



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FIRST CLASS AND ELECTRONIC MAIL**

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**FEB 28 2018**

RE: MUR 6334  
Aristotle International, Inc.

Dear Mr. Hershkowitz:

Based on a complaint filed with the Federal Election Commission on July 20, 2010, and information supplied by your client, Aristotle International, Inc., the Commission, on May 24, 2011, found that there was reason to believe your client violated 52 U.S.C. § 30111(a)(4) (then codified as 2 U.S.C. § 438(a)(4)), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the General Counsel's Brief. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. The Office of the General Counsel will not give extensions absent an agreement to toll the applicable statute of limitations.

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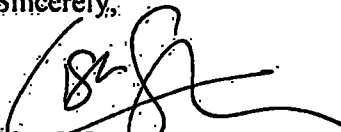
You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See Procedural Rules for Probable Cause Hearings*, 72 Fed. Reg. 64919 (Nov. 19, 2007) and *Amendment of Agency Procedures for Probable Cause Hearings*, 74 Fed. Reg. 55443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. A request for a probable cause hearing will require the Respondent to toll the applicable statute of limitations. *See Procedural Rules for Probable Cause Hearings*, 72 Fed. Reg. 64919, 64920 (Nov. 19, 2007). The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Claudio J. Pavia, the attorney assigned to this matter, at (202) 694-1597.

Sincerely,



Lisa J. Stevenson  
Acting General Counsel

Enclosure  
General Counsel's Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )  
4 ) MUR 6334  
5 Aristotle International, Inc. )  
6 )  
7 )

8 **GENERAL COUNSEL'S BRIEF**

9  
10 **I. STATEMENT OF THE CASE**

11 This matter was generated by a complaint filed with the Federal Election Commission by  
12 NGP Software, Inc., alleging that Aristotle International, Inc. ("Aristotle") violated 52 U.S.C.  
13 § 30111(a)(4) (the "sale and use restriction") which provides that FEC data "may not be sold or  
14 used by any person for the purpose of soliciting contributions or for commercial purposes, other  
15 than using the name and address of any political committee to solicit contributions from such  
16 committee."<sup>1</sup> Aristotle sells a commercial software program titled Aristotle 360 that is marketed  
17 towards political committees. Aristotle 360 includes a feature called Relationship Viewer that  
18 displays FEC data and is designed to assist Aristotle's clients with soliciting contributions. On  
19 May 24, 2011, the Commission found reason to believe that Aristotle violated the sale and use  
20 restriction in connection with Relationship Viewer and commenced an investigation.

21 As set forth below, the Office of General Counsel is now prepared to recommend that the  
22 Commission find probable cause to believe that Aristotle violated 52 U.S.C. § 30111(a)(4). The  
23 record makes clear that Relationship Viewer is designed as a solicitation tool and that Aristotle's  
24 conduct directly implicates the animating purpose of the sale and use restriction, which is to  
25 prevent individual contributors from being solicited because their names appear on a disclosure  
26 report filed with the Commission.

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<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act") was transferred from Title 2 to new Title 52 of the United States Code. Previously, the sale and use restriction was codified as 2 U.S.C. § 438(a)(4).

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1 **II. FACTS**

2 **A. Background**

3 Aristotle is a technology company based in Washington, DC that sells political software  
4 and public record information.<sup>2</sup> It describes itself as “the global leader in providing technology  
5 to political campaigns and organizations” and states that its “political committee software is  
6 nationally recognized as being among the best, if not the best, software.”<sup>3</sup> Aristotle 360,  
7 introduced by Aristotle in 2005, is a software application that is designed to assist political  
8 committees with accounting for contributions and disbursements, filing federal and state  
9 disclosure reports, and managing data.<sup>4</sup> It also includes various features that support other  
10 political activities such as grassroots organizing, voter identification, get-out-the-vote efforts,  
11 and fundraising.<sup>5</sup>

12 **B. Relationship Viewer**

13 1. Functionality

14 Relationship Viewer is one of the features available in Aristotle 360.<sup>6</sup> It acts as a search  
15 tool, whereby the user (Aristotle’s client) enters a person’s name (the target), and the program  
16 returns a list of individuals who have a “relationship” with the target using an algorithm that

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<sup>2</sup> Resp. at 5 (Sept. 15, 2010); *id.*, Attach. 1 ¶¶ 1, 4 (Declaration of Dean Aristotle Phillips, President of Aristotle) (Sept. 13, 2010) (“2010 Phillips Declaration”).

<sup>3</sup> *Learn About the Global Leader in Political Technology*, ARISTOTLE.COM, <http://aristotle.com/about> (last visited Feb. 16, 2018); 2010 Phillips Decl. ¶ 6.

<sup>4</sup> 2010 Phillips Decl. ¶¶ 12, 14.

<sup>5</sup> *Id.* ¶¶ 16-17; Resp. at 7. In 2010, the year that the Complaint was filed, gross sales of Aristotle 360 were \$1,553,060 with over 300 subscribers, including federal political committees, corporate PACs, and other political organizations. Email from Stephen Hershkowitz, Counsel for Aristotle to Attorney, FEC (Sept. 6, 2011).

<sup>6</sup> 2010 Phillips Decl. ¶ 18.

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1 looks at the target's professional, familial, and geographic connections.<sup>7</sup> As explained below,  
2 Aristotle uses FEC data to enhance the search results for the purpose of assisting clients with  
3 soliciting contributions. According to Aristotle, however, the names of the target and his or her  
4 relationships must already appear in the client's database and no FEC data is used in the process  
5 of identifying relationships.<sup>8</sup>

6 Relationship Viewer generates a visualization map that graphically depicts the target and  
7 his or her network of relationships. The map prominently displays the "contribution histories" of  
8 each individual (*i.e.*, the amounts and recipients of their past contributions) using data obtained  
9 from the Commission's database.<sup>9</sup> A connection line links the names of those individuals to the  
10 names of political committees to which they have contributed, with the specific amounts placed  
11 on the connection lines. Figure 1 (displayed on the next page) shows the typical results of a  
12 Relationship Viewer search. It is a screenshot of a video demonstration published by Aristotle  
13 and placed on its website to promote Relationship Viewer.<sup>10</sup>

<sup>7</sup> *Id.* ¶ 21(a)-(b); Declaration of Dean Aristotle Phillips ¶ 7 (June 18, 2012) ("2012 Phillips Declaration").

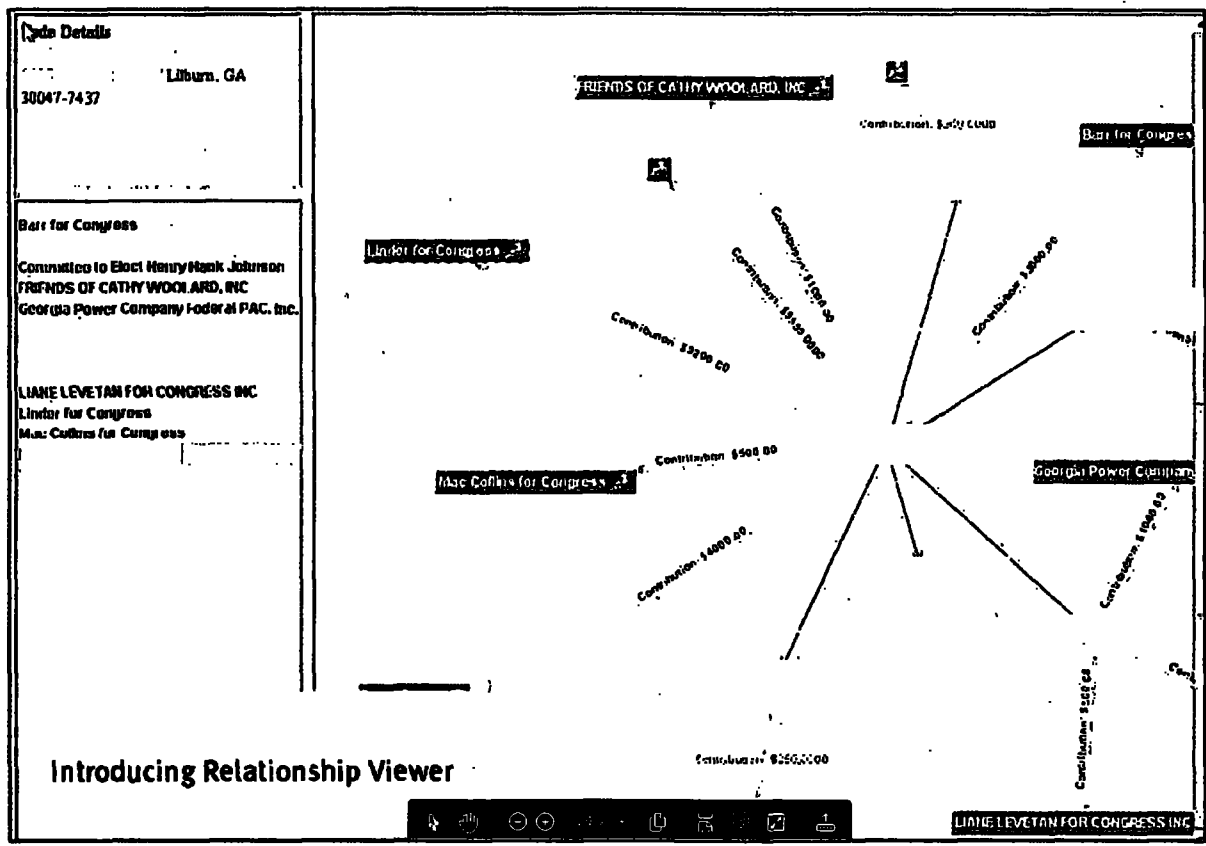
<sup>8</sup> 2010 Phillips Decl. ¶ 21; 2012 Phillips Decl. ¶ 7. Aristotle's clients may populate their database with names obtained from any non-FEC source with no guarantee that the individuals have a pre-existing relationship with the client or previously made contributions to the client organization. Interview of Dean Aristotle Phillips (Jan. 26, 2012) (explaining that the data in a client's database might include lists or other data that has been purchased by the client and that "if you own that name, it's part of your environment and can be searched"); *see Resp.* at 29; 2010 Phillips Decl. ¶ 21(a); 2012 Phillips Decl. ¶ 8. In any event, the source of the names used by Relationship Viewer is not dispositive to the sale and use analysis which instead turns on the impermissible use of contribution histories obtained from the Commission's database.

<sup>9</sup> 2012 Phillips Decl. ¶ 4. Contribution history is a subset of the term "contribution data," which includes all information about a contribution, such as name, mailing address, employer, occupation, contribution amount, date of contribution, and recipient political committee. *See* 52 U.S.C. §§ 30104(b)(3)(A), 30101(13)(A). Contribution data, in turn, is one type of FEC data (*i.e.*, any information published in the Commission's database of reports and statements filed by political committees).

<sup>10</sup> *See* Email from Stephen Hershkowitz, Counsel for Aristotle to Attorney, FEC (Dec. 21, 2011) (attaching video); *see also* 2012 Phillips Decl. ¶ 6 (confirming that the images in the video "generally reflect the RV software . . . included in the 360 software sold to our clients"); *id.* ¶ 7 (stating that a "typical RV query essentially provides the same results as . . . the images in the RV marketing video").

1 When the user selects a name, that person's contact information is displayed in the upper  
2 left-hand corner of the screen.<sup>11</sup> The color of the box containing an individual's name indicates  
3 political affiliation (Red = Republican; Blue = Democrat; and Green = Independent); the color of  
4 a connection line indicates whether it is a relationship (Blue) or a contribution (Green).<sup>12</sup>

5 **Figure 1. Typical Results of a Relationship Viewer Search**



6  
7 **2. Marketing and Patent Application**

8 Aristotle promoted Relationship Viewer as a fundraising tool through various mediums,  
9 including a press release, a print ad in a trade journal, and on its website. First, in a press release

<sup>11</sup> Interview of Dean Aristotle Phillips (Jan. 26, 2012). The contact information of the target and his or her relationships are obtained from the client organization's database. See 2012 Phillips Decl. ¶¶ 4, 8. The only FEC data incorporated into the product are the contribution histories.

<sup>12</sup> Interview of Dean Aristotle Phillips (Jan. 26, 2012).

1 announcing the submission of a patent application for the technology underlying Relationship  
2 Viewer, Aristotle explained that the software “delivers [a] significant advantage in terms of  
3 solicitation,” and included the following quote from an Aristotle executive:

4 This technology puts the exact information campaigns need right at their  
5 fingertips. To paraphrase Jerry Maguire, we show you the money . . . . The  
6 biggest sin in fundraising is not to ask. The second sin is not to ask enough.  
7 Fundraisers and campaigns will never again overlook a prospect, or leave money  
8 on the table by asking for too little. With this technology, campaigns will raise  
9 much more money than ever before.”<sup>13</sup>

10 Second, Aristotle ran a print ad in *Politics Magazine* with the pronouncement: “The only  
11 other way to raise as much money could land you in jail” above the image of a man  
12 posing for a mug shot (adjacent to a short list of available software features including  
13 “Relationship Finder”).<sup>14</sup> Further, the ad boasted: “Only Aristotle can provide the data  
14 needed to point the way to the thousands of donors predisposed to contributing to your  
15 campaign, PAC, or grassroots group.”<sup>15</sup> Third, Aristotle posted a Relationship Viewer  
16 product demo on its website with the following text appearing directly above it:

17 It's not science fiction, it's data mining taken to the next level. Our powerful  
18 web-based system quickly uncovers relationships that can be targeted for votes,  
19 dollars, or grass-roots support. Imagine the possibilities. Use it to access Fat  
20 Cats, elected officials, corporate board members, or ordinary voters. It's just one  
21 of the ways Aristotle gives you a much-needed edge, via our innovative software,  
22 accurate databases and seasoned staff. But don't take our word for it, take the  
23 Aristotle challenge.<sup>16</sup>

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<sup>13</sup> Compl. (July 20, 2010), Attach. at 15-17; see also *Integration of Voter and Contributor Data into Political Software and Compliance Systems for Purposes of Solicitation, Compliance, Vetting, and Calls to Action*, U.S. Patent Application No. 13/026,886, Pub. No. 2011/0202542 A1 (filed February 14, 2011, claiming priority over a prior patent application filed February 12, 2010) (published Aug. 18, 2011) (“Patent Application”).

<sup>14</sup> Compl., Attach. at 21-22.

<sup>15</sup> *Id.* at 22.

<sup>16</sup> *Id.* at 1; *Aristotle 360 – Relationship Viewer Demo – Aristotle – Now You Know*, ARISTOTLE.COM available at <https://web.archive.org/web/20080513151232/http://www.aristotle.com/content/view/232/161/> (archived version from May 13, 2008).

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1 In addition, Aristotle illustrated the fundraising capabilities of its software in a  
2 patent application filed with the United States Patent and Trademark Office. It explains  
3 how the software provides users with information to identify "those who may likely be  
4 positively disposed to contributing to the user's organization."<sup>17</sup> Further, it describes  
5 how this is accomplished "by displaying contribution data for reference individuals" on  
6 the feature's visualization map.<sup>18</sup> Aristotle's patent application, at the outset, explains  
7 that the invention will be "discussed in the context of organizations receiving political  
8 contributions and/or other donations," and goes on to provide specific examples of  
9 searches being run for the purpose of identifying potential contributors.<sup>19</sup>

10 **III. LEGAL ANALYSIS**

11 The Act requires political committees to report the name, mailing address, occupation,  
12 and employer of each person who makes an aggregate contribution in excess of \$200 within the  
13 calendar year (or election cycle, in the case of an authorized committee), together with the date  
14 and amount of any such contribution.<sup>20</sup> Further, the Act requires that the Commission make all  
15 such reports available for public inspection and copying, "except that any information copied  
16 from such reports . . . may not be sold or used by any person for the purpose of soliciting  
17 contributions or for commercial purposes, other than using the name and address of any political  
18 committee to solicit contributions from such committee."<sup>21</sup>

<sup>17</sup> Patent Application at 5.

<sup>18</sup> *Id.*; *see also id.* at 1 ("Organizations may solicit donations from individuals at random or they may target certain potential donors based on known information about the potential donors.").

<sup>19</sup> *Id.* at 1; *see, e.g., id.* at 4 (describing an example search "designed to identify potential monetary supporters for a political party").

<sup>20</sup> 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A).

<sup>21</sup> *Id.* § 30111(a)(4) (the "sale and use restriction"); *see also* 11 C.F.R. § 104.15(a).

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1           The record in this matter demonstrates that there is probable cause to believe that  
2 Aristotle violated 52 U.S.C. § 30111(a)(4) because it incorporates FEC data into a commercial  
3 product<sup>22</sup> for the purpose of soliciting contributions. Relationship Viewer is a solicitation tool,  
4 because it is designed to identify solicitation prospects based on whether individuals have made  
5 contributions or have relationships with other individuals who have made contributions. The  
6 sale and use restriction prohibits the use of FEC data in connection with a solicitation tool such  
7 as Relationship Viewer, as evidenced by the Commission precedent. Moreover, Aristotle's  
8 conduct directly implicates the government interests advanced by the statute, namely, preventing  
9 individual contributors from being solicited because their names appear on a disclosure report  
10 and defending the exclusive rights of the political committees whose data is being used by  
11 Aristotle without permission.

12           **A. Relationship Viewer is a Solicitation Tool**

13           Aristotle touted the fundraising capabilities of Relationship Viewer in each of the  
14 available promotional materials. According to a press release, the software "delivers [a]  
15 significant advantage in terms of solicitation."<sup>23</sup> An Aristotle executive cited to the film *Jerry*  
16 *Maguire*, saying "we show you the money," and asserted that Aristotle's clients "will never

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<sup>22</sup> It is clear that Relationship Viewer is commercial because it is part of a software product that is sold to customers for profit. Aristotle has argued that Relationship Viewer is not "commercial" *per se*, and therefore not subject to the sale and use restriction, because it is just one feature within a much larger software program and Aristotle does not separately charge for access to the FEC data. *See Resp.* at 26-27. However, it is not credible to argue that a component of a larger product that commands \$500-\$1,000 for a monthly subscription is not commercial because there is not a separate charge for that component. *See Email from Stephen Hershkowitz, Counsel for Aristotle to Attorney, FEC (Nov. 1, 2011).* In Advisory Op. 2004-24 at 3 (NGP Software, Inc.), the Commission found that the term "commercial purpose" applies regardless of whether a software product is "sold as a separate service or as part of [a suite of available features]."

<sup>23</sup> Compl., Attach. at 16.

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1 again overlook a prospect, or leave money on the table.”<sup>24</sup> Aristotle’s website claimed that  
2 Relationship Viewer “quickly uncovers relationships that can be targeted for [dollars].”<sup>25</sup> The  
3 website not only suggested that Aristotle’s clients would enjoy increased fundraising, but that  
4 they would be able to use Relationship Viewer to “access Fat Cats.”<sup>26</sup> Indeed, a print ad stated  
5 that “[t]he only other way to raise as much money could land you in jail,” and asserted that  
6 “[o]nly Aristotle can provide the data needed to point the way to the thousands of donors  
7 predisposed to contributing to your campaign, PAC, or grassroots group.”<sup>27</sup>

8 Further, and significantly, Aristotle’s patent application for the technology underlying  
9 Relationship Viewer explains how the software enables users to identify “those who may likely  
10 be positively disposed to contributing to the user’s organization.”<sup>28</sup> And it explains how  
11 “displaying contribution data for reference individuals” on the feature’s visualization map will  
12 assist clients with identifying potential contributors.<sup>29</sup> A formal submission to the government  
13 speaks for itself in terms of its authority regarding Aristotle’s purpose for using FEC data.

14 An assessment of Relationship Viewer’s functionality confirms the software’s design as a  
15 solicitation tool. The user most obviously gains two important pieces of insight about the target:

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 21-22.

<sup>28</sup> Patent Application at 5. The patent application states that the information will assist the user “as permitted by law.” *Id.* This language alone does not establish that Relationship Viewer is not a solicitation tool or create the presumption that Aristotle’s activities were necessarily legal. Furthermore, the marketed version of Relationship Viewer does not follow the limitations on the use of contribution data that the patent application presumed may be necessary to comply with applicable law. *See id.* at 4 (acknowledging that, if “a search were being run in order to identify potential contributors,” it may be necessary to “not display contribution data from any database from which the use of such contributor data is not legal”). The marketed version of Relationship Viewer, however, displays FEC data even if Aristotle’s client is running a search to identify potential contributors.

<sup>29</sup> *Id.* at 5.

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1 whether they are a known political contributor and whether they are connected to other known  
2 political contributors. Relationship Viewer instantly displays the contact information of any  
3 person who piques the user's interest. As the Commission has observed, "a committee may be  
4 more likely to decide to solicit an individual because his or her contribution history is  
5 immediately known."<sup>30</sup> Though a given person's relationships might, in the abstract, have other  
6 uses to a political committee besides solicitation, the prominent display of contribution histories  
7 embedded on the visualization map couches the meaningfulness of the relationships in terms of  
8 the target's giving potential.

9 Aristotle has argued, without providing specifics, that Relationship Viewer "has the same  
10 compliance and vetting capability that any access to FEC data would have."<sup>31</sup> However,  
11 Aristotle has only described the compliance and vetting purposes advanced by *other* Aristotle  
12 360 features.<sup>32</sup> There do not appear to be any legitimate compliance or vetting purposes for  
13 displaying the contribution histories of a given person's relationships. As the Commission  
14 previously observed, "Relationship Viewer appears to focus primarily on solicitation rather than  
15 compliance purposes, as evidenced by Aristotle's marketing materials."<sup>33</sup> Relationship Viewer  
16 is thus distinguishable from the feature in MUR 5625 (Aristotle Int'l, Inc.), which returned the  
17 contribution history of only one person at a time with no relationship-mapping functionality.<sup>34</sup>

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<sup>30</sup> Factual and Legal Analysis at 11, MUR 6334 (Aristotle) ("F&LA").

<sup>31</sup> Resp. at 32.

<sup>32</sup> See, e.g., *id.* at 7 (describing separate features that use FEC data to comply with the Lobbying Disclosure Act of 1995 and regulations promulgated by the Securities Exchange Commission).

<sup>33</sup> F&LA at 10, MUR 6334 (Aristotle Int'l, Inc.).

<sup>34</sup> The Commission has opined that Relationship Viewer "presents a more far-reaching use of FEC data than the Campaign Manager 5 software program addressed in MUR 5625," because of how it "allows a committee to view the contribution histories of both the subject of the search and other individuals." *Id.* at 9-10. *But see* Resp. at 3-4 (arguing that there is "no material difference" between that feature and Relationship Viewer). In MUR 5625,

1 We note that Aristotle 360 displays a warning against the misuse of FEC data before the  
2 user is able to access Relationship Viewer and run a search.<sup>35</sup> However, the mere presence of a  
3 disclaimer does not undercut the conclusion that Relationship Viewer is a solicitation tool. As  
4 the Commission has already observed, "these disclaimers may be insufficient to convey that the  
5 use of the Relationship Viewer itself for the solicitation purposes touted by Aristotle's own  
6 marketing materials would be impermissible."<sup>36</sup> Users might also be misled because it is not  
7 obvious that the contribution histories are copied from the Commission's database.<sup>37</sup>

8 In sum, based on Aristotle's promotional materials, a press release, a print ad, and  
9 statements on Aristotle's website; an assessment of how Relationship Viewer works; and the  
10 descriptions of the software in a related patent application, it is clear that Relationship Viewer is  
11 a solicitation tool. Relationship Viewer is designed for the purpose of identifying "those who  
12 may likely be positively disposed to contributing to the user's organization."<sup>38</sup> As discussed  
13 below, the statute prohibits the sale and use of individual contribution data obtained from the  
14 Commission's database in connection with a solicitation tool.

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the Commission split 3-3 at the probable cause to believe stage, in part, over whether the feature was a solicitation tool or a bona fide compliance and vetting feature. *See* Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Donald F. McGahn at 5-6, MUR 5625 (Aristotle Int'l, Inc.); Statement of Reasons of Vice Chair Cynthia L. Bauerly and Comm'rs Steven T. Walther and Ellen L. Weintraub at 5-6, MUR 5625 (Aristotle Int'l, Inc.); *see also* Certification, MUR 5625 (Aristotle Int'l, Inc.) (Mar. 18, 2010).

<sup>35</sup> Prior to conducting a search, a warning is displayed regarding the use of FEC data that essentially restates the text of the sale and use restriction. 2010 Phillips Decl. ¶ 19. Aristotle 360 contracts contain a similar warning. *See* Email from Stephen Hershkowitz, Counsel for Aristotle to Attorney, FEC (Sept. 6, 2011).

<sup>36</sup> F&LA at 11, MUR 6334 (Aristotle Int'l, Inc.).

<sup>37</sup> The button that a user clicks to enter Relationship Viewer states: "View relationships between [name of a given person], other entities in your system and Aristotle's COSMOS database." Interview of Dean Aristotle Phillips (Jan. 26, 2012) (picture taken during product demonstration). The warning would appear to be a non-sequitur given the lack of any mention of FEC data in connection with the Relationship Viewer feature. Even assuming the existence of a robust disclaimer, it is unreasonable to assume that Aristotle's clients would be able to consciously suppress the solicitation value of the information supplied by Relationship Viewer.

<sup>38</sup> Patent Application at 5.

1           **B.     The Statute Prohibits the Sale and Use of Individual Contribution Data in**  
2           **Connection With a Solicitation Tool Such as Relationship Viewer**

3           The dual purposes of the sale and use restriction have been advanced by the Commission  
4 through enactment of a regulation and multiple advisory opinions. The legislative history of the  
5 sale and use restriction indicates that its animating purpose is to prevent individual contributors  
6 from being solicited because their names appear on an FEC disclosure report.<sup>39</sup> Further, the *en*  
7 *banc* D.C. Circuit determined from the face of the statute that the restriction “leaves undisturbed  
8 a pre-existing barrier” and preserves “the exclusive right [of a political committee] to use its  
9 contributor list to solicit contributions, a right that the compiling committee would but for the  
10 Act have protected simply by keeping the list secret.”<sup>40</sup> The Commission has made clear that the  
11 sale and use of individual contribution data, including contribution histories (the type of FEC  
12 data at issue here), to assist clients with soliciting contributions is not permitted.<sup>41</sup>

13           The Commission’s regulation exempts “newspapers, magazines, books or other similar  
14 communications” from the sale and use restriction, “as long as the principal purpose . . . is not to

<sup>39</sup> 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) (statement of Sen. Bellmon) *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) (“These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.”).

<sup>40</sup> *FEC v. Int'l Funding Inst., Inc.*, 969 F.2d 1110, 1113, 1116 (D.C. Cir. 1992) (*en banc*) (generally adopting the arguments presented by the FEC and conclusions drawn by the district court below).

<sup>41</sup> Whereas the broad statutory text seemingly prohibits the sale and use of FEC data for any commercial purpose, the Commission has interpreted the statute to accommodate the competing interests identified by Congress, on the one hand, promoting the full disclosure of campaign spending and, on the other, protecting the privacy of individual contributors. *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 529-30 (D.D.C. 1997). Congress “left a gap for the [FEC] to fill” in determining what types of FEC data should be restricted and in what situations. *Nat'l Republican Cong. Comm. v. Legi-Tech Corp.*, 795 F.2d 190, 193 (D.C. Cir 1986) (quoting *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)) (bracketed text in original). An absolute prohibition on the commercial use of FEC data “would obviously impede, if not entirely frustrate,” the Act’s purpose regarding “full disclosure of campaign-oriented spending to insure both the reality and the appearance of the purity and openness of the federal election process.” *Id.* at 192 (quoting *Buckley v. Valeo*, 424 U.S. 1, 78 (1976)).

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1 communicate any contributor information listed on such reports for the purpose of soliciting  
2 contributions or for other commercial purposes.”<sup>42</sup> Reviewing courts have generally looked to  
3 the regulation when analyzing whether a given sale or use of FEC data is permitted.<sup>43</sup>

4 Relationship Viewer cannot be fairly characterized as a “similar communication” for  
5 purposes of the regulatory exemption.<sup>44</sup> In *PCD*, the Second Circuit concluded that a similar  
6 communication is one that “furthers the ‘profound national commitment to the principle that  
7 debate on public issues should be uninhibited, robust, and wide-open.’”<sup>45</sup> The product at issue in  
8 *PCD* — compilations of FEC data (name, recipient committee, occupation, and amount, *but no*  
9 *contact information*) — was designed in a way that made it “virtually certain” it would be “used  
10 for informative purposes (similar to newspapers, magazines, and books).”<sup>46</sup> Accordingly, the  
11 court determined that the product “further[ed] first-amendment values and [did] not infringe  
12 contributor privacy by abetting solicitors.”<sup>47</sup> None of these attributes apply to Relationship  
13 Viewer because, as explained in the previous section, it presents FEC data in a manner that is  
14 designed to assist clients with solicitation and displays their contact information.

<sup>42</sup> 11 C.F.R. § 104.15(c). The regulation also provides that the sale and use restriction applies to “any type of contribution or donation,” not just federal political contributions. *Id.* § 104.15(b).

<sup>43</sup> See *FEC v. Political Contributions Data*, 943 F.2d 190, 195-98 (2d Cir. 1991) (“*PCD*”); *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 530-31 (D.D.C. 1997); see also *Coeur Alaska, Inc. v. Se. Alaska Conservation Council*, 557 U.S. 261, 277-78 (2009) (“We look first to the agency regulations, which are entitled to deference if they resolve the ambiguity in a reasonable manner.”).

<sup>44</sup> Accordingly, there is no need to analyze the second requirement of the exception — whether “the principal purpose” of the product is to communicate contributor information for the purpose of soliciting contributions or for other commercial purposes. 11 C.F.R. § 104.15(c). In any event, based on the available information, this appears to be the exact reason why Aristotle displays the FEC data.

<sup>45</sup> *PCD*, 943 F.2d at 195 (quoting *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964)).

<sup>46</sup> *Id.* at 193, 197.

<sup>47</sup> *Id.* at 196 (“[T]he question of what is or is not ‘similar’ to the enumerated examples should be answered by closer attention to congress’s intent to expose this information to beneficial sunlight, while protecting contributors, as best as possible, from the harassment of solicitors.”).

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1 Further, in a long line of advisory opinions, the Commission has consistently prohibited  
2 the sale and use of individual contribution data (including contribution histories, the specific type  
3 of FEC data at issue here) where the purpose was related to solicitation.<sup>48</sup> The Commission has  
4 approved the sale and use of individual contribution data only in "narrow circumstances not was  
5 related to solicitation or commercial purposes."<sup>49</sup> As the Commission stated in its most recent  
6 advisory opinion involving the sale and use restriction, in summarizing its precedent, the sale and  
7 use of FEC data is permissible "so long as the data is not used to solicit contributions and cannot  
8 be so used by third parties to whom that data is provided."<sup>50</sup> Based on a review of the  
9 Commission's entire body of administrative matters involving the restriction, many of which are  
10 cited above, the Commission has never permitted the sale or use of FEC data where the purpose  
11 related to solicitation and has taken care to ensure that a challenged or requested sale or use of  
12 FEC data does not directly or indirectly involve such a purpose.

13 More specifically, there have been prior matters involving fact patterns substantially  
14 similar to Aristotle's conduct. In those instances, the Commission did not approve the sale of  
15 individual contribution histories where, as here, the data was displayed within fundraising-

<sup>48</sup> Advisory Op. 2004-24 (NGP) (contribution histories only); Advisory Op. 2003-24 (NCTFK) (names and addresses); Advisory Op. 1995-05 (TRIM) (names and addresses); Advisory Op. 1991-16 (Feigenbaum) (names and contribution histories); Advisory Op. 1985-16 (Weiss) (contribution histories only); *see also* F&LA, MUR 6334 (Aristotle Int'l, Inc.) (finding reason to believe based on alleged impermissible use of contribution histories only).

<sup>49</sup> Advisory Op. 1988-02 at 2 (Chicago Board of Options Exchange II) ("AO 1988-02"); *see, e.g.*, Advisory Op. 2013-16 (PoliticalRefund.Org) (informing contributors of their right to seek a refund from other committees); Advisory Op. 1998-04 (White Oak Technologies) (demonstrating the capabilities of data mining software that would in practice be limited to client's own data); AO 1988-02 (displaying contribution data related to an SSF in an access-restricted area); Advisory Op. 1984-02 (Gramm) (clarifying that a committee with a misleading name was not authorized); Advisory Op. 1981-05 (Findley) (correcting defamatory statements). Similarly, the Commission has permitted the sale and use of contribution data when displayed in a non-individualized, aggregate form in a product unrelated to solicitation. *E.g.*, Advisory Op. 2017-08 (Point Bridge Capital) (creating index of companies based on contributions and expenditures of SSF and employees) ("AO 2017-08"); Advisory Op. 2015-12 (Ethiq) (matching users to candidates with shared values) ("AO 2015-12"); Advisory Op. 2014-07 (Crowdpac) (same).

<sup>50</sup> AO 2017-08 at 4; *see also* AO 2015-12 at 4 (same).

1 related software, and has prohibited the use of individual contribution histories where, as here,  
2 the purpose was to enhance pre-existing names by determining who is a known political  
3 contributor. Relationship Viewer uses the same type of FEC data and performs the same basic  
4 functions as in those matters, albeit in a more sophisticated manner.

5 In Advisory Opinion 1985-16 at 1 (Weiss) ("AO 1985-16"), the requestor asked to  
6 compare a pre-existing list of names with the Commission's database in order to identify who  
7 made a past contribution. The Commission did not approve the proposed conduct, expressing a  
8 concern that the flagged contributors would be targeted for solicitation because they appear on  
9 FEC disclosure reports.<sup>51</sup> The fact that the requestor already possessed the names and addresses,  
10 and therefore could theoretically solicit each person without the benefit of FEC data, did not  
11 mitigate the privacy concern. Relationship Viewer similarly compares a list of pre-existing  
12 names with the Commission's database in order to identify who made a past contribution, going  
13 even one step further than the product in AO 1985-16 by enabling the user to analyze the  
14 contribution histories of a given person's network of relationships.<sup>52</sup>

15 In Advisory Opinion 2004-24 at 1 (NGP) ("AO 2004-24"), the requestor, a software  
16 company similar to Aristotle, asked if it could copy the contribution histories of its client's  
17 donors into its client's database (*i.e.*, pair FEC data with already-existing names). The stated

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<sup>51</sup> See AO 1985-16 at 2 ("A name on your list represents either an active contributor or a passive noncontributor, and the use of information gained from examining reports filed with the Commission would allow you to purge the non-contributors from your list or to otherwise identify the contributors on your list.").

<sup>52</sup> The requestor in AO 1985-16 was the purveyor of a commercial list, whereas Aristotle is the purveyor of an interactive software product that does not itself supply new names, but this is not sufficient to distinguish that opinion from the instant matter. The operative fact is that a person, whether it be the vendor or the end user, sought to enhance the solicitation value of pre-existing names by comparing them to the Commission's database. Indeed, a political committee could purchase a list of names, upload them to the organization's database, and thereby mirror the exact conduct prohibited in AO 1985-16. See *supra* note 8.



1 purpose was to show contributions that the client's donors may have made to other candidates,  
2 PACs, and party organizations.<sup>53</sup> The Commission was not presented with much information,  
3 but the requestor acknowledged that the contribution histories would "allow [NGP's] clients to  
4 conduct fundraising more efficiently, and to resolicit existing donors who may have given more  
5 to other committees"<sup>54</sup> This admission was sufficient for the Commission to conclude that the  
6 proposed conduct was impermissible. The statements in Aristotle's patent application, along  
7 with the descriptions in the available promotional materials, similarly assert that Relationship  
8 Viewer is designed to identify solicitation prospects.

9 Aristotle has argued that specific evidence of solicitation by clients using Relationship  
10 Viewer is required to establish that it has violated the statute.<sup>55</sup> However, this would frustrate the  
11 "broad prophylactic" nature of the restriction.<sup>56</sup> A violation flows from the *purpose* for which  
12 FEC data is being sold or used and is not dependent on proving a concomitant (and separate)  
13 violation by Aristotle's clients.<sup>57</sup> In Advisory Op. 1991-16 at 4 (Feigenbaum), the Commission  
14 concluded that a publication containing FEC data would be impermissible because use of the  
15 publication by clients to solicit contributions was a "logical and foreseeable consequence."  
16 Thus, evidence of misuse by clients is not an element of the violation.

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<sup>53</sup> AO 2004-24 at 1.

<sup>54</sup> *Id.* at 2.

<sup>55</sup> Resp. at 33-34. At the moment, we have no evidence showing that Aristotle 360 clients used Relationship Viewer to solicit contributions, although Aristotle does not keep records of which clients use Relationship Viewer, making it difficult or impractical to confirm whether there was in fact no misuse, as Aristotle claims. Email from Stephen Hershkowitz, Counsel for Aristotle to Attorney, FEC (Nov. 1, 2011). Further, political committees are unable to detect if their contribution data is being misused by Aristotle's clients. Relationship Viewer matches pre-existing names to the Commission's database and, therefore, does not display any "salted" names on screen (*i.e.*, fictitious names included in disclosure reports to identify misuse of FEC data). See 52 U.S.C. § 30111(a)(4).

<sup>56</sup> Advisory Op. 2012-22 at 8 (Skimmerhat) (quoting Advisory Op. 2003-24 at 4 (NCTFK)).

<sup>57</sup> See 52 U.S.C. § 30111(a)(4) (providing that no person shall sell or use FEC data "for the *purpose* of soliciting contributions or for commercial *purposes*") (emphasis added).

1 In conclusion, the statute prohibits the sale and use of individual contribution data copied  
2 from the Commission's database to assist clients with soliciting contributions. This prohibition  
3 extends to individual contribution histories, the FEC data at issue here. Therefore, a solicitation  
4 tool such as Relationship Viewer is in clear violation of the sale and use restriction.

5 **C. Aristotle's Conduct Directly Implicates the Government Interests Advanced**  
6 **by the Statute**

7 1. Privacy of Individual Contributors

8 Aristotle's use of FEC data strikes at the heart of the congressional intent regarding the  
9 protection of individual privacy. In 1971, Senator Bellmon, drafter of the amendment that would  
10 later become the sale and use restriction, explained in a floor statement that the general purpose  
11 of the restriction was "to protect the privacy of the generally very public-spirited citizens who  
12 may make a contribution to a political campaign or a political party."<sup>58</sup> Drawing on his own  
13 experience, Senator Bellmon presented list brokering as an example of what the statute would  
14 prevent.<sup>59</sup> Thereafter, Congress passed broad statutory language that does not limit the reach of  
15 the restriction to any particular activity. The Commission has consistently evaluated all of the  
16 given facts in a matter to identify any possible threat to individual privacy.<sup>60</sup>

17 Aristotle has argued that the legislative history of the sale and use restriction (regarding  
18 the privacy interest) supports a narrow reading of the statute that prevents only "list brokering,"

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<sup>58</sup> 117 Cong. Rec. 30,057 (daily ed. Aug. 5, 1971) *reprinted in* Legislative History of the Federal Election Campaign Act of 1971 at 581 (1981) (recognizing that public disclosure of the identities of political contributors would make those individuals "prime prospects for all kinds of solicitations").

<sup>59</sup> *Id.* ("In the State of Oklahoma, our own tax division sells the names of new car buyers to list brokers, for example, and I am sure similar practices are widespread elsewhere. This amendment is intended to protect, at least to some degree, the men and women who make contributions to candidates or political parties from being victimized by that practice.").

<sup>60</sup> *See supra* notes 48-49.

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1 *i.e.*, the wholesale copying of names and addresses.<sup>61</sup> However, there is no indication that  
2 Senator Bellmon intended his single example to be an exhaustive list of the ways in which the  
3 sale and use restriction could be violated. After all, in 1971, modern computing was still decades  
4 away (for many years, the only way to access FEC data was through printouts and magnetic tape  
5 records). Further, Aristotle's arguments elide the fact that a person's name and address, in  
6 isolation, have little value for solicitation. The solicitation value lies in identifying that names  
7 and addresses belong to known political contributors.<sup>62</sup> Although Relationship Viewer does not  
8 replicate traditional list brokering, it still implicates the same threat to privacy — that individual  
9 contributors will be solicited because their names appear on an FEC disclosure report.<sup>63</sup>

10 The privacy of individual contributors has been consistently treated with the upmost  
11 importance by the Commission. Indeed, the Commission has recognized privacy concerns where  
12 a client merely seeks to re-solicit a previous contributor (who may have given more to another  
13 committee).<sup>64</sup> Relationship Viewer presents heightened privacy concerns because solicitation  
14 targets may not have a pre-existing relationship with Aristotle's clients. The clients are free to  
15 populate their databases with names obtained from any non-FEC source (*e.g.*, a commercial list,  
16 phone book, attorneys listed on a law firm website, etc.) and then use Relationship Viewer to

<sup>61</sup> See Resp. at 24-25.

<sup>62</sup> See AO 1985-16 at 2 (concluding that it would be impermissible for the requestor to compare a given set of names with the Commission's database for solicitation-related purposes).

<sup>63</sup> See *Nat'l Republican Cong. Comm. v. Legi-Tech Corp.*, 795 F.2d 190, 193 (D.C. Cir 1986) (recognizing that the sale and use restriction prohibits activity that is "akin" to that of a list broker); *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 530 (D.D.C. 1997) (same). Use of the word akin implies that conduct of similar character as list brokering falls within the restriction, *i.e.*, conduct that threatens the privacy of individual contributors.

<sup>64</sup> See AO 2004-24 at 2-3; see also *id.* at 3 n.1 (opining that a client would be free to re-solicit existing donors as long as the solicitation was "based on its own records," not FEC data).

1 identify which individuals are worth targeting for solicitations based on their status as political  
2 contributors or their relationship with known political contributors.<sup>65</sup>

3           2.     The Rights of Political Committees Whose Data is Being Copied

4           Aristotle's conduct flouts the exclusive rights of the political committees whose data is  
5 being used without their permission to populate the individual contribution histories displayed  
6 within Relationship Viewer. The *en banc* D.C. Circuit concluded that the sale and use restriction  
7 "leaves undisturbed a pre-existing barrier" to the use of a political committee's contributor list to  
8 solicit contributions, a right which exclusively belongs to the political committee.<sup>66</sup> Relationship  
9 Viewer, however, utilizes contributor information copied from political committees' disclosure  
10 reports for Aristotle's own commercial purposes.<sup>67</sup> Therefore, Aristotle is encroaching on an  
11 exclusive right that belongs to the political committees.<sup>68</sup> If Aristotle wishes to continue using  
12 this data as part of Relationship Viewer, "[it] must, as before the passage of the FECA, obtain the  
13 political committees' permission, perhaps at a price."<sup>69</sup>

14 **IV. CONCLUSION**

15           The relevant authorities make clear that the sale and use of individual contribution data,  
16 including contribution histories, to assist clients with solicitation is not permitted. Yet, that is

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<sup>65</sup> See *supra* note 8.

<sup>66</sup> *FEC v. Int'l Funding Inst., Inc.*, 969 F.2d 1110, 1113 (D.C. Cir. 1992) (*en banc*) ("Prior to enactment of the FECA, the defendants had no right even to inspect another political committee's list of contributors."); see *FEC v. Legi-Tech, Inc.*, 967 F. Supp. 523, 531 (D.D.C. 1997). Aristotle has argued that the legal reasoning in *Int'l Funding* has not been specifically adopted by the Commission. Resp. at 33. This is unpersuasive. Not only does the reasoning in *Int'l Funding* represent the opinion of an *en banc* D.C. Circuit, the very circuit where this dispute would likely be heard should the matter proceed to litigation, but it was the Commission that initially advanced this argument, which the court adopted. See *Int'l Funding*, 969 F.2d at 1116-17.

<sup>67</sup> Aristotle's only defense has been to claim that it has not received any complaints from political committees. See Resp. at 4.

<sup>68</sup> *Int'l Funding*, 969 F.2d at 1120 (Buckley, J., concurring) (equating the appropriation of contributor lists for commercial purposes to "an act of piracy").

<sup>69</sup> *Id.* at 1113.

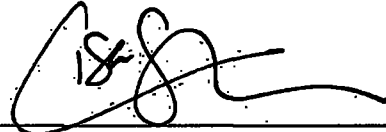
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1 exactly what Aristotle is doing here. Aristotle's own statements and an assessment of the  
2 product's functionality establish that Relationship Viewer is a tool designed to enhance clients'  
3 fundraising activities, and that the use of FEC data is central to that purpose. Further,  
4 Relationship Viewer's use of FEC data implicates the privacy concerns that Congress sought to  
5 ameliorate and encroaches on the exclusive rights of political committees that the statute is  
6 designed to protect. Therefore, the Office of General Counsel is prepared to recommend that the  
7 Commission find probable cause to believe that Aristotle International, Inc. violated 52 U.S.C.  
8 § 30111(a)(4).

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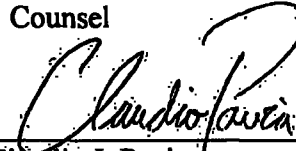
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