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BY EMAIL AT CELA@FEC.GOV

Charles Kitcher
Acting Associate General Counsel
Enforcement
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7911: Response of Rodney for Congress and Restoring Our Democracy

Dear Mr. Kitcher:

We represent Rodney for Congress, Restoring Our Democracy (ROD PAC), and Thomas Datwyler in his official capacity as treasurer for both committees (collectively, the "Respondents"). We write in response to your letters regarding the Complaint filed in the above-referenced matter.

In your letters you state that the Complaint indicates that the Respondents may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). We respectfully disagree. The Complaint, filed by a former political fundraiser known as The Gula Graham Group ("Gula Graham") does not allege a single violation of the Act on the part of the Respondents. Instead, the Complaint is nothing more than a bad faith attempt on the part of Gula Graham to harass the Respondents into paying purported debts which they do not owe.

On its best day, this Complaint is a breach of contract matter that belongs, if anywhere, in state court – not before this Commission. If Gula Graham truly believed it had a cognizable cause of action, it would have filed a lawsuit in a court of competent jurisdiction. Indeed, if the merits were tried here, it would become apparent that it is Gula Graham, and not the Respondents, who breached its contractual obligations. Perhaps acknowledging that it has little chance of winning on the merits, Gula Graham has instead chosen this forum to attempt to embarrass its former clients into submission. The Commission should refrain from participating in Complainant's tactics and immediately dismiss the Complaint.

On November 7, 2018, Rodney for Congress entered into a professional services agreement with Gula Graham wherein Gula Graham would provide fundraising services

Mr. Charles Kitcher
August 10, 2021
Page 2

through December 31, 2020. Likewise, ROD PAC entered into a professional services agreement with Gula Graham for fundraising services through the end of the 2020 election cycle. The parties performed under these contracts without major issue until March 26, 2020, when Mike Gula (Gula Graham's principal) abruptly announced to the Respondents (and many others) by mass e-mail, that Gula Graham would cease providing services to its clients. In his mass e-mail, Mr. Gula recommended that the Committees contact Aaron Poe for future fundraising services, and advised that "[a]fter this email, I will be unreachable. I wish you the best of luck in politics and life."

For any of his former clients, Mr. Gula was indeed unreachable. The Respondents learned from news outlets reported that Mr. Gula had abandoned his thriving fundraising business to take advantage of the sudden COVID-driven demand for personal protective equipment and medical supplies.¹

However, by June of 2020, Mr. Gula was again in the news, as his new venture faced investigation for failing to deliver millions of dollars of promised respirator masks and other medical supplies to numerous states.²

As his new venture's fortunes flagged, Mr. Gula predictably became reachable again, as he sought (through counsel) to make a claim for fees and costs he purports to have earned under the professional services contracts he abruptly abandoned. Respondents dispute, and have disputed, that any debt is owed to the Complainant, due to the Complainant's breach of his professional services contracts. Respondents have properly disclosed the amounts claimed by Mr. Gula (who incidentally provides no receipts to substantiate his claims) as "disputed debt" on their disclosure reports with the Commission.

As for the supposed merits of the Complaint, the first allegation appears to be that Respondents (and inversely, the Complainant) violated 11 C.F.R. § 116.3 under the false notion that Gula Graham has extended the Respondents credit beyond what would be considered to be in the ordinary course of business. However, in his Complaint, Complainant admits that it had a pattern of incurring out of pocket expenses on behalf of Respondents and such credit was indeed extended in the ordinary course of business.³ Insofar as Complainant has demanded payment for such claimed expenses, he by definition has revoked any supposed "extension of credit" to the Respondents. Complainant's attempt to characterize an ongoing debt dispute as an extension of credit is novel, but defies logic. Under the Complainant's theory, all disputed debts would violate 11 C.F.R. § 116.3. This simply cannot be the case. The circumstances described in

¹ See <https://www.politico.com/news/2020/03/27/republican-fundraiser-company-coronavirus-152184>

² See <https://www.wsj.com/articles/coronavirus-gear-broker-used-political-ties-to-sell-goods-to-states-data-show-11594807200>.

³ Complaint at 2 ("In the course of this relationship, Gula Graham would incur out-of-pocket expenses on behalf of the campaign, such as deposits while booking Campaign or ROD PAC event venues, the cost of meals at fundraising events, and travel for Campaign and ROD PAC officials. Until the period at issue in this complaint, the Campaign and ROD PAC would timely repay these expenses in accordance with FECA and Commission rules.").

Mr. Charles Kitcher
August 10, 2021
Page 3

the Complaint, even if true, do not violate 11 C.F.R. § 116.3, and the Complaint should be dismissed on this point.

Second, Complainant confusingly states that it wants to ensure that it does not violate 52 U.S.C. § 30101(8)(B), although it is unclear how that section of the Code can be violated or what allegation Complainant is actually making against Respondents. As the Commission is aware, § 30101(8)(B) contains the definition of what is *not* considered a contribution under the Act, and includes examples like volunteer services and bank loans to candidates. It appears that Complainant is again attempting to mischaracterize its disputed debt as an outsized extension of credit, and therefore an illegal corporate contribution to the Respondents. Again, a novel theory, but wholly without merit. A demand for payment (which Complainant admits it has made) would certainly negate a supposed extension of credit. As is made clear in 11 CFR § 116.3(b), extensions of credit are not contributions if they are made in the ordinary course of business, and as discussed, Complainant admits that it extended credit to Respondents in the ordinary course of business. Again, if a disputed debt can be characterized as outsized extensions of credit as Complainant claims, then all disputed debts with incorporated vendors would violate the Act's ban on corporate contributions. The Complaint's second argument has no merit.

Finally, the Complaint alleges that Respondents have violated the Act because they have reported the amounts in dispute with Gula Graham as disputed debts under 11 C.F.R. § 116.10, rather than simply listing these amounts as debts owed by the Respondents. We struggle to respond to this allegation because it is completely nonsensical. There can be no question that the amounts claimed by Gula Graham are disputed.⁴ The dispute arises out of the performance of written contracts, and obviously the Complainant and Respondents disagree as to the existence of any debt or amounts owed. Section 116.10 requires committees to report disputed debts, and the Respondents have done so. The Complainant may be unhappy that Respondents have reported the amounts claimed by Gula Graham as disputed debt and not a debt owed, and if so its recourse is in a court of competent jurisdiction, not here.

As should be evident, this Complaint is little more than an attempt to use the Commission to embarrass the Respondents into paying Gula Graham monies that Respondents deny owing. For the reasons set forth above, the Complainant's misuse of this venue should be rejected, and this legally meritless matter should be immediately dismissed.

⁴ "For purposes of this part, disputed debt means an actual or potential debt or obligation owed by a political committee, including an obligation arising from a written contract, promise or agreement to make an expenditure, where there is a bona fide disagreement between the creditor and the political committee as to the existence or amount of the obligation owed by the political committee." 11 C.F.R. § 116.1 (d).

Mr. Charles Kitcher
August 10, 2021
Page 4

Sincerely,

CLARK HILL

s/ John G. Fogarty, Jr.

John G. Fogarty, Jr.
Derek H. Ross