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October 29, 2020

CONFIDENTIAL

Federal Election Commission Office of General Counsel
Office of Complaints Examination & Legal Administration
Attn: Christal Dennis and Kathryn Ross
1050 First Street NE
Washington, DC 20463

Re: Matters Under Review 7771 and 7774

Dear Ms. Dennis and Ms. Ross:

This response corresponds to the similar complaints filed by the Minnesota Democratic Farmer-Labor Party on August 5 and the Campaign Legal Center on August 7—MURs 7771 and 7774, respectively.¹ Regrettably, these were both filed in the heat of the primary campaign for the Minnesota 5th Congressional District, were based on news media efforts to ‘create a story,’ and are based on mere speculation and wholly inappropriate applications of the FEC’s rules and precedent. As the following analysis will show, there is no reason to believe the reporting by Antone for Congress of payments to three businesses (two operating as LLCs and one operating as a corporation) was inaccurate, inappropriate, or impermissible.

I. The complainants’ presumption of guilt

The complaints proceed on what is, in effect, a presumption that it is ‘sneaky’ for a person with professional skills or commercial plans to form an LLC business structure and to have payments for services provided through that business structure reported by a political committee in the name of the *actual* payee—the LLC (or corporation) that received the payments in question. In reality, it is extremely common in the business world for professionals and others to form LLCs to conduct commercial activity, and there are several widely understood reasons for doing so.²

¹ This firm represents Antone for Congress, Dennis Melton as Treasurer, Antone Melton-Meaux, Lake Point LLC, North Superior LLC, and WCPA (West Coast Public Affairs).

² The Internet is replete with guidance on the primary advantages of forming an LLC to conduct business. *See, e.g.,*

Of most importance, a professional or other person who forms an LLC achieves a significant shield from liability stemming from work related functions. Contracts are made in the name of the LLC, banking is conducted in the name of the LLC, and federal/state/local tax and licensing obligations fall on the LLC. Also, use of an LLC legal entity structure achieves other commercial benefits, such as distinct branding options, shared ownership options, and improved ability to handle sale or dissolution arrangements if they arise.

As for the entity that has operated as a corporation since 2012 (WCPA), complainants erroneously assume it is an LLC and assume that its role as a full-service media firm that pays other firms for specified related tasks is somehow suspect as well. WCPA is the acronym for West Coast Public Affairs, a public relations firm operating in California and elsewhere for eight years. It essentially functioned as a general contractor media firm to handle mailings, cable/TV, and social media messaging for Antone for Congress. The hyperbolic suspicions of complainants about the role of this vendor are wildly misplaced.

Complainants in these two MURs appear to have seized on the breathless reporting of certain publications in Minnesota that were fixated on knowing which individuals were in some sense behind the three businesses at issue. Research of Delaware or other filings did not yield the information these publications believed they were entitled to, apparently. But business law in jurisdictions like Delaware sets forth the requirements for what is appropriate for public disclosure filings, and Delaware, for example, happens to not require details regarding who the owners or members of an LLC are when filing for a Certificate of Formation.³ Moreover, an annual report is not required for an LLC in Delaware, and though a franchise tax of \$300 is to be paid annually, this process likewise does not require disclosure of the owners or members of the LLC.⁴

Having read news stories of frustrated reporters, complainants apparently researched FEC rules and precedent and cobbled together a theory that the reported payments by Antone for Congress should have been reported in a way that identifies on the public record the person or persons who work through or with the LLC or corporate business entity structure. This theory, of course, would lead to the preposterous result that corporations, partnerships, and other forms of business should be subjected to an FEC investigation and enforcement penalty whenever the press or

³ “5 Reasons Why You Should Form an LLC for Your New Business,” *available at* <https://startupnation.com/start-your-business/reasons-form-llc-new-business/>. One researcher estimated that over 21 million LLCs were formed in the U.S. between 1993 and 2015. *See* <https://www.quora.com/How-many-LLCs-exist-in-the-United-States#:~:text=My%20estimate%20is%20that%20approximately,been%20formed%20in%20the%20U.S.> The State of Delaware is known for its streamlined, economical, and efficient process for formally creating and administering an LLC. *See* the state’s website content at <https://corp.delaware.gov/howtoform/> and <https://corpfiles.delaware.gov/LLCFormation.pdf>. The Secretary of State reported that over 226,000 new business entity registrations were filed in 2019, and 73% of those were LLCs. *See* <https://www.delawareinc.com/blog/delaware-releases-annual-report-companies-formed/#infographic>.

³ *See* online form at <https://corpfiles.delaware.gov/LLCFormation.pdf>. An attorney, for example, can file the form on behalf of the LLC as the authorized representative, and it is typical to use a commercial registered agent firm to function as the registered agent.

⁴ *See* <https://corp.delaware.gov/frtax/> (section marked “LP/LLC/GP Tax”) and <https://www.llcuniversity.com/delaware-llc/annual-franchise-tax/>. No listing of owners or members of an LLC is required in the franchise tax process, as this can be accomplished by any authorized agent, such as a law firm.

some complaining party wants to unearth which employees, contract employees, officers, partners, or sub-payees are on the front lines providing services to a political committee.

In a further reach, complainants point to a partial explanation openly offered by Antone for Congress representatives when dealing with the media—that persons helping Democratic House challengers are subject to the threat of ‘blacklisting’ by the DCCC and such persons might benefit from the LLC (or corporate) business structure which would reduce the risk of being ostracized and excluded from business opportunities. Complainants twist this very real consideration and suggest that it supports the theory that the business entities and the campaign committee were ‘hiding’ the identity of individuals or others doing work through the business entities in a way that deprives the public of information that otherwise should be made available.

The Commission should not accept this distorted perspective put forth by complainants. It indeed is an ugly reality that the DCCC puts enormous pressure on campaign professionals and political consultants to not work for any challenger, and this in fact means that operating through a legally distinct LLC or corporate structure gives a level of ‘protection’ to individuals or firms who might otherwise be identified on the record as a paid employee, sole proprietor, individual contractor, or sub-payee. The Commission should not extrapolate that a reporting violation arises from service providers and political committees operating in this manner. As long as the LLC or corporate entity is in fact providing or supervising the specified campaign-related services and the payments to the LLC or corporation are being properly reported as payments to such LLC or corporation for accurately-described purposes, the Commission should not assume a violation has occurred and launch an intrusive investigation.

II. Respondents refute the presumption of guilt and verify their legitimate actions.

The three businesses referenced in the complaints have had a representative prepare a declaration under penalty of perjury (Exhibits 1, 2, and 3). The declarations make clear that the primary reasons for operating as an LLC or corporation were all perfectly legitimate, that the businesses indeed performed or oversaw the services referenced on the FEC reports, that none of the businesses was a ‘front’ for paying other persons unrelated to the specified businesses, and, as appropriate, the LLCs and the individuals associated with them were properly recording receipts and disbursements and handling income tax consequences. These declarations should put to rest any unfounded assertions that the campaign committee and the businesses were in some plot to use the business structure as a scam to award payments to unrelated persons or persons not performing services for the campaign committee.

III. The law does not support the presumption of guilt put forward by complainants.

The controlling authority here is the wording of the statute. At 52 U.S.C. 30104(b)(5)(a), a candidate committee is to itemize the “name and address” of “each . . . person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.” Antone for Congress reported the name and address of each of the three businesses it made expenditures to, just as

those businesses indicated was appropriate. It did not report the name and address of any other payee because that actually would have been *inaccurate*. It did not have, and does not have to this day, any reason to believe that it was paying these entities for any purpose other than meeting a candidate or committee operating expense.⁵

The Commission is on thin ice if it takes the position that where a legitimate LLC is the reported payee there is a reporting violation just because the press creates a curiosity campaign, or just because the LLC was formed recently, or just because the LLC is not obligated to disclose who its members are under applicable state business laws. Similarly, the FEC is on thin ice if it takes the position that there is a reporting violation where a legitimate, established media corporation is the reported payee just because such corporation functions like a general contractor and makes payments in turn to a time-buyer firm or some other consultant to carry out the media services to be provided.

Complainants' reference to FEC Advisory Opinion 1983-25 does not support their theory of a reporting violation. For the two LLCs at issue here, we are advised there were no other business "entities" or "subcontractors" that received subsequent payment from the LLCs. The Commission has no basis to assume these were anything other than simple single-member LLCs designed to afford all the normal LLC business structure benefits to the LLC members involved. Likewise, the Commission has no basis to assume that 'arms-length' terms were not negotiated for the services of these LLCs or that other factors cited in the Advisory Opinion were not present.⁶ As for WCPA, it is an established all-purpose media corporation that has other clients, and the Commission has no basis for assuming it does not meet all the "significant" factors cited in the Advisory Opinion.

⁵ As the attached declaration for WCPA indicates, "WCPA" is the acronym for West Coast Public Affairs, Inc. Antone for Congress realizes there is a plausible argument it should have reported the "full name" of WCPA (West Coast Public Affairs), per 11 C.F.R. 104.3(b)(4)(i) (FEC regulation that uses "full name" in itemization requirement, rather than "name" as set forth in the statute). Of course, the Commission's regulation cannot exceed the reach of the underlying statute. See *FEC v. John Swallow and Jeremy Johnson, No. 2:15-cv-439-DB, (C.D. Utah, Mem. Op. and Order 2018)*, available on FEC website at https://transition.fec.gov/law/litigation/johnson_dc_decision_order.pdf. Nonetheless, if the Commission's Reports Analysis Division indicates that Antone for Congress should have complied with the regulation rather than the statute, Antone for Congress will submit a Miscellaneous Text Submission (Form 99) to explain that the "WCPA" reference in the committee's reports refers to "West Coast Public Affairs."

⁶ This firm assisted Antone for Congress with its organizational efforts, which included helping craft incorporation documents and organizational meeting documents. The person who formed Lake Point LLC was one of the directors selected at the organizational meeting in 2019 and was selected as Secretary of the corporation as well. These functions are not related to the day-to-day substantive decision-making of the campaign. This person's role in the campaign emanated from actions through Lake Point LLC, performing campaign director functions pursuant to a contractual arrangement negotiated between the candidate and Lake Point LLC. The Commission should note that the factors the Commission listed as significant in Advisory Opinion 1983-25 are not binding as they would be in a statutory rule specifying them as actual legal conditions. While a person can rely on an indistinguishable advisory opinion as legal protection, see 52 U.S.C. 30108(c), that does not mean a complainant can rely on a slightly distinguishable set of factors to establish a violation has occurred. Ultimately, in the absence of a statutory standard using all the factors set forth in Advisory Opinion 1983-25, the Commission has to fall back on the statutory analysis: Did Antone for Congress report the "name and address" of "each . . . person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense?" Indeed, the committee did report the name and address of each business to whom expenditures were made by the committee to meet a campaign operating expense.

The enforcement cases cited by complainants likewise are unavailing. The Stockman campaign matter, MUR 3847, involved a clearly duplicitous effort to report payments to "Political Won Stop" when in fact the invoices had been submitted by a completely different consultant. The Jenkins campaign matter, MUR 4872, involved a knowing and willful effort to report payments to one firm that was not performing any services in order to funnel payments to another firm that was associated with a White supremacist. And the Bachman campaign matter, MUR 6724, involved reporting extra payments to a consulting firm not related to any services it was contracted to perform so that the extra funds could be routed eventually to a government official who was trying to evade potential ethics problems related to such payment. These cases are easily distinguishable because they involved paying a business that was not responsible for performing actual campaign services for the funding. In contrast, the payments to the LLCs and the corporation involved in the matter now before the Commission, were to the businesses that were actually responsible for performing the services reported to the FEC.

IV. Conclusion

The Commission should reject the presumption of guilt put forward by complainants. The businesses here involved were legitimate business structures commonly used in this country for many reasons completely unrelated to campaign finance law. They performed the services they were responsible for providing and for which they were paid. The theory put forward by complainants, if accepted, would lead the Commission down a long road of complaints and investigations based solely on curiosity about who else might have a role in a business that gets paid by a campaign, or what other sub-payees a consulting firm might use in performing a broad array of media services. The Commission should find no reason to believe any reporting violation occurred here and close the file.

Very truly yours,



Scott E. Thomas

Attachments

- Declaration for Lake Point LLC with accompanying documentation
- Declaration for North Superior LLC with accompanying documentation
- Declaration for WCPA with accompanying documentation

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Attachment 1

I, Heather Faulkner, declare under penalty of perjury that the following facts are true:

I arranged to form Lake Point Consulting LLC in December of 2019 in order to have a business entity structure through which strategic and communications services could be provided to political, nonprofit, or other organizations in need of such services. A copy of the formation documents is attached.

My understanding was and is that by having such a business entity structure: (1) any liability claims stemming from services provided runs only to the LLC and my personal liability is thereby reduced; (2) in general, banks, businesses, and government agencies would look to the assets of the LLC and not any of my own personal assets; and (3) to the extent there were any 'blacklisting' policies like those of the DCCC or there were any other 'conflict-like' considerations of clients or their competitors, using the LLC structure would improve business success opportunities.

The reported payments to Lake Point Consulting LLC reflect payments for services actually provided by Lake Point Consulting LLC. Lake Point Consulting LLC was not in any way a 'front' for payments to any other business entity or any person not related to the services provided by Lake Point Consulting LLC. To the extent that any income of Lake Point Consulting LLC was passed through to me, it was done so properly pursuant to LLC law and tax law, and it is being properly documented and reported in such manner.

I hereby verify the foregoing with my signature below.


September 28, 2020

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:42 PM 12/02/2019
FILED 03:42 PM 12/02/2019
SR 20198375786 - File Number 7730886

STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is Lake Point Consulting LLC
2. The Registered Office of the limited liability company in the State of Delaware is located at 8 The Green Suite B (street), in the City of Dover DE, Zip Code 19901. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is Northwest Registered Agent Service Inc.

By: 

Authorized Person

PAGE 1 of 1

Service Request# 20198375786

**State of Delaware**

SECRETARY OF STATE
DIVISION OF CORPORATIONS
P.O. BOX 898
DOVER, DELAWARE 19903

8300295

12-06-2019

| DESCRIPTION | | AMOUNT |
|-------------------------------------|-------------------------------|----------|
| 7730886 - LAKE POINT CONSULTING LLC | | |
| 0102Y LLC | | |
| | Formation Fee | \$70.00 |
| | Court Municipality Fee, Dover | \$20.00 |
| | Expedite Fee, 24 Hour | \$50.00 |
| | TOTAL CHARGES | \$140.00 |
| | TOTAL PAYMENTS | \$140.00 |
| | BALANCE | \$0.00 |

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Attachment 2

I, [REDACTED] declare under penalty of perjury that the following facts are true:

1. I arranged to form North Superior LLC in November of 2019 in order to have a business entity structure through which strategic consulting services could be provided to political, nonprofit, or other organizations in need of such services. A copy of the formation documents is attached.
2. My understanding was and is that by having such a business entity structure: (1) any liability claims stemming from services provided runs only to the LLC and personal liability is thereby reduced; (2) in general, banks, businesses, and government agencies would look to the assets of the LLC and not any personal assets for any claims; and (3) to the extent there were any 'blacklisting' policies like those of the DCCC or there were any other 'conflict-like' considerations of clients or their competitors, using the LLC structure would improve business success opportunities.
3. The reported payments to North Superior LLC reflect payments for services actually provided by North Superior LLC. North Superior LLC was not in any way a 'front' for payments to any other business entity or any person not related to the services provided by North Superior LLC. To the extent that any income of North Superior LLC was passed through to any individual, it was done so properly pursuant to LLC law and tax law, and it is being properly documented and reported in such manner.

I hereby verify the foregoing with my signature below.

[REDACTED]

Signature

9/11/2020

Date

STATE OF DELAWARE
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OF LIMITED LIABILITY COMPANY

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By

Authorized Person

Name:

Print or Type

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:51 PM 11/04/2019
FILED 11:51 PM 11/04/2019
SR 20197903631 - File Number 7688081

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By

Authorized Person

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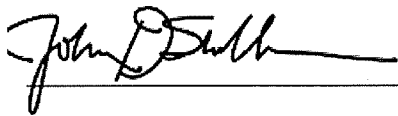
Attachment 3

Declaration of John Shallman Regarding WCPA


I, John Shallman, declare under penalty of perjury that the following facts are true:

1. I am familiar with the formation and functions of WCPA. It was formed in 2012 as a California corporation. Its full formal name is West Coast Public Affairs. A copy of relevant information documenting this is attached as part of this declaration. Its public filings can be researched on the Secretary of State website at <https://businesssearch.sos.ca.gov/>. It was formed in order to have a business entity structure through which the full range of media services could be provided to political, nonprofit, or other organizations in need of such services. It has had several clients during its period of existence. It handles media strategy, production, and time-buying functions, with the latter being accomplished through sub-payee time-buyer firms like Canal Partners Media of Atlanta, GA.
2. The reported payments by Antone for Congress to WCPA reflect payments for services actually provided by WCPA, either directly or indirectly, such as through the standard sub-payee time-buying arrangement with Canal Partners Media. WCPA was not in any way a 'front' for payments to any other business entity or any person not related to the overall media services provided by WCPA. The arrangement whereby time-buying functions were carried out by Canal Partners Media as sub-payee is a normal industry practice and normal commercial fees were applied.


I hereby verify the foregoing with my signature below.



Signature



Alex Padilla
California Secretary of State



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Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Saturday, October 24, 2020. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C3505102 WEST COAST PUBLIC AFFAIRS

Registration Date: 08/27/2012

Jurisdiction: CALIFORNIA

Entity Type: DOMESTIC STOCK

Status: ACTIVE

Agent for Service of Process: SCOTT E BROWN
21866 BURBANK BLVD STE 100
WOODLAND HILLS CA 91367

Entity Address: 15840 VENTURA BLVD STE 301
ENCINO CA 91426

Entity Mailing Address: 16000 VENTURA BLVD STE 110
ENCINO CA 91436

[Certificate of Status](#)

A Statement of Information is due EVERY year beginning five months before and through the end of August.

| Document Type | File Date | PDF |
|---------------|------------|-----|
| SI-NO CHANGE | 08/14/2020 | |
| SI-COMplete | 08/10/2013 | |
| REGISTRATION | 08/27/2012 | |

* Note that the information is not provided to the California Secretary of State's database.



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

AR/MUR/RR/P-MUR# 7771 and 7774

Name of Counsel: Scott E. Thomas

Firm: Blank Rome LLP

Address: 1825 I Street NW
Washington, DC 20006

Office#: 202 420 2601 Fax#: 202 374 9258

Mobile#: _____

E-mail: sthomas@blankrome.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/29/20 John D. Shallman President
Date (Signature - Respondent/Agent/Treasurer) Title
John D. Shallman
(Name - Please Print)

RESPONDENT: WCPA (West Coast Public Affairs)
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: c/o Scott E. Brown (registered agent)
(Please Print)

21860 Burbank Blvd., Suite 100, Woodland Hills, CA 91367

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

FAX 202-219-3923

AR/MUR/RR/P-MUR# 7771 7774

Name of Counsel: Scott E. Thomas

Firm: BlankRome

Address: 1825 Eye Street NW Washington DC 20006

Office#: 202-420-2601 Fax#: 202-379-9258

Mobile#: _____

E-mail: sthomas@blankrome.com

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/25/20 K Davis Agent
 Date (Signature - Respondent/Agent/Treasurer) Title
K Davis Senseman
 (Name – Please Print)

RESPONDENT: North Superior LLC
 (Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: c/o Northwest Registered Agent, Inc. 8 The Green, Suite B, Dover DE 19901-3618
 (Please Print)

Home#: _____ Mobile#: _____

Office#: 509-768-2249 Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.