

BEFORE THE FEDERAL ELECTION COMMISSION

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) **MUR 8251**
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RESPONSE OF RED CURVE SOLUTIONS, LLC

Red Curve Solutions, LLC (“Red Curve”), by and through undersigned counsel, hereby responds to the complaint in the above-captioned matter. The complaint, filed by the Campaign Legal Center (“CLC”), speculates that disbursements which five political committees—all existing clients of Red Curve, a leading treasury and compliance consulting firm—have reported making to Red Curve as reimbursements for legal costs may have violated the Federal Election Campaign Act (“FECA”). But the Committees made all of those payments to Red Curve as a matter of *express contractual indemnity*. These contractual indemnity payments were permissible uses of the Committees’ funds and were reported properly and accurately to the Commission under FECA and FEC regulations. Thus, there can be no reason to believe any violation has occurred, and we respectfully request that the Commission immediately dismiss the complaint and close the file in this MUR.

BACKGROUND

Red Curve is a full-service consultancy providing “comprehensive treasury, budgeting, and FEC compliance services for political campaigns, party organizations, and PACs,” as well as other entities. Compl. ¶ 4; Exhibit A, Affidavit of Bradley T. Crate (Crate Aff.) ¶ 1. Founded in 2009 by its President Bradley T. Crate, Compl. ¶ 4; Crate Aff. ¶ 1, Red Curve is organized as a limited liability company under Massachusetts law, Compl. ¶ 4; Crate Aff. ¶ 2. Red Curve also has elected corporate tax treatment by the IRS. Crate Aff. ¶ 2.

Red Curve and Mr. Crate have provided their consulting services to hundreds of FEC-registered political committees over the years, including the authorized committees of every Republican nominee for President since 2012. Crate Aff. ¶ 3. Today, the company has over 200 committee clients actively registered with the FEC. Compl. ¶ 4; Crate Aff. ¶ 4. Among them are the five committees identified in CLC's complaint: Donald J. Trump for President 2024, Inc.; Trump Save America Joint Fundraising Committee; Save America; Trump Make America Great Again Committee; and Make America Great Again PAC (collectively, "the Committees"). Compl. ¶ 2; Crate Aff. ¶ 4. As part of Red Curve's services to these Committees, Mr. Crate serves as the designated FEC Treasurer and Custodian of Records. Compl. ¶ 1-9; Crate Aff. ¶ 5.

Red Curve and Mr. Crate provide their services to the Committees under written contracts. Crate Aff. ¶ 5. Each Committee has entered into a contract with Red Curve styled as a Master Agreement for Financial Consulting and Treasury Services ("Master Agreement"), setting forth the scope of services, compensation, and various other provisions customary to arm's-length commercial services contracts. *Id.* Each Master Agreement contains an "Indemnity" clause providing Red Curve broad indemnification protection in the event of "any and all claims, suits, proceedings, [or] investigations" arising from Red Curve's work for a Committee. *Id.* ¶ 6. This indemnification obligation includes a duty to compensate Red Curve for any related "reasonable attorney's fees." *Id.* As an example, Red Curve's current standard indemnification clause specifically states:

Subject to the limitations of this Master Agreement, *Client agrees to indemnify, defend, and hold [Red Curve] harmless from and against any and all claims, suits, proceedings, investigations, costs and expenses including reasonable attorney's fees and court costs arising out of this Agreement*, except to the extent that such claims, suits, proceedings, investigations, costs or expenses arise out of [Red Curve]'s negligence, if determined by a court of competent jurisdiction that [Red Curve] acted negligently.

Id. (emphasis added).

From time to time, Red Curve and Mr. Crate avail themselves of outside legal counsel to advise them in an array of matters involving clients, including the Committees. *Id.* ¶ 7. In recent years, Red Curve has had to pay substantial legal costs because, as a direct result of Mr. Crate’s designation as the FEC Treasurer and Custodian of Records for the Committees, Red Curve and Mr. Crate have received more than 15 wide-ranging subpoenas and requests for production of documents and/or information. *Id.* ¶ 8. In each case, Red Curve and Mr. Crate have retained outside counsel pursuant to the indemnity provisions of the Master Agreements to provide counsel on the response to the subpoenas and other document requests. *Id.* ¶ 9.

Red Curve has elected to exercise its contractual indemnity rights under the Master Agreements and claim reimbursement for legal costs incurred in responding to the subpoenas and requests, as well as in consulting with Red Curve counsel on other matters relating to its services to the Committees. *Id.* In doing so, Red Curve has separately invoiced the relevant Committees for those costs, and the Committees have remitted their indemnity payments directly to Red Curve. *Id.* ¶ 10. The Committees have made their decisions on whether to pay Red Curve’s indemnity claims independently of Mr. Crate. *Id.* ¶ 11.

The Committees and Red Curve also have sought to be transparent about these indemnity payments on their public FEC reports. They have separated the indemnities from all other payments made to Red Curve on Schedule B of the Committees’ disclosures—rather than including them among payments for general “Compliance Consulting” as they could have done. *Id.* ¶ 12. Furthermore, they have aptly described the disbursements as “Reimbursement for Legal Fees” or “Reimbursement for Legal Expenses.” Compl. ¶ 24; Crate Aff. ¶ 12. All of the Committees’ payments to Red Curve reported as “Reimbursement for Legal Fees” or

“Reimbursement for Legal Expenses” have reflected the Committees’ contractual indemnity payments to Red Curve. Crate Aff. ¶ 12.

The Committees made their first indemnity payments to Red Curve in December 2022, and disclosed them in January 2023. Compl. ¶ 10. At no time since has the FEC raised any questions or concerns—whether through RFAI or otherwise—about these payments or the Committees’ disclosure of them on FEC reports.

ARGUMENT

It is well established that “[t]he Commission cannot launch investigations into Americans’ political activities based on speculation or official curiosity, or shift the burden to respondents to prove their innocence.” MUR 7501 (Bill Nelson for U.S. Senate), Statement of Reasons of Comm’rs Cooksey, Dickerson & Trainor at 2, 2 n.10 (internal quotation marks omitted) (collecting MURs); *see also* MURs 7951 & 8003 (Kistner for Congress), Statement of Reasons of Comm’rs Cooksey, Dickerson & Trainor at 3 (“Commissioners are not required to accept all the allegations in a complaint as true. If the record contains, or respondents provide, facts or information that credibly contradict an allegation contained in a complaint, the Commission must weigh this information in deciding whether to proceed with enforcement.”); MUR 7901 (Ethan Owens), Statement of Reasons of Comm’rs Cooksey, Dickerson & Trainor at 5 (same). Accordingly, the Commission has repeatedly admonished that “purely speculative charges, especially when accompanied by a direct refutation, do not form an adequate basis to find reason to believe that a violation of the [law] has occurred.” MUR 4960 (Hillary Rodham Clinton for Senate), Statement of Reasons of Comm’rs Mason, Sandstrom, Smith & Thomas at 3; *accord* First Gen. Counsel’s Rpt. at 5, MUR 5467 (Michael Moore). More bluntly: “‘speculation is not enough’ to find reason

to believe.” MUR 8132 (ActBlue), Factual & Legal Analysis at 12 n.43 (quoting *Common Cause Georgia v. FEC*, No. 22-cv-3067 (DLF), 2023 WL 6388883 at *6 (D.D.C. Sept. 29, 2023)).

CLC’s complaint cannot withstand even the most basic of scrutiny under this standard. While the complaint purports to be “based on information and belief,” Compl. ¶ 3, it offers nothing except false conjecture about the nature of the Committees’ payments to Red Curve. The complaint’s “purely speculative charges” may serve CLC well in grabbing an anti-Trump headline in a publication like the *Daily Beast*, Compl. ¶ 11 & n.14 (citing Roger Sollenberger, *Trump’s New Legal Bills Are Hiding an \$8 Million Mystery*, *Daily Beast* (Apr. 24, 2024)),¹ or even when raising funds from its bankrollers, but do not make for a viable FEC enforcement complaint. *See* MURs 7854 & 7946 (Priscilla Chan & Mark Zuckerberg), Factual & Legal Analysis at 19-20 (dismissing complaint allegations that were “speculative at best”); MUR 7712 (Tom Steyer 2020), First General Counsel’s Report at 11 n.41 (“The Commission has stated that mere speculation, without more, does not provide a basis to support a reason to believe finding.”).

The actual facts here are quite simple and benign: the Committees remitted contractually obligated indemnification payments to Red Curve to compensate Red Curve for legal costs Red Curve had to pay arising from its services to the Committees, and the Committees accurately disclosed those payments to Red Curve on their FEC reports. *See* Crate Aff. ¶¶ 5-12. These indemnity payments to Red Curve were (i) permissible and (ii) properly and accurately reported under FECA and FEC regulations. Accordingly, there can be no reason to believe a violation has occurred, and the Commission should dismiss the complaint and close the file.

¹ Conveniently, the *Daily Beast*’s article, on which the complaint entirely predicates itself, was published the morning of the day CLC filed its 42-paragraph complaint. An orchestrated—and equally speculative—media report cannot possibly serve as a basis to collaborate a conjectural complaint.

I. THE COMMITTEES' INDEMNIFICATION PAYMENTS TO RED CURVE WERE PERMISSIBLE UNDER FECA AND FEC REGULATIONS

The Committees' indemnity payments to Red Curve were proper as a matter of law. To start, the payments were all made pursuant to arm's-length contractual arrangements between the Committees and Red Curve. Crate Aff. ¶¶ 5-10. As described above, the Committees agreed to indemnify Red Curve and Mr. Crate broadly from losses arising from their contracted services to the Committees. *Id.* ¶¶ 5-6. Such express indemnification clauses are usual and customary terms in commercial services agreements; indeed, they “appear in nearly all commercial agreements,” as “[t]hey are an essential risk allocation tool between the parties.” *Indemnification Clauses in Commercial Contracts*, Thomson Reuters, <https://legal.thomsonreuters.com/en/insights/articles/indemnification-clauses-in-commercial-contracts>; accord Matt Rosso & Elizabeth F. Vieyra, *The Importance of Drafting Clear Contractual Indemnity Provisions* (Aug. 23, 2023), <https://www.policyholderperspective.com/2023/08/articles/insurance-coverage/the-importance-of-drafting-clear-contractual-indemnity-provisions> (“This type of provision appears in nearly all commercial contracts and is an important tool to allocate risk between parties.”). And here, the Committees independently made the indemnification payments to Red Curve based on their own independent assessment that the indemnification clauses applied. Crate Aff. ¶ 11.

Moreover, because the legal costs indemnified by the Committees arose as a direct result of Red Curve's services to the Committees, including Mr. Crate's designation as the Committees' FEC Treasurer and Custodian of Records, *id.* ¶¶ 8-10, they necessarily could not have existed “irrespective of” the Committees' activities, 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g), and the Committees' payments for them were proper under all circumstances. *See, e.g.*, MUR 7390 (Donald J. Trump), Factual & Legal Analysis 6-8 (discussing personal-use restrictions on legal expense payments by authorized committees); *see also* MUR 7961 (LOU PAC), Factual & Legal

Analysis at 9 (providing that “the personal use prohibition is inapplicable to” committees that are not “authorized committees,” including leadership PACs and multicandidate committees). The FEC has repeatedly approved of committees—including authorized committees—paying another party’s legal costs when, like here, the expenses arose directly from work done for the committees. *See, e.g.*, MUR 7934 (Xochitl for New Mexico), Factual & Legal Analysis at 7 (“The Commission has also determined that campaign funds may be used to pay the legal expenses of persons *other* than the candidate when they are for activities directly related to the candidate’s campaign or officeholder duties.”). For example, in Advisory Opinion 2011-07 (Chuck Fleischmann for Congress), the Commission approved of a campaign committee paying for legal expenses of a former political consultant defending a civil lawsuit against him arising from his work as a campaign consultant for the committee. *See* Advisory Op. 2011-07 (Chuck Fleischmann for Congress) at 4; *see also* Advisory Op. 2009-20 (Visclosky) at 4 (approving a campaign committee paying for the legal expenses of the candidate-officeholder’s former staffers in connection with a federal investigation).

In desperate search of a violation, CLC’s complaint contends that the Committees’ payments to Red Curve may have “stemm[ed] from the representation of others linked to [President] Trump or the [Committees],” or may have “included payments for expenses unrelated to legal services” entirely. Compl. ¶ 11. Even standing alone this irresponsible speculation would not suffice to establish “reason to believe.” Yet Red Curve and Mr. Crate also directly refute CLC’s false suppositions. *See, e.g.*, MUR 8082 (Unknown Respondents), Statement of Reasons of Comm’rs Cooksey, Dickerson & Trainor at 1 (“As the Commission explained nearly a quarter century ago, we may not find reason to believe based upon mere speculation or conclusory

statements in a complaint, especially when accompanied by a direct refutation.” (internal quotation marks and footnote omitted)).

CLC’s complaint also asserts that there may be “reason to believe that Red Curve made prohibited or excessive contributions in violation of FECA, in the form of corporate “advances” or impermissible “extensions of credit.” Compl. ¶¶ 33-39. This too is false. *First*, although not always necessary, it is customary for an indemnitee to pay an incurred cost first, then seek compensation from the indemnitor when the amount of the loss is known—indeed, this order of operations is inherent in the very concept of indemnity. *See Indemnity*, Black’s Law Dictionary (2006) (defining indemnity to include the duty to make good on a loss and the “right of an injured party to claim reimbursement for its loss ... from a person who has such a duty”). *Second*, Red Curve’s payments to outside counsel it retained could not have constituted “advances” to the Committees. To find the making of an advance under these facts indeed would impose an absurd obligation on committees to pay for the legal costs of any current or former vendors and staff arising from work done for committees. This, of course, is not—and never has been—the rule. *See, e.g.*, Advisory Op. 2011-07 (providing that the committee permissively “*may* use campaign funds to pay legal fees described in this request” (emphasis added)).

II. THE COMMITTEES’ INDEMNIFICATION PAYMENTS TO RED CURVE HAVE BEEN PROPERLY AND ACCURATELY REPORTED UNDER FECA AND FEC REGULATIONS

The complaint further alleges that the Committees may have failed to properly report the indemnity payments made to Red Curve. Compl. ¶¶ 23-32. As CLC notes, under FECA and FEC regulations, committees must disclose “the name and address of each . . . person to whom an expenditure in an aggregate amount of value in excess of \$200” per election cycle for authorized committees, or within the calendar year for other committees, along with the date, amount, and

purpose for the disbursements. Compl. ¶ 12. Yet the Committees did exactly that: they reported the *payee* of their indemnification payments (*i.e.*, Red Curve), Crate Aff. ¶ 10, and they described those indemnity payments for exactly what they were—“reimbursements for legal” costs, Compl. ¶¶ 1, 23. The complaint’s misreporting allegations thus fall flat on all counts.

A. The Committees properly reported Red Curve as the payee of their indemnity payments.

CLC’s complaint repeatedly speculates that Red Curve may have been a mere “conduit” of legal payments for others, Compl. ¶¶ 30, 36, but it was in fact the Committees’ *payee* under the terms of their indemnity agreement, Crate Aff. ¶¶ 5-6, 10. “An indemnification provision is a legally binding agreement between two parties specifying that one party (indemnitor) will compensate the other party (indemnitee) for any losses or damages that may arise from a particular event or circumstance.” Rosso & Elizabeth F. Vieyra, *supra*. The Committees thus were, as a matter of contractual obligation, paying Red Curve. *Id.* So Red Curve *was* the “ultimate payee” and correctly reported as the recipient of the payments on the Committees’ Schedule B.

Yet even if the Commission were to treat Red Curve’s outside law firms as the “ultimate payees” of the Committees’ indemnification payments to Red Curve, the Committees’ reporting of the payments to Red Curve was still proper. FECA and FEC regulations are completely silent on the issue of ultimate payees. *See* MUR 6698 (United Ballot PAC), First General Counsel’s Report at 9. And the limited interpretive policy that the FEC issued in 2013, requiring committees to report ultimate payees in specific circumstances, does not address this issue. *Reporting Ultimate Payees of Political Committee Disbursements*, 78 Fed. Reg. 40,625, 40,626 (July 8, 2013). To the contrary, the Commission consistently “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.” MUR 6510 (Kirk for Senate),

Factual & Legal Analysis at 12 (citing Advisory Op. 1983-25 (Mondale for President)); *see also* MUR 6894 (Steve Russell for Congress), First General Counsel’s Report at 3; MUR 6775 (Ready for Hillary PAC), Statement of Reasons of Comm’r Goodman at 4, 4 n.19. Such “a consultant may be viewed as a vendor ... to a committee, and ... a committee may report payments to such consultants as committee expenditures without further itemization of the other entities that receive payments from these consultants in connection with their services under committee contracts.” MUR 2612 (Bush for President, Inc.), First General Counsel’s Report at 4. Here, the very nature of Red Curve’s business necessarily demands it seek independent legal counsel from time to time in carrying out its duties to clients, *Crate Aff.* ¶ 7, and it is thus appropriate to view any payments made to such counsel as being “services ... used in the performance of” Red Curve’s work for a committee.

The two MURs cited in the complaint as examples of conduit vendor payments—MUR 4872 (Jenkins) and MUR 6800 (Ron Paul 2012 Presidential Campaign Committee Inc.)—have no relevance to this matter. *See* Compl. ¶¶ 14-16, 29-30 In MUR 4872 (Jenkins), for example, the committee had hidden its payments to a phone bank vendor through a media vendor that had no “involvement whatsoever with the services provided by [the phone bank vendor]” in order to conceal an affiliation with David Duke. MUR 4872, Conciliation Agreement ¶ 9. Similarly, in MUR 6800 (Ron Paul 2012)—a matter subsequently abandoned and closed without conciliation—the FEC had found reason to believe a committee had “routed payments through” an intermediary “to avoid disclosing” those payments, which purportedly were made to an individual in return for his political endorsement. MUR 6800, Factual & Legal Analysis 10. The reason-to-believe record in that MUR indicated that the committee had “made the decision to hire [the individual] and

negotiated the terms of his compensation, and [the individual] took no direction from [the reported payee] nor performed any work for” the reported payee. *Id.*

There are no similar facts here. Unlike in those old MURs, Red Curve is a bona fide corporate vendor to the Committees under its own services contracts. Crate Aff. ¶¶ 5-6. And unlike in those MURs, Red Curve and Mr. Crate—consistent with Red Curve’s negotiated indemnification agreement in the Master Agreements with the Committees—actually were in privity with, and were clients of, the law firms paid for the legal services indemnified by the Committees. *Id.* ¶¶ 7-9.

B. The Committees properly and accurately described the purposes of their indemnity payments.

The Committees’ purpose descriptions accompanying their disclosures of the indemnity payments to Red Curve also were correct and accurate. Crate Aff. ¶ 12. “The Commission’s regulations define ‘purpose’ as ‘a brief statement or description of why the disbursement was made.... [T]he Commission has clarified that the ‘purpose of disbursement’ entry, when considered along with the identity of the disbursement recipient, *must be sufficiently specific to make the purpose of the disbursement clear.*” MURs 7575, 7580, 7592 & 7626 (Brand New Congress), Statement of Reasons of Comm’rs Dickerson, Cooksey & Trainor at 4, 4 n.30 (citing *Purposes of Disbursement*, <https://www.fec.gov/help-candidates-andcommittees/purposes-disbursement>; see also *Statement of Policy: “Purpose of Disbursement” Entries for Filings with the Commission*, 72 Fed. Reg. 887, 888 (Jan. 9, 2007)). “[A] detailed description is not required.” MUR 7934, Factual & Legal Analysis at 10. But the disclosed “purpose, ‘when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear’” such that it allows “‘a person not associated with the committee [to] easily discern why the

disbursement was made when reading the name of the recipient and the purpose.” *Id.* at 10-12 (emphasis added).

This test is passed here with flying colors. Unlike in MURs 7291 and 7449 cited by the complaint (Compl. ¶ 16)—where Marc Elias, Hillary Clinton, and the DNC failed to specify the true nature and purpose of disbursements made for opposition research, MURs 7291 and 7449, Conciliation Agreements—anyone reading the Committees’ FEC reports would “easily discern” exactly why the Committees made to Red Curve the disbursements at issue: to reimburse legal costs Red Curve paid. On such facts, there could not be a violation of the Committees’ reporting duties. *See* MURs 7931 & 8059 (Biden for President), Statement of Reasons of Comm’rs Lindenbaum, Broussard & Weintraub at Attach. A, pp. 38-40 (supporting finding no reason to believe where “there [was] no information in the Complaints to suggest that ... disbursements were for something other than [as] described by the Respondents”).

CONCLUSION

All told, CLC’s baseless allegations amount to another notch in an ever-growing belt of hollow publicity stunts that CLC masks as FEC enforcement complaints. CLC’s recidivist misuse of the FEC’s (overly) liberal complaint procedures, particularly against President Trump and his various committees, has been shameful—yet, of course, they know there will not be any repercussions for such wantonness. Although the time came long ago for Congress and the FEC to reform FECA’s complaint process, until that actually happens, the Commission should send a strong message to the regulated community that it will not tolerate groundless filings like these: by immediately dismissing CLC’s complaint and closing the file in this MUR.

Respectfully submitted,



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EXHIBIT A

Commonwealth of Massachusetts
County of Essex

AFFIDAVIT OF BRADLEY T. CRATE

I, Bradley T. Crate, attest under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief:

1. I am the President of Red Curve Solutions, LLC ("Red Curve"), a full-service consulting firm I founded in 2009, which provides treasury and accounting services to political committees registered with the Federal Election Commission ("FEC"), as well as other entities.

2. Red Curve is organized as a limited liability company under Massachusetts law, and has elected to be taxed as a corporation by the Internal Revenue Service.

3. Red Curve has provided services to hundreds of FEC-registered political committees over the years, including the authorized committees of every Republican nominee for President since 2012.

4. Red Curve has more than 200 clients actively registered with the FEC today, including Donald J. Trump for President 2024, Inc., Trump Save America Joint Fundraising Committee, Save America, Trump Make America Great Again Committee, and Make America Great Again PAC ("the Committees").

5. Red Curve provides its services to each of the Committees under Red Curve's Master Agreement for Financial Consulting and Treasury Services ("Master Agreement"). Pursuant to those Master Agreements, I serve as the designated FEC Treasurer and Custodian of Records for each of the Committees.

6. A standard provision in Red Curve's services contracts, including each of the Committees' Master Agreements, is a mutual "Indemnity" clause providing Red Curve broad protection from legal losses arising from its services. Specifically, the Master Agreements provide that the Committees will "indemnify and hold [Red Curve] harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs arising out of" Red Curve's work for the Committees. In full, Red Curve's current standard indemnity clause provides:

Subject to the limitations of this Master Agreement, [Red Curve] agrees to indemnify and hold Client harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs arising out of [Red Curve]'s negligence to the extent of [Red Curve]'s negligence. Subject to the limitations of this Master Agreement, Client agrees to indemnify and hold [Red Curve] harmless from and against any and all claims, suits, costs and expenses including reasonable attorney's fees and court costs arising out of this Agreement, except to the extent that such claims, suits, costs or expenses arise out of [Red Curve]'s negligence.

7. Red Curve and I, from time to time, will consult with outside legal counsel to advise on an array of matters involving clients, including the Committees.

8. In recent years, Red Curve has had to pay for substantial legal costs because Red Curve and I have received more than 15 wide-ranging subpoenas and requests for production of documents and/or information as a direct result of my designation as the FEC Treasurer and Custodian of Records for the Committees.

9. In responding to these subpoenas and other requests, pursuant to the indemnity provisions of the Master Agreements, Red Curve and I have retained outside counsel to assist in the response.

10. Red Curve has separately invoiced the relevant Committees for the legal costs for which Red Curve has sought indemnity, and the Committees have remitted their indemnity payments directly to Red Curve.

11. The Committees' decisions on whether to pay Red Curve's indemnity claims have been made by Committee staff, independently of me.

12. The Committees have reported all of their indemnity payments made to Red Curve on Schedule B of their FEC disclosure reports, describing the purposes of those payments as either "Reimbursement for Legal Fees" or "Reimbursement for Legal Expenses."

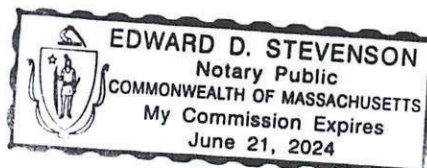

Bradley T. Crate

Subscribed and sworn to before me, this 14th day of June, 2024.


NOTARY PUBLIC

My commission expires: June 21, 2024, 20 .

SEAL:





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