, LLC (together, “Respondents”) in response to the complaint filed by the Committee to Defend the President on October 7, 2019 (“Complainant”) in the above-referenced matter. Because the Complaint fails to set for facts that, if true, would constitute a violation of the Federal Election Campaign Act of 1971 (the “Act”), as amended, the Federal Election Commission (“FEC” or “Commission”) should dismiss the Complaint and close the file.

THE COMPLAINT

The Complaint falsely alleges that in her work for the Democratic National Committee (“DNC” or “Committee,” also named as a respondent in this matter) Ms. Chalupa, “solicited foreign nationals, including representatives and members of the Ukrainian government, for contributions and donations”¹ on behalf of the Committee. The Complaint relies on unsupported and unsubstantiated allegations from a handful of selective news accounts, many of which have been discredited or disavowed, to make speculative claims, none of which – even if true – would show that Ms. Chalupa sought anything from any foreign national or foreign government representative on behalf of the DNC.

¹ Complaint at ¶16.

LEGAL ANALYSIS

“The Commission may find ‘reason to believe’ only if a complaint sets forth specific facts, which, if proven true, would constitute a violation of the [Act].”² “Unwarranted legal conclusions from asserted facts” or “mere speculation” are not accepted as true.³ Finally, a complaint may be dismissed if its allegations are refuted with sufficiently compelling evidence provided in response, or available from public sources.⁴ Here, the Commission is presented with no facts, just mere speculation, based on discredited, disavowed and erroneous reporting from a tiny number of selective news articles, as well as the Complainant’s own absurd accusations of an alleged attempt by the Democratic Party to, “impose its bizzare, dystopian, socialist, identity-obsessed postmodern globalist worldview on the American public.”⁵ The Commission should find no reason to believe that Ms. Chalupa or Chalupa & Associates, LLC violated the Act and should dismiss the Complaint and close the file.

1. Ms. Chalupa Did Not Solicit Contributions or Donations from a Foreign National or Foreign Government Representative.

Ms. Chalupa worked as a consultant for the DNC in 2015 and 2016 to engage in political outreach to American ethnic communities. Ms. Chalupa’s consulting agreements with the DNC⁶ clearly outline the scope of her work for the Committee, which concerned ethnic engagement through the Committee’s Ethnic Council; scheduling and organizing ethnic-themed events; and working with state party committees to expand the DNC’s outreach to certain ethnic constituencies. Ms. Chalupa was not engaged by the DNC as a researcher and her role did not involve research or the solicitation of information from anyone, as falsely alleged in the Complaint.⁷ To the contrary, Ms. Chalupa’s consulting agreements with the Committee required her to comply with the financing restrictions applicable to the DNC, and specifically prohibited her from soliciting, accepting or receiving contributions from foreign nationals in the course of her work, with which she complied. Ms. Chalupa never requested or received anything of value from any foreign national in the course of her work for the DNC, a fact that has been

² FEC Matter Under Review 4960 (Clinton for U.S. Exploratory Committee), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1 (Dec. 21, 2000)

³ *Id.* at 2.

⁴ *Id.*

⁵ Compl. Introduction

⁶ Ms. Chalupa voluntarily produced copies of her consulting agreements with the DNC in response to FEC Matter Under Review 7271, which alleges many of the same false claims presented here. Ms. Chalupa has voluntarily cooperated extensively with the Commission’s investigation of MUR 7271.

⁷ Compl. at ¶¶ 4-5, 7-8.

emphatically acknowledged by the author of one of selected articles upon which the Complaint rests its baseless allegations.⁸

Ms. Chalupa is of Ukrainian heritage and has for many years retained personal and political connections to the Ukrainian diaspora community in the United States. In this capacity, she has engaged and interacted with representatives of the Ukrainian Embassy in Washington, D.C. and the Ukrainian government through her volunteer work on cultural and humanitarian programs. Ms. Chalupa never solicited or requested documents, research, or any other information from Ukrainian Embassy staff or any Ukrainian government official regarding Paul Manafort's⁹ work in the Ukraine in her capacity as a consultant for the DNC or as a private citizen, and the Complaint fails completely to provide any credible facts to support these allegations. In fact, the Complaint's apparent basis for this claim, an article appearing in THE HILL, has been thoroughly discredited, its author no longer with the publication, and the publication conducting a full-scale review of all of the author's columns to ensure that they comply with the most basic journalistic standards given the author's reputation for parroting Russian-sponsored disinformation.¹⁰

Nor did Ms. Chalupa ever meet with any Ukrainian Embassy staff or any Ukrainian government official for assistance to "research connections among Trump, Manafort, and Russia," as falsely alleged in the Complaint.¹¹ Ms. Chalupa's work for the DNC was on behalf of numerous ethnic groups and was not limited to Ukraine. As stated previously, Ms. Chalupa is

⁸ See, Kenneth P. Vogel, (@kenvogel), TWITTER (July 12, 2017, 9:58 a.m.) ("I more pt. DNC Consultant WAS NOT repping DNC in mtgs with [Ukrainian flag] officials, while DJT Jr. WAS repping Dad's campaign in meeting with [Russian flag]-linked atty." <https://twitter.com/kenvogel/status/885181638929526785>).

⁹ Mr. Manafort served as Donald Trump's campaign chairman in 2016. He was indicted, tried and convicted and sentenced to seven and half years in prison. His crimes included "illegally lobbying in Ukraine, hiding the proceeds and then encouraging witnesses to lie on his behalf." Spencer S. Hsu, Rachel Weiner & Ann E. Marimow, *Paul Manafort Sentenced to a Total of 7.5 Years in Prison for Conspiracy and Fraud, and Charged with Mortgage Fraud in New York*, WASH. POST. (Mar. 13, 2019), https://www.washingtonpost.com/local/legal-issues/paul-manafort-faces-sentencing-in-washington-in-mueller-special-counsel-case/2019/03/12/d4d55dd4-44d0-11e9-aaf8-4512a6fe3439_story.html.

¹⁰ Compl. at ¶ 5; Jane Coaston, *How Bad Right Wing Journalism Helped Kick Off the Impeachment Saga*, VOX.COM (Nov. 19, 2019), <https://www.vox.com/policy-and-politics/2019/11/19/20971075/rudy-giuliani-john-solomon-ukraine-impeachment-trump>; Eric Wemple, *The Hill is Reviewing the Work of Former Opinion Contributor John Solomon*, WASH. POST (Nov. 18, 2019), <https://www.washingtonpost.com/opinions/2019/11/18/hill-is-reviewing-work-former-opinion-contributor-john-solomon/>; Justin Baragona, *The Hill: We are 'Reviewing' and 'Updating' John Solomon's Ukraine Columns*, THE DAILY BEAST (Nov. 18, 2019), <https://www.thedailybeast.com/the-hill-we-are-reviewing-and-updating-john-solomons-ukraine-columns>.

¹¹ Compl. at ¶ 10. The "political officer" from the Ukrainian Embassy who the Complaint alleges met with Ms. Chalupa, Andrei Telizhenko, recently accompanied Rudolph Giuliani, President Trump's personal attorney, on Mr. Giuliani's visit to Kyiv, Ukraine in his effort to pursue the long debunked and discredited conspiracy theory that Ukraine, not Russia, interfered in the 2016 United States presidential election. Christopher Miller, *Rudy Giuliani Made a Surprise Visit to Kyiv and Nobody There is Happy About It*, BUZZFEEDNEWS.COM (Dec. 5, 2019), <https://www.buzzfeednews.com/article/christopherm51/rudy-giuliani-kyiv-ukraine-impeachment>.

a member of the Ukrainian-American community. She has well-established personal connections with many Ukrainian-Americans, and had interactions with Ukrainian Embassy staff relating to the humanitarian and civic volunteer work she conducted in her personal capacity, as she was actively engaged in shining a light on the political corruption and human rights issues in this fledgling democracy that is the gateway between Europe and the far more repressive regimes to the East.

Ms. Chalupa had personal relationships and volunteer projects that existed outside of her DNC consultancy. Accordingly, no violation of the Act by Ms. Chalupa on behalf of the DNC has occurred. The Commission has repeatedly recognized that individuals may work for a political committee or campaign, but that they are free to engage in other activity on behalf of others, or in their personal capacity, and that that activity is simply not attributable to the political committee. The Commission's agency rules define an "agent" as a person with "actual authority, either express or implied to . . . solicit, direct, or receive any contribution, donation or transfer of funds..."¹² Ms. Chalupa never was given such authority by the DNC and was in fact expressly prohibited from doing so by the terms of her consulting agreement. Finally, the Commission recognizes that individuals may "wear multiple hats," and any contacts that Ms. Chalupa had with Ukrainian Embassy staff were made in her personal capacity and not on behalf of the DNC.¹³

2. Ms. Chalupa Did Not Solicit Any Contributions at All

The Complaint falsely alleges that Ms. Chalupa "solicited Ukrainian officials to have then President of Ukraine, Petro Poroshenko, provide a valuable service to the DNC and provide valuable information to the DNC" by having the president comment on Paul Manafort and encourage members of congress to hold hearings on Mr. Manafort.¹⁴ The Complaint's flimsy support for this allegation, an article from Fox News, not only fails to make this allegation but actually refutes it, despite its attention-grabbing headline. "The Ukrainian embassy ... disputed the suggestion that Chalupa sought 'dirt' on Trump, saying that she was merely concerned about the role on Manafort due to his previous work in the country -- and said she did not ask for any materials from the embassy. A spokesperson said that the embassy's encounter with Chalupa was 'null' and produced no further action."¹⁵ And as Ms. Chalupa herself was quoted in the same article, "[i]n 2017, Chalupa told CNN: 'During the 2016 US election, I was a part time consultant for the DNC running an ethnic engagement program. I was not an opposition

¹² 11 C.F.R. § 300.2(b); see also FEC A.O. 2015-09 (Senate Majority PAC)

¹³ FEC A.O. 2007-05 (Iverson)(staffer may raise non-federal funds as long as he is not acting as an agent of federal officeholder).

¹⁴ Compl. at ¶7.

¹⁵ Compl. at ¶7, citing Gregg Re, *Ukraine Embassy Says DNC Operative Reached Out for Information on Trump Campaign in 2016*, FOX NEWS (May 4, 2019), <https://www.foxnews.com/politics/ukraine-embassy-dnc-operative-trump-dirt-2016>.

researcher for the DNC, and the DNC never asked me to go to the Ukrainian Embassy to collect information.”¹⁶

The “valuable services” Ms. Chalupa allegedly requested on behalf of the DNC, even if requested, though they were not, do not in any event constitute “something of value” that amounts to a “contribution” under the Act. The Act defines a “contribution” as “any gift ... of money or anything of value made by any person for the purposes of influencing any election for Federal office.”¹⁷ “Anything of value” is not limited to financial contributions, but includes in-kind contributions, goods, or services provided to a political committee without charge or at a rate that is less than the usual and normal charge.¹⁸ The “usual and normal charge” is defined as the price of goods in the market from which they ordinarily would have been purchased at the time of the contribution, or the commercially reasonable rate prevailing at the time the services were rendered.¹⁹

In the Commission’s recent attempt to clarify prohibited activities concerning foreign nationals, Chair Weintraub noted that “soliciting, accepting or receiving information in connection with an election from a foreign national, *as opposed to purchasing the information at the usual and normal charge* . . . , could potentially result in the receipt of a prohibited in-kind contribution.”²⁰ The services Ms. Chalupa allegedly requested of Ukrainian government officials, including having the president provide a statement on Paul Manafort, even if requested, which they were not, do not amount to soliciting information from a foreign national. And of course, there is no “normal or usual charge” for making a statement and as such, a request to do so cannot and does not amount to a contribution.²¹

Similarly, the Complaint’s allegation that Ms. Chalupa e-mailed DNC staff in May of 2016 to say that she had “sensitive information about Manafort that she wished to share in person” completely fails to establish that she solicited a contribution from a foreign national.²² This vague and unspecific allegation does not even purport to know what this “sensitive information” was, or the source of the information. In addition, in May 2016 a major expose of Paul Manafort and his ties to pro-Russian politicians in Ukraine was published on the Pulitzer

¹⁶ *Id.* citing Re, *supra* note 15.

¹⁷ 52 U.S.C. § 30101(8)(a)(i).

¹⁸ 11 C.F.R. § 110.52(d)(2)

¹⁹ *Id.*

²⁰ See, Draft Interpretive Rule Concerning Prohibited Activities Involving Foreign Nationals (Sept 26, 2019)(emphasis added), available at https://www.fec.gov/resources/cms-content/documents/mtgdoc_19-41-A.pdf

²¹ In addition, simply talking to a foreign national does not result in a contribution. See, AO 2007-22 (where the Commission approved “[c]onsulting with Canadian citizens” to learn about their election activities as an activity that could be conducted without payment to avoid taking a contribution from a foreign national.

²² Compl. at 11.

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Prize winning site Politifact, resulting in increased media scrutiny of his activities, all of which was widely publicly available.²³

CONCLUSION

Because the Complaint fails to show that Ms. Chalupa solicited any contributions or anything of value from any foreign national in violation of the Act, Respondents respectfully request that the Commission find no reason to believe any violation has occurred, dismiss the matter, and close the file.

Sincerely,



Amanda S. La Forge

Joseph E. Sandler

Cc: Kathryn Ross, Paralegal

²³ See, Aleksandra Kharchenko, *Paul Manafort, Donald Trump's Top Advisor, and His Ties to Pro-Russian Politicians in Ukraine*, POLITIFACT (May 2, 2016), <https://www.politifact.com/global-news/article/2016/may/02/paul-manafort-donald-trumps-top-adviser-and-his-ti/>;