



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC MAIL

April 6, 2021

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RE: MUR 7895
DNC Services Corp./Dem. Nat'l Committee and William Q. Derrough in his official capacity as treasurer

Dear Mr. Wilson:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the “Commission”) became aware of information suggesting your client, DNC Services Corp./Dem. Nat'l Committee and William Q. Derrough in his official capacity as treasurer (the “Committee”), may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”). On July 8, 2019, the Commission notified the Committee of this information and gave your client an opportunity to respond. On March 9, 2021, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(a)-(b) by failing to disclose debt on its 2017 Year-End Report. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

We have also enclosed a brief description of the Commission’s procedures for handling possible violations of the Act. In addition, please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B), (12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to

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the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law. Enclosed is a conciliation agreement for your client's consideration

If your client is interested in engaging in pre-probable cause conciliation, please contact Aaron Rabinowitz, the attorney assigned to this matter, at (202) 694-1476 or at arabinowitz@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities, *id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: DNC Services Corp./Dem. Nat'l Committee
William Q. Derrough in his official capacity
as treasurer MUR 7895

I. INTRODUCTION

11 The matter was generated based on information ascertained by the Federal Election
12 Commission (“Commission”) in the normal course of carrying out its supervisory
13 responsibilities.¹ The Commission’s Reports Analysis Division (“RAD”) referred DNC Services
14 Corp./Dem. Nat’l Committee and William Q. Derrough in his official capacity as treasurer (the
15 “Committee”) to the Office of General Counsel (“OGC”) as a result of the Committee’s
16 amending its 2017 Year-End Report to disclose \$1,704,513.33 in previously-unreported debt.
17 For the reasons discussed below, the Commission finds that there is reason to believe that the
18 Committee violated 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a), and
19 104.11(b).

20 II. FACTUAL AND LEGAL ANALYSIS

21 A. Factual Summary

22 The Committee — the national committee for the Democratic Party² — timely filed its
23 2017 Year-End Report on January 30, 2018, disclosing \$6,107,821.95 in outstanding debts and
24 obligations owed by the Committee on Schedules C and D of that report.³ On September 10,
25 2018, the Committee filed a Second Amended 2017 Year-End Report that disclosed additional

¹ See 52 U.S.C. § 30109(a)(2).

² Amended Statement of Organization (Sep. 10, 2018). William Q. Derrough is the current treasurer. *See id.*

³ 2017 Year-End Report (Jan. 30, 2018).

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1 debts — all of which were invoices received from vendors — that it had not disclosed in its
 2 January 30 filing.⁴ It reported on Schedules C and D of its Second Amended 2017 Year-End
 3 Report \$7,139,327.74 in total outstanding debts and obligations owed and \$1,704,513.33 in debts
 4 that were not disclosed in Schedule D of its January 30 filing.⁵ Of that \$1,704,513.33 in newly-
 5 disclosed debt, \$1,406,549.70 remained outstanding at the end of the 2017 calendar year and
 6 \$297,963.63 was debt that the Committee had paid off before the end of the year.

7 RAD sent the Committee a Request for Additional Information (“RFAI”) regarding the
 8 discrepancy on November 29, 2018.⁶ The Committee initially responded via an FEC Form 99
 9 on January 3, 2019.⁷ It explained that it “amended its 2017 Year-End Report after staff changes
 10 led to an internal audit of records, revealing that the previously reported debt totals required
 11 updating to reflect accurate debt amounts.”⁸ It further stated that its supplemental reporting is
 12 “in line with its general reporting practice” to amend reports as appropriate and that it has

⁴ Second Amended 2017 Year-End Report (Sep. 10, 2018). The Committee filed a First Amended 2017 Year-End Report on March 19, 2018, which did not disclose additional debt.

⁵ Compare 2017 Year-End Report Schedule D; with Second Amended 2017 Year-End Report Schedule D. The specific vendors and the respective increases in reported debts are: ADP, LLC—\$22,169.27; BULLY PULPIT INTERACTIVE LLC—\$155,000.00; CIT—\$3,587.61; CYBERSOURCE—\$1,307.05; DRINKER BIDDLE & REATH LLP—\$12,091.00; EntIT SOFTWARE—\$76,156.18; EQUINIX SERVICES, INC. #774252—\$31,498.72; JITASA—\$3,450.00; MCINTOSH, JESSICA—\$10,382.00; MAL WARWICK & ASSOCIATES, INC.—\$29,406.75; THE MANAGEMENT ACTION CENTER—\$4,500.00; MERKLE RESPONSE SERVICES, INC.—\$6,150.53; NGP VAN, INC.—\$159,750.00; PACIFIC EAST—\$3,282.57; PDQ PRINTING OF LAS VEGAS—\$2,156.46; PERKINS COIE—\$892,338.07; REVOLUTION MESSAGING LLC—\$3,000.00; SD&A TELESERVICES INC.—\$7,159.50; SKD Knickerbocker—\$41,843.36; STARBUCKS—\$2,191.72; TARGETSMART COMMUNICATION LLC—\$191,050.00; TELEFUND, INC.—\$39,070.12; UNITED BUSINESS TECHNOLOGIES—\$6,972.42.

⁶ RFAI at 2 (Nov. 29, 2018).

⁷ Committee Miscellaneous Electronic Submission (Sep. 10, 2018).

⁸ *Id.* at 1.

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1 “implemented a new software program that automates processes that in the past were manually
2 performed, thus reducing the chance of future errors.”⁹

3 RAD contacted the Committee on April 12, 2019, to notify it that it could be referred for
4 potential enforcement action. The Committee further responded on September 27, 2019,
5 explaining the reasons for its omissions in greater detail and arguing that the Commission should
6 take no further action in this matter.¹⁰ The Committee stated that it became aware of the
7 undisclosed debts from its annual external financial audit, which concluded in the summer of
8 2018, and “worked diligently to ensure that it publicly disclosed all Committee debts.”¹¹ It
9 emphasized that the amount of late-disclosed debt was “but a small fraction of the thousands of
10 transactions the Committee reported . . .”¹²

11 In its response to the referral, the Committee represented that a significant portion of the
12 undisclosed debt resulted from issues with its accounts payable and disbursements software
13 systems.¹³ Because those systems were not integrated, staff were required to manually input
14 invoice data twice, causing errors.¹⁴ Moreover, the Committee’s general ledger and reporting
15 software was difficult to operate and frequently recorded the wrong date associated with an
16 invoice.¹⁵ As a result, the Committee incorrectly identified approximately \$400,000 worth of

⁹ *Id.*

¹⁰ *Resp.* (Sep. 27, 2019).

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 3-4.

¹⁴ *Id.*

¹⁵ *Id.*

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1 invoices as due in 2018 when they were actually due before the end of 2017.¹⁶ According to the
 2 Committee, it learned only after it filed its 2017 Year-End Report of invoiced debt totaling
 3 \$1,047,643.38 that it incurred during the reporting period.¹⁷ It states that it became aware of
 4 these invoices through communications with vendors and cannot determine whether those
 5 invoices were lost or never received in the first place.¹⁸ The Committee, however, disputes that
 6 “the entirety of the \$1,704,513.33 amount was not disclosed in its original report” because
 7 “\$297,963.63 of the \$1,704,513.33 increase was paid off in December 2017 and had already
 8 been reported as operating expenditures in Schedule B of the Committee’s original report.”¹⁹

9 **B. The Committee Failed to Disclose the Entirety of Its Debts as Required
 10 under the Act**

11 The Federal Election Campaign Act of 1971, as amended (the “Act”) requires
 12 committees to disclose “the amount and nature of outstanding debts and obligations owed by or
 13 to such political committee[s]”²⁰ For each regular report, Commission regulations require
 14 disclosure of a committee’s outstanding debts on Schedule D²¹ and clarify that “[a] debt or
 15 obligation, including a loan, written contract, written promise or written agreement to make an
 16 expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ *Id.* at 2-3.

²⁰ 52 U.S.C. § 30104(b)(8).

²¹ 11 C.F.R. § 104.3(d).

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1 or obligation is incurred”²² In addition, “[d]ebts and obligations owed by or to a political
2 committee which remain outstanding shall be continuously reported until extinguished.”²³

3 The Committee was thus obligated to disclose in its 2017 Year-End Report all debts
4 outstanding through the end of the calendar year, but it failed to do so. Although the Committee
5 provides several justifications for this failure — and ultimately corrected its reports seven
6 months after its filing deadline — it does not dispute its obligation to disclose these debts on
7 Schedule D of its 2017 Year-End Report.

8 However, the Committee did not need to disclose on Schedule D the debts that it both
9 incurred and paid off during the reporting period.²⁴ Thus, rather than disclosing the entire
10 amount of debt that was referred, \$1,704,513.33, the Committee was obligated to disclose
11 \$1,406,549.70, the debt that was outstanding at the end of the reporting period.

12 Although the Committee does not contest that it failed to timely disclose all of its debts, it
13 contends that the Commission should dismiss this matter in the exercise of its prosecutorial
14 discretion.²⁵ The Committee cites to prior matters involving debt disclosures that the
15 Commission has declined to pursue and asks that the Commission act similarly here.²⁶ The
16 matters cited by the Committee, however, are factually distinct in several key ways: some

²² 11 C.F.R. § 104.11(b). Excepting certain categories of regularly-reoccurring administrative expenses not relevant here.

²³ 11 C.F.R. § 104.11(a).

²⁴ See Instructions for Schedule D, Debts and Obligations (FEC FORM 3X) at 1, <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf#page=20> (committees must report “debts and obligations owed BY the reporting committee *at the close of the reporting period*” and “the payment(s) this period to retire the debt” (emphasis added)).

²⁵ Resp. at 3; *see also Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

²⁶ Resp. at 5.

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1 involve far less late-disclosed debt than here;²⁷ while others involved a good-faith belief by the
 2 relevant committee that the debt at issue need not be reported.²⁸

3 The Commission has pursued matters involving similar debt-reporting violations as at
 4 issue here. For example, in MUR 6177 (21st Century Democrats), the Commission entered into
 5 a conciliation agreement in which a committee agreed to pay \$24,000 in civil penalties for,
 6 among other things, failing to timely disclose \$671,498.05 in vendor debts.²⁹ The Commission
 7 has also pursued enforcement matters where the respondent raised similar justifications and
 8 ameliorative factors as the Committee does here. In MUR 6508 (Republican National
 9 Committee), the Commission approved a \$96,000 civil penalty for a committee's failure to
 10 timely disclose \$9,232,903 in debt over the course of five consecutive monthly reports.³⁰ Like
 11 here, the committee in MUR 6508 argued that the amounts it failed to disclose were a small
 12 percentage of its overall transactions and that it "took aggressive, proactive action to conduct a

²⁷ See MUR 6712 (Kreegel for Congress) (\$49,762.63); MUR 6525 (Friends of Christine O'Donnell) (\$5,058.55 of contested debt).

²⁸ See MUR 6732 (North Carolina Democratic Party) (Committee under belief that timely-paid invoices that were not past due did not qualify as reportable debt); MURs 6606, 6572, 6676 (Danny Tarkanian for Congress) (Failure to disclose \$250,000 loan from candidate to committee where treasurer incorrectly believed that candidate had forgiven loan before start of reporting period).

The Committee contends that "it is frequently not clear what, when, or how debt is to be reported." Resp. at 5. But the Committee did not fail to disclose the debt at issue here because of any such confusion. It does not dispute that it is obligated to disclose the \$1,406,549.70 in invoiced amounts on Schedule D — in fact it recognized as much by filing its Second Amended 2017 Year-End Report to make this additional disclosure. And it initially failed to make a complete disclosure because of errors in capturing invoice data, not because of confusion about its reporting obligations.

²⁹ Conciliation Agreement §§ V-VI, MUR 6177; *see also* Conciliation Agreement §§ IV.4, VI.1, MUR 6639 (Gary Johnson 2012, Inc.) (\$10,000 penalty for committee's failure to disclose \$447,567 in debts and obligations, among other violations); Conciliation Agreement §§ IV.4-5, VI.1, MUR 6965 (Warriors of Liberty) (\$7,150 penalty after Committee amended its 2013 Year-End Report to disclose \$592,541 in receipts, disbursements, and debt not previously disclosed).

³⁰ Conciliation Agreement §§ IV.4-8, V-VI, MUR 6508.

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1 comprehensive internal review and file amended reports where necessary as expeditiously as
2 possible.”³¹

3 Accordingly, the Commission finds reason to believe that that the Committee violated 52
4 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d), 104.11(a), and 104.11(b) by failing to disclose
5 debt on its 2017 Year-End Report.

³¹

Id. §§ IV.9-10.