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November 9, 2020

Jeff S. Jordan
Assistant General Counsel
Office of Complaints Examination
& Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463
cela@fec.gov

Re: **MUR 7800**

Dear Mr. Jordan:

This Response is submitted by the undersigned counsel on behalf of Kanye 2020 and Andre Bodiford, in his official capacity as Treasurer ("Committee"), in response to the complaint designated as Matter Under Review 7800. As explained more fully below, the complaint fails to allege facts that constitute a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), or Commission regulations. Because the complaint is meritless, we respectfully request that the Commission dismiss the complaint and close the file in this matter.

I. Factual Background

The Committee is the authorized campaign committee for Kanye West's 2020 presidential candidacy. In July 2020, the Committee retained New York-based political consulting firm Millennial Strategies LLC ("Millennial") to provide a variety of campaign services, including campaign management consulting, get out the vote ("GOTV") consulting, polling, ballot access services, and campaign website development. As part of its efforts to provide these services to the Committee, Millennial hired another political consulting firm, Mercury Public Affairs ("Mercury"), as a sub-vendor to assist in obtaining ballot access in states throughout the country. As such, Mercury was paid exclusively by Millennial for work it completed for Millennial in connection with Millennial's fulfillment of its contract with the Committee.

On September 4, 2020, the Committee filed its September Monthly Report disclosing its activity through August 31. *See* Kanye 2020 Sept. Monthly Rpt. (Sept. 4, 2020). As required by the Act, the

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report disclosed all of the Committee's disbursements. Included among those disbursements were a series of 23 payments that the Committee made to Millennial between July 16, 2020, and August 28, 2020 — six of which related to ballot access services provided by Millennial to the Committee.¹ *See id.* at Schedule B. There were no payments to Mercury included in the disclosure report because Mercury was not a direct vendor to the Committee.

II. Legal Analysis

Complainant alleges that the Committee violated the Act's disclosure requirements because the Committee failed to disclose any payments to Mercury on its FEC disclosure reports even though Mercury provided certain ballot access services to the Committee. However, contrary to this allegation, which is the result of either incomplete information or unfamiliarity with how the Act's disclosure requirements apply to sub-vendors, the Committee's reports complied with all applicable disclosure requirements set forth in the Act and Commission regulations. Thus, for the reasons more fully explained below, the Commission should swiftly dismiss the complaint and close the file in this matter.

* * *

The Act requires authorized committees to disclose “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.” 52 U.S.C. § 30104(b)(5)(A). Similarly, Commission regulations provide, in relevant part, that “[e]ach authorized committee shall report the full name and address of each person ... to whom an expenditure in an aggregate amount or value in excess of \$200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.” 11 C.F.R. § 104.3(b)(4)(i).

The Commission has consistently held that these disclosure provisions *do not* require a committee to report payments that a committee vendor makes to another person (*i.e.*, a sub-vendor, subcontractor, or ultimate payee) for the purchase of goods or services in furtherance of performing the vendor's contract with the committee. The Commission has also repeatedly acknowledged that there are no other provisions in the Act or Commission regulations that require disclosure of such payments. For instance, in Advisory Opinion 1983-25 (Mondale), the Commission explained that while the requesting candidate committee was required to disclose its payments to its direct media vendor, there was no further requirement for the committee to disclose the vendor's payments to its own sub-contractors in connection with services provided to the committee. AO 1983-25 at 3 (concluding that “payments to Consultants may be reported as Committee expenditures without further itemization of other entities that receive payments from Consultants in connection with services under the Committee contract.”).

¹ The Committee's disbursements to Millennial were restricted to the time period covered by the September Monthly Report and, therefore, that is the sole report at issue in this matter.

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Since issuing AO 1983-25, the Commission has applied this rule in several enforcement matters and has consistently reinforced that an authorized committee need not itemize its vendors' payments to sub-vendors hired by the vendor. In MUR 6510 (Kirk for Senate), for example, a complaint alleged that the authorized committee of Senator Mark Kirk violated the Act's disclosure requirements by failing to itemize payments that the Committee's media vendor made to its own subcontractor. The Commission, citing AO 1983-05, again explained that "[n]either the Act nor the Commission's regulations require authorized committees to report expenditures or disbursements to their vendors' sub-vendors. To the contrary, the Commission has concluded that a committee need not separately report its consultant's payments to other persons — such as those payments for services or goods used in the performance of the consultant's contract with the committee." Factual and Legal Analysis at 11-12, MUR 6510 (Kirk for Senate). Even more recently, in MUR 6894 (Russell for Congress), the Commission found no reason to believe that a committee violated section 30104(b) by reporting disbursements to its media vendor but not reporting the vendor's subsequent payments to other entities. *See* Factual and Legal Analysis, MUR 6894 (Steve Russell for Congress). The Commission concluded that "the alleged unreported disbursements were in fact reported to the Commission. The Committee disclosed payments it made directly to [its vendor] for media and advertising services" *Id.* at 2.

While there have been limited circumstances under which the Commission has determined that reporting only the direct recipient of a committee's payment will not satisfy the requirements of 52 U.S.C. § 30104(b)(5), that has happened only when facts indicate that the direct recipient acted merely as a conduit for transmitting the payment to the intended recipient of the funds, often for the purpose of concealing the true recipient. *Compare* MUR 3847 (Stockman) (the Commission found probable cause to believe that the authorized committee of a congressional candidate violated 52 U.S.C. § 30104(b)(5) by paying one of its vendors through a second vendor where there was no subcontractor relationship between the two entities, and the second vendor acted merely as a conduit for the payments) *and* MUR 4872 (Jenkins) (the Commission found reason to believe that an authorized candidate committee knowingly and willfully violated 52 U.S.C. § 30104(b)(5)(A) by concealing its association with a vendor by routing payments through a second vendor that played no role in the services provided to the committee, and reporting the second vendor as the payee on disclosure reports) *with* MUR 6698 (United Ballot PAC) (the Commission closed the file and declined to proceed when there were not sufficient votes to find reason to believe that the recipient reported in the committee's disclosure reports was merely a conduit). As described above, Millennial provided numerous services to the Committee, and in furtherance of providing these services, it subcontracted with Mercury to assist with ballot access. Thus, it is abundantly clear that Millennial was not functioning as a conduit for payments to be made to Mercury. Accordingly, precedents where the Commission has required sub-vendors to be disclosed are obviously inapplicable here.

In 2013, the Commission issued an interpretive rule clarifying when a committee is required to disclose an ultimate payee. However, none of the circumstances set forth in the interpretive rule apply to vendor payments to sub-vendors. *See* Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625,46,026 (July 8, 2013) (explaining that a committee must report "ultimate payees" in three specific scenarios not articulated in the Act or regulations: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments

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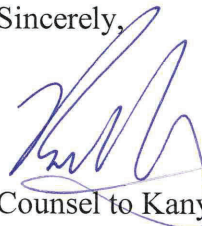
to credit card companies; and (3) reimbursements to candidates who use personal funds to pay committee expenses). In fact, the Commission specifically noted in its ultimate payee interpretive rule that it “is only addressing the three issues at hand and is not extending the clarification to situations in which a vendor, acting as the committee’s agent, purchases goods and services on the committee’s behalf from sub-vendors.” *Id.* Thus, nothing in the ultimate payee rule required the Committee to disclose Mercury in its reports.

In short, the Committee satisfied the reporting requirements under the Act and Commission regulations when it reported payments to Millennial for ballot access services in its September Monthly Report. As exhaustively set forth above, the Committee is not required to list payments made by Millennial to any of Millennial’s own sub-vendors. Further, there is no information whatsoever to suggest (nor does the Complaint even allege) that Millennial acted merely as a conduit for payments made to Mercury. That is because Millennial, in providing a host of bona fide campaign-related services to the Committee over the course of two months, entered into an entirely conventional and entirely legitimate sub-contract with Mercury to assist with ballot access activities. Therefore, Commission precedent compels the conclusion that the allegation at issue is meritless and must be dismissed.

III. Conclusion

Because the Committee satisfied its reporting obligations under the Act and Commission regulations by disclosing its payments to Millennial for ballot access services, the allegation in the Complaint does not describe a legal violation. For the reasons set forth above, the Commission must adhere to its precedents by dismissing this Complaint and closing the file.

Sincerely,



Counsel to Kanye 2020
Richard R. Heath Jr.
Special Counsel

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