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<p>IN THE MATTER OF END CITIZENS          UNITED &amp; AMANDA BOGDEN,</p> <p style="text-align: center;">COMPLAINANT,</p> <p>V.</p> <p>ROBERT HEALEY, JR., BOB HEALEY          FOR CONGRESS, RONALD GRAVINO, IN          HIS OFFICIAL CAPACITY AS          TREASURER, AND VIKING YACHT          COMPANY,</p> <p style="text-align: center;">RESPONDENTS.</p>	<p>FEDERAL ELECTION COMMISSION</p> <p>DOCKET NUMBER: MUR 8056</p> <p><b>RESPONSE TO COMPLAINT</b></p> <p><b>CONFIDENTIAL</b></p>
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RESPONDENT, Viking Yacht Company, (hereinafter referred to as "Respondent"), by and through their attorneys of the firm of Prime & Tuvel, with Tyler T. Prime, Esq. appearing, hereby respond to the Complaint as follows:

**RESPONSE TO COMPLAINT**

1. Respondent denies that it violated the Federal Election Campaign Act of 1971, as amended.
2. Respondent denies that it violated any Federal Election Commission (hereinafter referred to as "FEC") regulations.
3. Respondent denies that it made, or facilitated the making of, impermissible in-kind contributions to Bob Healey for Congress, Robert Healey, Jr., or Ronald Gravino.
4. Respondent denies the allegations contained in Paragraph 1 of the Complaint.

5. Respondent denies the allegations contained in Paragraph 2 of the Complaint.

**RESPONSE TO FACTUAL BACKGROUND**

6. Respondent admits that Robert Healey, Jr., is the Republican nominee for the U.S. House of Representatives in New Jersey's 3<sup>rd</sup> Congressional District.

7. Respondent neither admits nor denies. Respondent is without knowledge or information sufficient to form a belief as to the truth of the corresponding averment and therefore, leaves Complainant to their proofs.

8. Respondent neither admits nor denies. Respondent is without knowledge or information sufficient to form a belief as to the truth of the corresponding averment and therefore, leaves Complainant to their proofs.

9. Respondent neither admits nor denies. Respondent is without knowledge or information sufficient to form a belief as to the truth of the corresponding averment and therefore, leaves Complainant to their proofs.

10. Respondent admits that Robert Healey, Jr., is Respondent's chairman.

11. In regard to the posting on Respondent's website that is referenced in the Complaint, Respondent admits only that it recognized and congratulated an employee for an accomplishment, of its own volition, and without any direction to do so, as is customary for Respondent.

12. Respondent respectfully submits that the website posting referenced in the Complaint is no longer posted on its website, and that the image was not prominently featured over any other image when it was posted to the website.

13. Respondent denies that the website posting violates any law or regulation.

14. In regard to the digital advertisement referenced in the Complaint, Respondent admits that the polo shirt in question is in the video only for a total of four (4) seconds. It is respectfully submitted that the writing on the shirt is not legible for a majority of that time. It is also respectfully submitted that neither the word “Viking” nor the name “Viking Yacht Company” was spoken during the entire length of the video.

15. Respondent submits that the FEC has permitted candidates to discuss their prior business experience, even when it involved the use of company logos, in connection with their campaigns. See, MUR 6542 and 7302.

16. Respondent denies that the digital advertisement violates any law or regulation.

#### **RESPONSE TO LEGAL ANALYSIS**

17. The Federal Election Commission regulations state, “The terms contribution and expenditure shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 C.F.R. 100.82(a) through (d) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 C.F.R. 114.2(a) or (b) as applicable).

18. Respondent denies that it made, or facilitated the making of, any illegal contribution or expenditure to Bob Healey for Congress, Robert Healey, Jr., and/or Ronald Gravino, as alleged in the Complaint.

19. Respondent denies that it contributed any expenditure or contribution to Robert Healey, Jr., Bob Healey for Congress, and/or Ronald Gravino.

20. Respondent submits that no reporting was required as per the Federal Election Commission regulations, because it did not give a distribution or in-kind contribution to Robert Healey, Jr., Bob Healey for Congress and/or Ronald Gravino.

21. Respondent denies that it distributed any corporate resources in an illegal or inappropriate manner to Robert Healey, Jr., Bob Healey for Congress, and/or Ronald Gravino as alleged in the Complaint.

22. Respondent denies that the value of the congratulatory website message and four (4) second image of a Viking Company polo shirt is in excess of \$200.00.

23. Respondent respectfully submits that communications by a corporation to its stockholder and executive or administrative personnel and their families on any subject are not considered a contribution or expenditure under Federal Election Commission regulations. 11 C.F.R. 114.1(2)(i).

24. Respondent denies that the posting on its Company website was made in cooperation, consultation, or concert with, or at the request of suggestions of Robert Healey, Jr., Bob Healey for Congress, or any of the candidate's or campaign's agents.

25. Respondent denies that the posting on its website is a communication that expressly advocates as intended in 11 C.F.R. 100.22. The posting was not intended to endorse the election or defeat of any individual candidate, but was a congratulatory message posted for an employee.

26. Respondent denies that Viking polo shirt seen in the digital advertisement for four (4) seconds is either a coordinated communication or a contribution.

27. The posting of the congratulatory message on the website and the four (4) second image of a polo shirt did not and do not result in an in-kind contribution. As stated previously, the message had been taken off of its website voluntarily.

28. Furthermore, even if the congratulatory message and four (4) second image of a polo shirt were to be considered an in-kind contribution – a position the Respondent disagrees with – the value of same was and remains de minimis.

Though the Federal Election Commission has previously opined that use of a corporation's name, trade name, trademarks and service mark by a campaign may constitute an in-kind contribution, the Federal Election Commission has held that the resulting in-kind contributions from such use likely to be de minimis. See. MUR 7302 6542, 6287, 6288,6297, and 6331. In MUR 6542, a matter involving similar facts, the candidates' authorized committee paid for three video advertisements that featured vehicles bearing the name and logo of the candidates local plumping business, as well as images of the company's storefront and appearances by company employees. Citing the likely de minimis value of any possible in-kind contribution, the Commission dismissed the allegation that the committee had accepted prohibited in-kind contributions[.] American Democracy Legal Fund v. Tom Campbell et al. Federal Election Commission MUR 7302 First General Counsel's Report page 5 of 7 summarizing MUR 6542.

29. Respondent respectfully submits that the precise value of the website posting and four (4) second image of a polo shirt in the digital advertisement cannot likely be determined, but as in MUR 6542, the value of the same is likely de minimis.

30. Therefore, as the value of the website posting and four (4) second image of a polo shirt in the digital advertisement are de minimis it is respectfully submitted that this matter does not justify the use of further FEC resources, as stated in a similar matter in the First General Counsel's Report in American Democracy Legal Fund v. Tom Campbell et al. Federal Election Commission MUR 7302 First General Counsel's Report page 2 of 7.

**PRAYER FOR RELIEF**

31. Respondent submits that the FEC should not take action against it as no provision of the Federal Election Campaign Act of 1971, as amended or FEC regulations were violated.

32. Respondent respectfully submits that, based on the totality of the circumstances, that the FEC should conclude that the value communications, (the website posting and the four (4) second image of a polo shirt), detailed in the Complain are likely de minimis and therefore pursuing the matter further would not be a judicious use of the FEC's resources.

33. Respondent respectfully requests that the FEC exercise its prosecutorial discretion and dismiss the allegations against it.

34. Respondent requests dismissal of the Complaint and closure of the FEC's file in this matter.

**SEPARATE DEFENSES**

35. The Respondent is in compliance with all constitutional, statutory and regulatory obligations.

36. The Complaint fails to state a claim upon which relief may be granted.

37. The Complaint fails to assert a sufficient basis for the Committee to act.

38. Complainant's claims are barred under the Doctrine of the Doctrine of Equitable Estoppel, Waiver, Laches and Unclean Hands.

39. Complainant's claims are barred by reasons of Res Judicata and Collateral Estoppel.

40. Complainant's claims are barred as pursuing the matter further would not be a prudent use of the Commission's resources. See MUR 6542 and MUR 7302.

41. Respondent's actions were lawful and were not arbitrary, capricious, or unreasonable.

42. Respondent reserves the right to move for dismissal of the Complaint at any time.

43. Respondent reserves the right to assert any and all other defenses, both factual and legal, as may be justified by information subsequently obtained.

### **DESIGNATION OF COUNSEL**

Tyler T. Prime, Esq., of the firm of Prime & Tuvel, is hereby designated as counsel and trial counsel for Respondent Viking Yacht Company.

### **CERTIFICATION**

The undersigned hereby certified that a copy of this pleading was served and filed within the time permitted. I certify that this dispute is not the subject of any other action pending in any other court or pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification. I certify that this dispute is not the subject of any other action pending in any other court or pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification. The foregoing, to the best of my knowledge is true and accurate.

Respectfully submitted:

**PRIME & TUVEL**

Dated: *October 11, 2022*

By: 

**TYLER T. PRIME, ESQ.**

*Attorney for Respondent Viking Yacht  
Company*