



office | 720.904.6010
direct | 720.904.6022
fax | 720.904.6020
rwestfall@halewestfall.com
1400 16th Street, Suite 400
Denver, Colorado 80202
www.halewestfall.com

Richard A. Westfall | Partner

Allan L. Hale | Partner

Digitally signed
by Kathryn Ross
Date: 2020.05.13
19:50:22 -04'00'

VIA E-MAIL: cela@fec.gov

May 13, 2020

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

Re: MUR 7729

To the Commission and Its Representatives:

Hale Westfall, LLP, hereby respectfully submits its response to the Complaint filed by Rebuilding America Now (“RAN”) against Hale Westfall and Ryan Call.

I. Preliminary Statement Concerning Posture of Complaint and Ryan Call

Hale Westfall’s involvement arises from a former employee of Hale Westfall, Ryan Call. Mr. Call was a prominent election law attorney in the State of Colorado for many years. See Exhibit 1 to the Complaint (detailing Mr. Call’s background.) He had been counsel for the State Republican Party and was State Party Chairman for two terms. He became affiliated with Hale Westfall after entering private practice after serving as State Party Chairman.

Mr. Call had a very active political law practice. He represented campaigns, the State Republican Party and affiliates, and various nonprofit political organizations such as RAN. He was one of the preeminent election law lawyers in the State of Colorado.

Mr. Call is no longer affiliated with this firm. The firm discontinued its affiliation with Mr. Call over the firm’s concerns with Mr. Call’s handling of his client, RAN, the Complainant, in August, 2019, when he refused to answer a number of questions as Hale Westfall was in the process of responding to a letter from RAN raising a number of issues requesting a response.

This response is on behalf of Hale Westfall only. It is our understanding that Mr. Call was provided a copy of the Complaint through his attorney, and we presume he will be providing his own response. Hale Westfall will provide the information it was able to locate after Mr. Call’s

Federal Election Commission
c/o Kathryn Ross, Paralegal
MUR 7729
May 13, 2020
Page 2

departure that it collected to respond to questions from RAN. Mr. Call provided minimal assistance in gathering that information through his attorney.

Hale Westfall provides this response without the benefit of knowing all the facts – facts that only Mr. Call possesses. For reasons stated, Hale Westfall respectfully submits that it should not be found in violation of the laws set forth in the Complaint.

II. Factual Background Related to RAN

The engagement letter attached to the Complaint as Exhibit 2 spells out Mr. Call's role as RAN's Treasurer and, separately, the retention of Hale Westfall LLP as a second law firm providing legal services.¹ As reflected in its first paragraph, RAN's engagement of Mr. Call as Treasurer was the product of several months of negotiation between Ms. Mitchell and him. Exhibit 2 to the Complaint actually replaces an earlier engagement letter. The letter provides that "[a]s we discussed," Mr. Call as the "*undersigned*" will serve as 'Treasurer' for 'Rebuilding America Now.'" (Emphasis added.) Complaint, Exhibit 2 at 1. Significant as to this matter, the Engagement Letter provides that Mr. Call's work will be done:

in coordination with Cleta Mitchell and the law firm of Foley & Lardner LLP, as general campaign counsel for the federal super PAC, and you, Chris Marston, serving as "Assistant Treasurer" and your firm, Election CFO, LLC, taking principal responsibility for receiving and depositing donations, tracking and reporting individual contributions and assisting with certain campaign finance reporting functions and account reconciliation.

Complaint, Exhibit 2 at 2.²

It is in this context, that RAN, acting through Ms. Mitchell and Mr. Marston, were unable to obtain additional information and documents from Mr. Call and, therefore, contacted the undersigned partners for Hale Westfall. In response, and as described in the March 6, 2020, letter from RAN counsel to the Commission (Exhibit 3 to the Complaint, "Sua Sponte Submission"), Hale Westfall supplied RAN additional documents from Mr. Call on or about July 3, 2019, when Mr. Call provided those additional documents at the instruction of the undersigned. Undersigned so instructed Mr. Call in response to a letter sent to us dated June 28, 2019, Attachment A to this Response.

¹ Cleta Mitchell, a partner at Foley & Lardner LLP, and RAN's General Counsel, was RAN's primary provider of legal services. See Exhibit 1 and Exhibit 3 to the Complaint.

² The Engagement Letter also contains a provision for arbitration of disputes and a provision for indemnification. Hale Westfall is not waiving either provision by filing this response.

Federal Election Commission
c/o Kathryn Ross, Paralegal
MUR 7729
May 13, 2020
Page 3

Undersigned followed up with counsel for RAN to see if its Treasurer, Mr. Marston, had received the materials. We were informed that he did, but that the documents were not complete. We were instructed to hold off on further work until we received a memorandum detailing areas where additional information would be needed. We received that memorandum on July 29, 2019, Attachment B to this Response.

For the next two weeks, undersigned contacted Mr. Call repeatedly about where he was on providing the additional information in person and by phone. Eventually, a meeting was scheduled to get back to counsel for RAN via phone on August 19, 2019. Undersigned (Westfall) met with Mr. Call on Wednesday, August 14, 2019, to go over the list of items provided by RAN in its July 29 memorandum. Undersigned was informed, for the first time, that Mr. Call had a separate political consulting contract separate and apart from his work as an attorney for Hale Westfall. Both undersigned then met with Mr. Call the afternoon of August 15 and stressed the need to fully disclose all information to RAN. Mr. Call avoided answering a number of questions and on the morning of August 16, 2019, Mr. Call informed the undersigned that he had retained an attorney and could no longer answer our questions.

Undersigned participated on a call with RAN counsel on August 19 as scheduled, notified counsel of first learning of the political consulting contract, and notified counsel that Mr. Call was no longer employed by Hale Westfall. Undersigned committed to doing our best to respond to the July 29, 2019, memorandum, and on September 9, 2019, provided RAN a detailed response, Attachment C to this Response.³

The September 9 response provides the best efforts of Hale Westfall to respond to the questions posed by the July 29, 2019, memorandum. It provides all of the documents in Hale Westfall's possession regarding RAN's contracts, including the political consulting contract discovered on August 14, 2019. It provides a detailed response of all invoices in Hale Westfall's possession including invoices related to Hale Westfall's bills, that were provided in all instances to Mr. Marston, the current Treasurer of RAN and the signer of the Complaint, and accounting for all Hale Westfall related bills and charges that RAN paid and which were not questioned.

The September 9 response addresses the discrepancy between what RAN's records show regarding disbursements to Hale Westfall and/or Mr. Call and what Hale Westfall's records show. As noted at page 3 of the response: "As stated above, to the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that this firm received funds from RAN other than the \$182,029.63 RAN paid as reflected on Exhibit 4, such representation is in error and should be corrected immediately." The response further notes: "Until you provided us with this information on July 29, 2019, this firm had no knowledge of the Undocumented RAN Disbursements to him."

³ Attachments B and C collectively contain hundreds of pages of documents that are not being included in this Response. Hale Westfall will provide whatever additional documentation the Commission requests.

Federal Election Commission
c/o Kathryn Ross, Paralegal
MUR 7729
May 13, 2020
Page 4

The September 9 response then addresses expense reimbursements and provides RAN all documents in Hale Westfall's possession and some documents that were then recently obtained from Mr. Call that were not in the firm's electronic files. The response then provided whatever information that was in Hale Westfall's files regarding payments to certain vendors and 1099s.

The September 9 response then details Hale Westfall's efforts to identify and isolate all of Mr. Call's emails related to RAN. And lastly, the response responded to an inquiry concerning a \$23,135.00 cashier's check. We noted that while that amount tracked the exact amount of invoice number 4170 to RAN dated October 31, 2016, we noted that that particular invoice had been paid by a December 31, 2016, wire transfer. We concluded on this point: "To the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that the funds represented in the cashier's check were paid to this firm, such representation is in error and should be corrected immediately."

The March 6, 2020, sua sponte submission from RAN notes receipt of the September 9, 2019, response from Hale Westfall. Hale Westfall has no reason to dispute any of the representations made in that submission, although Hale Westfall disputes the manner in which the Complaint characterizes the sua sponte submission particularly as regards the role of Hale Westfall vis a vis Mr. Call.

The submission notes that there is a pending MUR as to RAN. During Hale Westfall's efforts to gather additional information, Hale Westfall was also made generally aware of pending investigations civilly and criminally regarding RAN. Hale Westfall has no personal knowledge regarding these MURs and investigations.

III. Hale Westfall Should Not Be Found in Violation Under Either Claim 1 or Claim 2

A. Hale Westfall as a Firm Took Affirmative Steps to Correct Reporting Deficiencies When Mr. Call's Actions Were Brought to Its Attention

Claim 1 asserts that Mr. Call and Hale Westfall failed to properly account for contributions and expenditures under 11 C.F.R. § 102.9. Claim 2 asserts that Mr. Call and Hale Westfall engaged in false reporting of RAN's receipts and disbursements under 52 U.S.C. §§ 30104 et seq. Section 30104 is effectuated through 11 C.F.R. §§ 104.1 – 104.22. Both sets of regulations provide for a determination that compliance with the applicable laws can be established if "best efforts" can be demonstrated. *See* 11 C.F.R. § 102.9(d); 11 C.F.R. § 104.7(a).

As noted in the factual background section, Hale Westfall took corrective action when RAN brought Mr. Call's actions to its attention. A critical step in the process was when RAN submitted spreadsheets and underlying documentation as part of its July 29, 2019, memorandum, detailing the questions it had about Mr. Call. Hale Westfall demanded Mr. Call to explain what had happened and to provide facts to support his explanations regarding the various points set forth in the memorandum.

Federal Election Commission
c/o Kathryn Ross, Paralegal
MUR 7729
May 13, 2020
Page 5

Five days before the scheduled call with RAN's counsel (August 14, 2019), Mr. Call revealed for the first time a separate political consulting contract between him and RAN that Hale Westfall knew nothing about. He attempted to explain that day the discrepancies between what Hale Westfall's records showed about payments to Hale Westfall and what RAN's records showed relying primarily upon the newly discovered political consulting contract. There remained numerous questions, however, and both undersigned met with Mr. Call the next afternoon, August 15, 2019. At that meeting, Mr. Call, for the first time ever, stopped answering undersigned's questions. He was implored to rethink his position and to cooperate with a full disclosure to RAN. The next morning, Mr. Call informed us that he had retained an attorney and that he could no longer talk to us about this matter, and his employment was then terminated.

Hale Westfall subsequently did everything it could to answer RAN's questions in its September 9, 2019, letter, a response acknowledged in RAN's March 6, 2020, sua sponte submission. In the September 9 letter and the volume of documents contained in a shared Dropbox file, Hale Westfall provided RAN complete responses to all of its questions to the best of Hale Westfall's ability and urged RAN to make corrections to the necessary reports based upon the information it was providing.

Hale Westfall respectfully submits that it has made best efforts to answer RAN's questions and to cooperate with it to assist as best it can to make the necessary corrections to RAN's reports with the Commission.

B. Hale Westfall Should Not be Liable for Any Violations of Campaign Finance Law Under Respondeat Superior

As an initial matter here, Hale Westfall fundamentally disputes the manner in which the Complaint attempts to recast Hale Westfall's role in representing RAN. The March 6 sua sponte submission (see especially page 2 defining Mr. Call as treasurer and his role as such and distinguishing him from "the Law Firm" and page 3 discussing "Treasurer Ryan Call") correctly characterizes Hale Westfall's role vis a vis Mr. Call's role as Treasurer. Exhibit 1 to the Complaint also correctly describes the roles of the key players for RAN. The Complaint, however, appears to be based upon a mischaracterization of Hale Westfall's role. A key feature of the Complaint as to Hale Westfall is the following statement: "Respondent Hale Westfall was retained as treasurer of the Committee." As noted, inter alia, in the March 6, sua sponte submission to the Commission, Exhibit 1 to this Complaint, and Exhibit 2 (the Engagement Letter), this is simply not true.

The crux of this Complaint is RAN's attempt to use this Complaint as a vehicle for recovering an alleged \$278,169.45 in misappropriated funds. See Complaint at 3 and Exhibits 3 and 4. Hale Westfall has no responsibility for any funds misappropriated by Mr. Call. Any such misappropriation would be an intentional tort. Under well-established law, "[a]n employer can be liable for an intentional tort committed by an employee if the servant's conduct was in some way caused by an intent to serve his employer's interests and connected with his authorized acts."

Federal Election Commission
c/o Kathryn Ross, Paralegal
MUR 7729
May 13, 2020
Page 6

Colorado Compensation Insurance Authority v. Jones, 131 P.3d 1074, 1080 (Colo. App. 2005) (Colorado law, internal quotations and citation omitted); *see also Hicks v. Garrett*, 2012 WL 3194376 (Ohio App. 2012) (finding law firm not liable under respondeat superior); *id.* at *9 (where tort is intentional, tort must be “calculated to facilitate or promote the business for which the servant was employed”; “an employer is not liable for independent self-serving acts of his employees which in no way facilitate or promote his business”; internal citations and quotations omitted). Federal case law in the context of securities violations tracks Colorado and Ohio law. *See Rochez Bros., Inc. v. Rhoades*, 527 F.2d 880, 884 (3d. Cir. 1975) (“fraud of an officer of a corporation is imputed to the corporation when the officer’s fraudulent conduct was (1) in the course of employment, and (2) for the benefit of the corporation.”). Any funds misappropriated by Mr. Call were neither misappropriated within the scope of his employment with Hale Westfall nor for the benefit of Hale Westfall.

The Complaint asserts that Hale Westfall “failed to properly supervise” Mr. Call. Complaint at 3. The record reflects that once RAN brought its concerns to the attention of Hale Westfall in June, 2019, Hale Westfall took action to (a) get to the bottom of RAN’s concerns, and (b) once it became apparent Mr. Call was not being forthcoming in providing answers supported by the documents, terminated his employment.

RAN’s March 6, 2020, sua sponte submission contains a discussion of internal controls. Inter alia, it notes that RAN “created segregation of duties and internal controls from the outset,” and that RAN “took extraordinary steps to make sure there was more than one person involved in the Committee’s financial management, with divided responsibilities for Committee operations.” Exhibit 3 to the Complaint at 4. For example, at RAN’s request Hale Westfall’s monthly invoices were provided to Mr. Call and Mr. Marston (RAN’s Assistant Treasurer--now Treasurer--who signed the Complaint), both of whom had information about all RAN receipts and expenditures and the resulting reports filed with the FEC and IRS, consistent with the engagement letter set for in the Complaint, Exhibit 2.

As described above, Hale Westfall’s investigation of Mr. Call and its September 9th report to RAN described the discrepancy between what RAN’s records show regarding disbursements to Hale Westfall and/or Mr. Call and what Hale Westfall’s records show, a discrepancy that should have been apparent to RAN with its robust internal financial controls. It is incongruous for RAN to now assert here before the Commission that Hale Westfall should be held responsible for Mr. Call’s conduct that evaded RAN (its then Assistant Treasurer and its General Counsel) and its internal controls for more than two years.

Hale Westfall respectfully requests that the Commission, under 11 C.F.R. § 111.7(b), either dismiss the Complaint, or find that there is no reason to believe that Hale Westfall has committed, or is about to commit, a violation of federal election law.

Federal Election Commission
c/o Kathryn Ross, Paralegal
MUR 7729
May 13, 2020
Page 7

We thank the Commission for its consideration of this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Westfall". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Richard A. Westfall

A handwritten signature in black ink, appearing to read "Allan L. Hale". The signature is cursive and somewhat stylized, with a large initial "A" and "H".

Allan L. Hale

ATTACHMENT

A

ATTACHMENT

A



FOLEY & LARDNER LLP

ATTORNEYS AT LAW
 WASHINGTON HARBOUR
 3000 K STREET, N.W.
 SUITE 600
 WASHINGTON, D.C. 20007-5109
 202.672.5300 TEL
 202.672.5399 FAX
 WWW.FOLEY.COM

WRITER'S DIRECT LINE
 202.295.4081
 cmitchell@foley.com EMAIL

CLIENT/MATTER NUMBER
 999100-0100

June 28, 2019

VIA Federal Express

Mr. Allan Hale, Managing Partner
 Hale Westfall LLP
 1400 Sixteenth Street Suite 400
 Denver, CO 80202

Re: Ryan Call / Rebuilding America Now

Dear Mr. Hale:

The undersigned serves as counsel to Rebuilding America Now, an independent expenditures only political committee, registered with the Federal Election Commission ("RAN" or "the PAC"). Ryan Call, an attorney in your firm, served as RAN's treasurer until a few weeks ago, when he was replaced in that position.

I am writing to you for several reasons having to do with Ryan's actions and inactions as RAN treasurer. The immediate need is for you to please assist in collecting and forwarding the RAN books and records to our new treasurer – something we have requested of Ryan multiple times, to no avail. It is impossible for RAN to be able to audit its accounts and prepare the next report to the Federal Election Commission ("FEC") due on July 15 until and unless all the books, records, and documents related to RAN are received as requested. I had given Ryan until last Friday by close of business as a final deadline for receipt of the records but we have received and heard nothing from him.

There are many concerns that need to be addressed, reviewed, researched and resolved, including questions surrounding disbursements from the PAC's accounts to Ryan personally, \$1700 in ATM withdrawals by Ryan over the period of time when he was serving as RAN's treasurer, payments to / from your firm that seem erratic, and potentially unauthorized, and other anomalies that need to be reviewed and reconciled, then properly reported to the FEC. One of the things we are also requesting is the documentation of the billings, invoices, and payments to and from RAN from/to your firm. There are a number of transactions that appear on the bank statements that require further review and documentation.

AUSTIN
 BOSTON
 CHICAGO
 DALLAS
 DENVER

DETROIT
 HOUSTON
 JACKSONVILLE
 LOS ANGELES
 MADISON

MEXICO CITY
 MIAMI
 MILWAUKEE
 NEW YORK
 ORLANDO

SACRAMENTO
 SAN DIEGO
 SAN FRANCISCO
 SILICON VALLEY
 TALLAHASSEE

TAMPA
 WASHINGTON, D.C.
 BRUSSELS
 TOKYO



FOLEY & LARDNER LLP

June 28, 2019

Page 2

Another serious issue facing the PAC is that Ryan failed to report a \$1 million contribution received by RAN one week before the 2016 election – which should have been reported on the post-general report in December 2016. Ryan had represented (in writing) to the assistant treasurer, to me, and to the PAC's principals in early December 2016 that he had "reconciled" the bank account and the post-general report was accurate and ready to be filed.

However, that representation was not true.

Ryan filed an incorrect FEC post general report in December 2016, and continued to file incorrect reports for each ensuing reporting period through December 31, 2018.

Then, last fall, without notice to or discussions with the (then) assistant treasurer Chris Marston or me as counsel to the PAC, Ryan filed an amendment reporting for the first time the \$1 million contribution – nearly two years after the fact. Of course, that generated a letter of inquiry from the FEC. I tried to reach Ryan multiple times about the filing, the letter of inquiry from the FEC and his proposed response. I heard nothing back from him despite repeated messages and inquiries. Finally, on the date when the response was due, I was able to reach Ryan and asked if he planned to file a response that was due that day. He did prepare and file an explanation that evening. It was not satisfactory and the matter is now referred to the FEC's Office of General Counsel for further action.

I told Ryan several months ago that he should notify your firm's malpractice carrier of the FEC issues because the PAC will, no doubt, be subject to a substantial civil penalty as a result of his errors, which have given rise to a matter under review before the FEC. Ryan advised me as recently as last week that the notice of potential claim has been given to the firm's malpractice carrier and when I asked him to provide written confirmation of the notice, his response is that he still 'waiting for confirmation' from the insurance carrier of the receipt of the notice of the potential claim.

Additionally, Ryan failed to respond to numerous requests for additional information from the FEC. One request in particular may well lead to an additional proceeding before the FEC. Ryan made a \$42,000 payment to an individual reported as reimbursement for travel expenses without providing the required itemization of the individual expenses constituting the payment. The FEC brought this failure to his attention through a request for additional information, but Ryan has never responded to that request from the agency. In order for RAN to properly amend that report, we will require the receipts submitted by the individual so that we can properly itemize and follow the FEC's recordkeeping requirements. We need all underlying documentation for all such payments. Ryan well knows that such invoices and documentation are required by law.



FOLEY & LARDNER LLP

June 28, 2019

Page 3

As you can see, there are myriad serious issues related to Ryan's errors and omissions with regard to the PAC and we are unable to proceed with an audit, with responding to FEC requests for information that Ryan has failed to answer; we cannot properly review and amend all the FEC reports, or prepare future FEC reports until we receive the books and records that Ryan as treasurer and Custodian of Records is required to maintain and preserve. We can only hope that he has indeed maintained proper documents as required by law. I have no idea why he has refused to forward those as requested – and that is why we are seeking your assistance.

We will appreciate your firm's help in collecting and forwarding to my office all the books and records related to the PAC, including all documentation and records related to the payments to and from your firm related to the PAC, and to also provide to us confirmation of the notice to your firm's malpractice carrier of the potential claim(s) arising from the firm's relationship with Rebuilding America Now.

I am sorry that we have come to this point, but after unsuccessful attempts to resolve these matters with Ryan, he left us no choice but to communicate directly with you. He told me in the last two months that he had advised Hale Westfall's management of this situation, so I trust this is not a total surprise to you. I will look forward to hearing from you. Please feel free to contact me at (202) 295-4081 or to email me at cmitchell@foley.com.

Thank you for your prompt attention.

Sincerely,

A handwritten signature in blue ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq.

Cc: Chris Marston, Treasurer
Rebuilding America Now

ATTACHMENT

B

ATTACHMENT

B



ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300
202.672.5399
WWW.FOLEY.COM

cmitchell@foley.com
202.295.4081

MEMORANDUM

CLIENT-MATTER NUMBER
999100-0100

TO: Richard Westfall, Esq.
Hale Westfall

FROM: Clela Mitchell, Esq.
Foley & Lardner, LLP

CC: Chris Marston
Election CFO

DATE: July 29, 2019

RE: Rebuilding America Now - Missing Documents and Records Needed

Richard - -thanks so much for checking in last week. We are trying to reconstruct the financial records of Rebuilding America Now ("RAN") and have found that there are many missing records and documents. Your assistance in helping get the missing records, documents, and information from Ryan is greatly appreciated.

1. Contracts. Ryan did not include all the executed contracts with the records that he sent. Our process for contracting with vendors and consultants was as follows: I prepared the contracts and finalized all the documents, pursuant to the terms negotiated by the RAN principals. I then emailed the prepared contracts to Ryan and to the vendor / consultant. Ryan, as treasurer, was responsible for ensuring that the contracts were executed, that W-9's were obtained from the consultant, and that Ryan retained signed copies in his files, as required by the FEC. Can you please have Ryan produce the fully-executed contracts or let us know if there are any contracts were *not* fully executed? Also, if there are any contracts he entered into on behalf of RAN that I did not prepare, please have him produce those as well. A list of the contracts that he provided, and whether they were fully executed (or not), is attached. See Attachment 1, List of Contracts.

2. Missing Invoices. We are missing copies of the invoices listed in the attached spreadsheet. This list has been revised to remove the invoices for which we were able to obtain copies directly from vendors, which was necessary because these invoices were not included in the materials provided by Ryan. The spreadsheet reflects the invoices that we have not been able to obtain from the vendors / consultants directly. See Attachment #2, List of Missing Invoices.



FOLEY & LARDNER LLP

3. Reconciliation of amounts paid to Hale Westfall and/or Ryan Call. The attached spreadsheet shows the payments to Hale Westfall and/or Ryan Call from RAN. Please verify that this matches your account of records for this matter. It appears, there are a number of disbursements that are not supported by the engagement letter, invoices, or other documentation. We need the underlying documentation for all of those payments and disbursements and a reconciliation of our records with your firm's records regarding the correct amount(s) paid to the firm.

There are also ATM cash withdrawals from a bank in Denver. All cash payments of PAC funds in excess of \$200 are to be specifically itemized on the FEC report, so we will need the information as to what the cash was used for and the receipts, invoices, etc. in order that the FEC reports can be amended and the amounts properly reported. See Attachment #3 Spreadsheet of Hale Westfall payments

4. Expense reimbursements. Certain disbursements for expense reimbursements lack the underlying documentation for the expenses that were reimbursed. Of particular concern, there are "Travel expense reimbursements reported on the Committee's 2018 April Quarterly report" that are the subject of a request for more information from the FEC that Ryan never answered. We need the receipts and other documentation for all of the expense reimbursements paid by the PAC. FEC regulations require the treasurer to obtain and maintain such records of all expenditures by the PAC, including expense reimbursements. See Attachment #4, List of Missing Expense Documentation

5. Payments After Termination Dates of Contracts. The consulting contracts all had termination dates, to-wit:

- Laury Gay October 31, 2016.

There is a document signed by Ryan, which provides for payments to Laury Gay of \$35,000 per month, effective Jan 1, 2018, and signed by Ryan on 1/20/2018. Laury Gay did not sign the agreement. There is no documentation regarding 2017 payments or other payments following the expiration of the contract on October 31, 2016.

- Ken McKay October 31, 2016
- Christina Culver November 8, 2016.

There are two additional documents, purportedly contracts, signed by Ryan, but not Christina Culver, the first of which was purportedly effective on 4/1/2017, through December 31, 2017, and the second



FOLEY & LARDNER LLP

purportedly effective January 1, 2018. Both are signed only by Ryan and provide for payments of \$15,000 per month.

None of the additional / extended 'agreements' set forth specific services to be performed in the years following the election in 2016.

In addition, Hale Westfall's agreement was for hourly billing. At some point, it appears that Ryan changed the agreement to a monthly retainer, which continued for two plus years after the 2016 election. In addition, disbursements continued at the same level as 2016 far beyond the 2016 election and the termination dates on the contracts.

We need the documentation that authorized the payments to Laury Gay (20 months), Ken McKay (3 monthly payments) and Christina Culver (19 months) following the expiration of the terms of the initial contract terms and the change of contract terms for Hale Westfall.

6. Form 1099s. Ryan, as treasurer, was responsible for sending the Form 1099s to the vendors and consultants of the PAC. I know he sent 1099s to some vendors but the payer copies were not included in the records he sent to Chris earlier this month. We need a complete set of the 1099s, which he should have retained in his records as treasurer.

7. Email communications. We would request copies of all Ryan's email communications regarding RAN since inception of the PAC in 2016 through the present date. The emails will, hopefully, help us sort out the anomalies we have identified, as well as to shed light on communications related to media refunds and directions as to deposits and disbursements. In particular, we need Ryan's emails to and from Laury Gay and/or other consultants authorizing or directing changes to or extensions of the contract terms and/or new contracts with Laury Gay and Christina Culver / EdNexus as well as the monthly retainers to Hale Westfall that were not contemplated in the June 2016 engagement letter. A thumb drive with all of Ryan's emails related to RAN will provide badly needed missing documentation.

As you may or may not know, the distribution of funds from RAN's media buys is the subject of an ongoing criminal investigation in the US Attorney's office in Washington, DC and the Department of Justice Office of Public Integrity. If these emails have not already been subpoenaed, they are likely to be in the near future. We also believe Ryan's email communications are necessary in order for us to be able to amend the FEC reports and reconcile the PAC's accounts and records.

8. Cashier's check. There is a bank originated transaction on November 25, 2016 in the amount of \$23,135.00. The transaction indicates that the disbursement was paid to Hale Westfall. Can you please confirm receipt of those funds in that amount on that date? It seemed odd that a cashier's check would be necessary for payment of invoices from the firm, so if you can please confirm receipt of those funds, that would be useful – and then help us with tying the payment to specific invoice(s).



We appreciate your assistance in helping to retrieve missing documents and records. None of this is what we ever expected to have to deal with, but Ryan's actions raise serious questions regarding his fiduciary and statutory duty to the PAC, and his proper discharge of his responsibilities to maintain and preserve RAN's books and records, to properly report to the FEC, and to ensure that the funds of the PAC were disbursed according to written agreements and in the best interests of the PAC.

Please feel free to contact me at any time to discuss these requests. We are hopeful that this can all be resolved as quickly as possible but we need the requested additional documents, materials, and records in order to finish this work.

Thank you.

Attachments:

1. List of Contracts
2. Spreadsheets of Missing Invoices
3. Spreadsheet of Hale Westfall Payments
4. List of missing expense documentation – Gay, McKay, Culver/Ed Nexus

ATTACHMENT

C

ATTACHMENT

C



office | 720.904.6010
direct | 720.904.6022
fax | 720.904.6020
rwestfall@halewestfall.com
1400 16th Street, Suite 400
Denver, Colorado 80202
www.halewestfall.com

Richard A. Westfall | Partner

September 9, 2019

Cleta Mitchell, Esq.
Foley & Lardner, LLP
CMitchell@foley.com

By: Federal Express and Electronic Transmission (Documents by Dropbox)

Re: Rebuilding America Now, LLC (“RAN”)

Dear Cleta:

This letter and accompanying materials and documents will summarize our efforts to date to respond to your July 29, 2019, Memorandum (the “Memo”) and its request for certain documents and records related to RAN.¹ This response follows as closely as possible the headings and categories in the Memo.

Let us begin by repeating what we have expressed in our conversations. First, we apologize that the documents and information we are providing now were not provided to you earlier as our former client’s authorized representative. Second, we are continuing to investigate this matter and we will work with you, or others you designate, to obtain additional documents and information.

1. Contracts. Attachment 1 to your Memo is an Excel spreadsheet with two tabs. You write that Tab 1 is a list of contracts provided to you by Ryan Call. Tab 2 is titled “Amount Owed Per Contract.” We read your Memo to ask us to review this firm’s files for any contracts, fully executed or not, that do not appear on Tab 1.

Attached as **Exhibit 1** to this letter is a list by title of all documents in the subfile “Vendor contracts and W9s” within our firm’s electronic client file “Rebuilding America Now PAC”.

¹ Please note that Ryan Call resigned from this firm effective Tuesday, August 20th, and he has retained an attorney who represents him personally: Nancy Cohen (Nancy.Cohen@lewisbrisbois.com) who is a partner in the Denver office of Lewis Brisbois Bisgaard & Smith LLP. Ms. Cohen has a copy of your Memo and she is copied on this letter. Contact information for Ms. Cohen, other than her email, may be obtained through her firm’s website.

Cleta Mitchell, Esq.
Rebuilding America Now
September 9, 2019
Page 2

All of the documents in this subfile are being made available to you electronically through DropBox.

We compared this subfile with Tab 1 and each contract, but one, listed in Tab 1 appears in the subfile. The one contract listed in Tab 1 we could not find in the subfile is "6/3/2016 CMDI".

On 8/15/19 Mr. Call provided to us for the first time a contract titled "PAC Consulting Contract" that does not appear either on your Tab 1 or in this firm's electronic subfile. Mr. Call said that he did not believe you were aware of this document but he did believe that Mr. Gay was aware of and had approved it. This document was previously given to you electronically and a copy is attached as **Exhibit 2** for ease of reference.

2. **Missing Invoices.** Attachment 2 to your Memo consists of two Excel spreadsheets, one titled "Missing Invoices" and a second titled "2019-07-23 Updated Missing Invoices Spreadsheet". The second spreadsheet appears to be more recent and comprehensive and that is the one we reviewed and to which we respond in this section. The second spreadsheet has three tabs titled "Missing Invoices", "Hale Westfall – hourly", and "Hale Westfall – retainers". In direct response to the first tab, attached as **Exhibit 3** to this letter is a list by title of all documents in the subfile "Vendor invoices for regular reports" within our firm's electronic client file "Rebuilding America Now PAC". All of these documents are being made available to you electronically through DropBox.

Regarding the second tab titled "Hale Westfall – hourly", we do not understand why a list of our invoices refers to some as "missing." Also, the information in this tab is different from what is in our records. To address these differences, attached as **Exhibit 4** is this firm's electronic billing system reports titled "Tabs3 Client Ledger Report" for RAN dated 8/13/19 and "TAS Client Trust Ledger" for RAN dated 8/16/19. which reflect invoices to, and payments from, RAN as well as the transfers between our operating and trust accounts. To the first report we have added information in handwriting reflecting the type of payment, i.e., RAN check, RAN wire transfer, or transfer from RAN funds in our COLTAF or trust account; handwritten notes in the far left column show RAN deposits into our trust account (this makes it easier to track payment from RAN that were made by transferring funds from our trust account RAN funds reflected in the second report). We have conducted a careful review of this report and compared it to our audited operating account and trust account statements and the underlying bank statements and presented checks. We have supporting documentation for each transaction.

As you will read, this firm submitted invoices to Mr. Marston (our invoices were always submitted directly by email to Mr. Marston) at RAN for professional fees and costs totaling \$182,309.63 for which RAN paid \$182,029.63, leaving an outstanding balance of \$280.00. Although we assume you have a complete set of our invoices, to assist your review of them we are making them available to you through DropBox.

Cleta Mitchell, Esq.
Rebuilding America Now
September 9, 2019
Page 3

To the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that this firm received funds from RAN other than the \$182,029.63 RAN paid as reflected in **Exhibit 4**, such representation is in error and should be corrected immediately. Note that as described in category 6 below, the amounts reflected in RAN's IRS Form 1099s to this firm for tax years 2016, 2017, and 2018 correspond to the amounts in our **Exhibit 4**.

Regarding the third tab in Attachment 2 titled "Hale Westfall – retainers", this firm has no record of billing RAN these amounts or receiving such payments from RAN. To the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that this firm billed RAN or received funds from RAN as reflected on this tab, such representation is in error and should be corrected immediately. We note that the amounts listed appear to correspond to the amounts described in a contract titled "PAC Consulting Contract" that Mr. Call provided to us for the first time on 8/15/19 and which is described in category 1 above and attached as **Exhibit 2**.

3. **Reconciliation of amounts paid to Hale Westfall and/or Ryan Call.** Attachment 3 to your Memo consists of an Excel spreadsheet titled "Hale Westfall LLC-Ryan Call Disbursements" and has two tabs, one titled "Disbursements from Crimson" and a second tab titled "Invoices". It appears that this category overlaps substantially with category 2 above and so our response here incorporates our response above.

Tab one reflects a total disbursement by RAN of \$440,999.08 but incorrectly lumps together payments to this firm with those to Ryan Call. As described above, this firm submitted invoices to RAN through Mr. Marston totaling \$182,309.63 for which RAN paid \$182,029.63, leaving an outstanding balance of \$280.00. As stated above, to the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that this firm received funds from RAN other than the \$182,029.63 RAN paid as reflected in **Exhibit 4**, such representation is in error and should be corrected immediately.

The second tab appears to be an incomplete list of this firm's invoices to, and payments from, RAN. Differences and missing items are addressed in detail in our response above and in **Exhibit 4** and the invoices we are providing by DropBox. As we have discussed, the difference between RAN's total disbursement number of \$440,999.08 and the amount for which this firm billed RAN, and was paid by RAN, \$182,029.63, is \$258,969.45 (the "Undocumented RAN Disbursements"). Your attachment 3 states that a substantial portion of the Undocumented RAN Disbursements was paid to Ryan Call. Until you provided us with this information on July 29, 2019, this firm had no knowledge of the Undocumented RAN Disbursements to him. To the extent Mr. Call recently provided us his personal documents, that were not in this firm's paper or electronic records for RAN, we have provided you copies.

4. **Expense reimbursements.** Attachment 4 to your Memo consists of an Excel spreadsheet titled "Expense Reimbursements" and has three tabs, one titled "Ken McKay", a second tab titled

Cleta Mitchell, Esq.
Rebuilding America Now
September 9, 2019
Page 4

“EdNexus”, and a third tab titled “Laury Gay”. It appears that this category overlaps somewhat with category 5 below and so our response here incorporates that response. We have provided you with all of the documents in this firm’s records. In addition, we have provided you with copies of documents Mr. Call recently provided us that were not in this firm’s paper or electronic records for RAN. Beyond this information and these documents this firm has no knowledge about these expense reimbursements.

5. Payments After Termination Dates of Contracts. This category overlaps with category 1 above. We have provided you with copies of all contracts, whether fully executed or not, and drafts of contracts, in this firm’s files. Beyond obtaining these documents, your Memo asks about the following:

a. Hale Westfall LLP’s Engagement Agreement. This firm’s only fully-executed (by Messrs. Call and Marston) Engagement Agreement with RAN is dated June 15, 2016, a copy of which is attached as **Exhibit 5**. It appears that a few weeks earlier on May 19, 2016, Mr. Call prepared, signed, and sent you a proposed engagement letter that is not counter-signed. A copy of this document is included with **Exhibit 5**. You have been provided all of our invoices and supporting documentation reflecting our charges to RAN for professional fees and costs and payment of same. As described above, this firm’s invoices were always sent directly by email to Mr. Marston.

Also as described above, on August 16, 2019, Mr. Call provided to us for the first time a copy of a contract titled “PAC Consulting Contract” that does not appear either on your Tab 1 or in this firm’s electronic or paper files. Mr. Call told us that he received several payments under this PAC Consulting Contract. Services performed or payments received by Mr. Call pursuant to this PAC Consulting Contract, or any other informal agreements, were separate from this firm’s engagement contract. To the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that this firm billed RAN or received funds from RAN related to the PAC Consulting Contract, such representation is in error and should be corrected immediately.

b. Payments to Laurence Gay After the 2016 Election (20 months). Other than our conversations and the documents we have provided, this firm has no additional information about the services performed for RAN by Mr. Gay during this period or who authorized payment by RAN.

c. Payments to Kenneth McKay After the 2016 Election (3 months). Other than our conversations and the documents we have provided, this firm has no additional information about the services performed for RAN by Mr. McKay during this period or who authorized payment by RAN.

Cleta Mitchell, Esq.
Rebuilding America Now
September 9, 2019
Page 5

d. Payments to Christina Culver After the 2016 Election (19 months). Other than our conversations and the documents we have provided, this firm has no additional information about the services performed for RAN by Ms. Culver during this period or who authorized payment by RAN.

6. Form 1099s. Attached as **Exhibit 6** are copies of the only two pages we found in this firm's electronic files for RAN reflecting its issuance of IRS Form 1099s.

Attached as **Exhibit 7** are copies of IRS Form 1099s issued by RAN to this firm for tax years 2016 (\$116,826.77), 2017 (\$41,927.86), and 2018 (\$16,905.00). These documents were not found in this firm's electronic file for RAN but were obtained from our electronic firm administration files.

Just prior to his departure, Mr. Call provided us with paper copies of IRS Form 1099s for RAN for tax years 2016, 2017, and 2018. These documents have been scanned and made available to you by DropBox. These documents do not appear in this firm's electronic or paper files.

7. Email communications. This firm, through its technical vendor DCNC, preserved Ryan Call's computer Outlook emails and calendar as of August 30, 2019, for the period of 1/1/16 through 8/20/19. Copies of Mr. Call's Outlook calendar were provided to you electronically last week. DCNC collected approximately 88,000 emails, incoming and outgoing, for Mr. Call (the "Call Emails"). Mr. Call's counsel, Ms. Cohen, requested and has been provided the Call Emails. Although we did not have time to review the Call Emails for relevance or privilege, they were provided to Ms. Cohen with the understanding and acceptance of Mr. Call's continuing obligation to preserve the confidences and privileges that may apply to any email or attachment on behalf of any client.

We searched the Call Emails for communications or attachments relevant to RAN, using the search terms listed on **Exhibit 8** attached. Searches using such terms, after eliminating duplicates, resulted in 2,268 emails (the "**Call RAN Emails**") that are being made available to you through DropBox. Mr. Call did not collect RAN emails in a separate Outlook folder. Our investigation is continuing and we expect Ms. Cohen to request from Mr. Call and preserve other electronic communication by him concerning RAN, including personal emails and texts.

8. Cashier's check. This firm has no record of receiving \$23,135.00 by cashier's check dated November 25, 2016. Although this firm's invoice no. 4170 to RAN, dated 10/31/16 totaled \$23,135.00, that invoice was paid by RAN by a wire transfer on 12/31/16 (see this firm's and RAN's records). To the extent Ryan Call represented to RAN, the FEC, the IRS, or anyone else, that the funds represented by this cashier's check were paid to this firm such representation is in error and should be corrected immediately.

Cleta Mitchell, Esq.
Rebuilding America Now
September 9, 2019
Page 6

Our investigation of this transaction is continuing. As you know, we have asked you for a copy, both front and back, of the cashier's check as well as for a copy of any documents Wells Fargo

Bank may have reflecting why and how it the transaction was initiated. On August 15, 2019, we asked Mr. Call about the cashier's check and he declined to provide any information.


In closing, let us iterate that we are continuing to investigate this matter and we will work with you, or others you designate, to obtain additional documents and information. Please contact us if you have a question about this letter or any related materials.

Sincerely,

HALE WESTFALL, LLP



Richard A. Westfall, Esq.



Allan L. Hale

Copies to:

Mr. Chris Marston
Election CFO, LLC
[electronically by email and by FedEx and by DropBox FTP]

Nancy Cohen, Esq.
[electronically by email and by DropBox FTP]

Cleta Mitchell, Esq.
Rebuilding America Now
September 9, 2019
Page 7

Attached Exhibits:

Exhibit 1. List of documents in Hale Westfall LLP's electronic RAN subfile titled "Vendor contracts and W9s"

Exhibit 2. PAC Consulting Contract

Exhibit 3. List of documents in Hale Westfall LLP's electronic RAN subfile titled "Vendor invoices for regular reports"

Exhibit 4. Hale Westfall LLP's electronic billing system reports titled "Tabs3 Client Ledger Report" for RAN, dated 8/13/19, with hand-written notes (shows invoices to, and payments from, RAN) and "TAS Client Trust Ledger" for RAN, dated 8/16/19

Exhibit 5. Hale Westfall LLP's Engagement Agreement, dated 6/15/16, fully executed; and Hale Westfall LLP's proposed Engagement Agreement, dated 5/19/16, executed only by Ryan Call

Exhibit 6. IRS Form 1099s found in Hale Westfall LLP's electronic files for RAN

Exhibit 7. IRS Form 1099s issued by RAN to Hale Westfall LLP for tax years 2016 (\$116,826.77), 2017 (\$41,927.86), and 2018 (\$16,905.00). These documents were obtained from our firm's electronic administration files and are not found in our RAN paper or electronic files.

Exhibit 8. Search terms applied to Call Emails (resulting in Call RAN Emails)

Categories of Documents Transferred by DropBox File Transfer Protocol:

1. All documents in Hale Westfall LLP's electronic RAN subfile titled "Vendor contracts and W9s"

2. All documents in Hale Westfall LLP's electronic RAN subfile titled "Vendor invoices for regular reports"

3. All invoices from Hale Westfall LLP to RAN

4. IRS Form 1099s for RAN for tax years 2016, 2017, and 2018. These documents do not appear in this firm's electronic or paper files.

5. Call RAN Emails