



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chris Winkelman, Esq.
General Counsel
National Republican Congressional Committee
320 First Street, SE
Washington, DC 20003

AUG 27 2019

RE: MUR 6960

Dear Mr. Winkelman:

This is in reference to the complaint your office filed with the Federal Election Commission on August 27, 2015, concerning SW Technologies, LLC d/b/a Advocacy Data ("SWT") and Roger A. Stone. The Commission found that there was reason to believe that SWT violated 52 U.S.C. § 30111(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended, and conducted an investigation in this matter. On June 25, 2019, the Commission dismissed the allegations that Roger A. Stone violated 52 U.S.C. § 30111(a)(4) in his personal capacity. On August 21, 2019, a conciliation agreement signed by SWT was accepted by the Commission. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). A copy of the conciliation agreement with SWT is enclosed for your information. In addition, the Factual and Legal Analysis, which formed a basis for the Commission's finding with respect to Mr. Stone, is enclosed for your information. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact me at (202) 694-1597.

Sincerely,

A handwritten signature in cursive script that reads "Claudio Pavia".

Claudio J. Pavia
Attorney

Enclosures

Conciliation Agreement
Factual and Legal Analysis

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MURs 6960 & 6991
5 SW Technologies, LLC)
6)
7)

8 **CONCILIATION AGREEMENT**

9 These matters were initiated by signed, sworn, and notarized complaints filed by the
10 Republican National Committee ("RNC") and National Republican Congressional Committee
11 ("NRCC"). The Federal Election Commission (the "Commission" or "FEC") found reason to
12 believe that SW Technologies, LLC ("SWT" or "Respondent") violated 52 U.S.C. § 30111(a)(4),
13 the "sale and use" provision of the Federal Election Campaign Act of 1971, as amended by
14 compiling a commercial mailing list with names and addresses obtained from FEC disclosure
15 reports.

16 NOW, THEREFORE, the Commission and Respondent, having participated in informal
17 methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as
18 follows:

19 I. The Commission has jurisdiction over Respondent and the subject matter of this
20 proceeding, and this Agreement has the effect of an agreement entered pursuant to 52 U.S.C.
21 § 30109(a)(4)(A)(i).

22 II. Respondent has had a reasonable opportunity to demonstrate that no action should
23 be taken in this matter.

24 III. Respondent enters voluntarily into this Agreement with the Commission.

25 IV. The pertinent facts and relevant law in this matter are as follows:

FACTS

1
2 1. During the relevant time period, SWT rented email lists and provided voter,
3 demographic, and other information for political advocacy and constituent communications. The
4 company was formed in 2010 as the successor to Advocacy Inc. R. A. Stone was SWT's
5 president and CEO.

6 2. Between December 2014 and August 2015, SWT rented a commercial mailing list
7 to political customers called the Republican Elite Donors ("RED") List that was generated by
8 narrowing the names in SWT's database (the "voter file") to the approximately 200,000 names
9 comprising the RED List. This was accomplished, in part, by matching the pre-existing names in
10 the voter file to disclosure reports copied from the Commission's website that were filed by the
11 RNC and NRCC and identifying known political contributors. During the relevant period, the
12 RED List generated \$33,611 in rental sales.

13 3. During the summer of 2015, the RNC and NRCC received solicitation packages
14 from various political organizations that had rented the RED List and were addressed to "salted"
15 names placed in their FEC disclosure reports to detect improper use of information contained in
16 those reports. In June 2015, SWT was alerted by the RNC that the RED List appeared to contain
17 FEC data. SWT deleted only those records that had been added as part of a recent update and
18 continued to rent the list to customers. In August 2015, SWT was again alerted that the RED
19 List appeared to contain FEC data, this time by the NRCC, and pulled the RED List from the
20 market.

21 4. The complaints in these matters were later filed, both of which included the salted
22 names at issue. SWT used the salted names to perform a targeted search of its system, which
23 revealed that the raw FEC data files containing RNC and NRCC disclosure reports, which SWT

1 claims were only intended to be matched with SWT's voter file, as described above, had been
2 transmitted to the company responsible for marketing the RED List and handling individual
3 client rental orders. Consequently, the RED List that was sold to customers included prohibited
4 FEC data. SWT determined that 20,000 donor records from the RNC and 20,000 donor records
5 from the NRCC were added to the RED List (40,000 of the approximately 200,000 total names,
6 or 20% of the RED List).

7 5. SWT deleted the raw FEC data files from its system, removed the notations in the
8 voter file showing contribution histories, and discontinued sales of the RED List.

9 **LAW**

10 6. In relevant part, 52 U.S.C. § 30111(a)(4) provides that the Commission shall
11 make available to the public reports and statements filed with it, "except that any information
12 copied from such reports or statements may not be sold or used by any person for the purpose of
13 soliciting contributions or for commercial purposes, other than using the name and address of
14 any political committee to solicit contributions from such committee." Political committees are
15 permitted to submit 10 pseudonyms or "salted" names on each report "in order to protect against
16 the illegal use of names and addresses of contributors." 52 U.S.C. § 30111(a)(4).

17 7. The statute not only places restrictions on the sale and use of names and addresses
18 obtained from the Commission's database, but also restricts the sale and use of contribution
19 histories, including by matching a pre-existing list of names with FEC disclosure reports for the
20 purpose of identifying known political contributors in order to assist with potentially soliciting
21 those individuals. *See, e.g.*, Advisory Op. 1985-16 (Weiss).

22 8. Respondent contends that it sought to develop and market the RED List in
23 accordance with general industry practices, believing it permissible to use FEC data files to

1 enhance existing lists, without copying or adding names not already on those lists, and that the
2 inclusion of raw FEC data in the RED List occurred by error.

3 V. Respondent violated 52 U.S.C. § 30111(a)(4) by inserting names and addresses
4 from FEC disclosure reports into the RED List, a commercial mailing list, and by matching the
5 pre-existing names in SWT's voter file to FEC disclosure reports in order to identify the known
6 contributors who were later added to the RED List.

7 VI. Respondent will take the following actions:

8 1. SWT will pay a civil penalty to the Commission in the amount of twenty-
9 five thousand dollars (\$25,000) pursuant to 52 U.S.C. § 30109(a)(5)(A).

10 2. SWT will cease and desist from violating 52 U.S.C. § 30111(a)(4).

11 VII. The Commission, on request of anyone filing a complaint under 52 U.S.C.
12 § 30109(a)(1) concerning the matter at issue herein or on its own motion, may review
13 compliance with this Agreement. If the Commission believes that this Agreement or any
14 requirement thereof has been violated, it may institute a civil action for relief in the United States
15 District Court for the District of Columbia.

16 VIII. This Agreement shall become effective as of the date that all parties hereto have
17 executed the same and the Commission has approved the entire Agreement.

18 IX. Respondent shall have no more than 90 days from the date this Agreement
19 becomes effective to comply with and implement the requirements contained in this Agreement
20 and to so notify the Commission.

21 X. This Agreement constitutes the entire agreement between the parties on the matter
22 raised herein, and no other statement, promise, or agreement, either written or oral, made by

10044742001

1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**

3
4 Respondent: Roger A. Stone

MURs 6960 & 6991

5
6
7 **I. INTRODUCTION**

8 These matters were generated by complaints filed with the Federal Election Commission
9 by the Republican National Committee ("RNC") and the National Republican Congressional
10 Committee ("NRCC"). They allege that SW Technologies, LLC d/b/a Advocacy Data ("SWT")
11 violated 52 U.S.C. § 30111(a)(4), the "sale and use" provision of the Federal Election Campaign
12 Act of 1971, as amended (the "Act") by compiling a commercial mailing list with the names and
13 addresses of contributors obtained from their FEC disclosure reports. Further, the complainants
14 allege that Roger A. Stone, SWT's founder, president, and CEO, individually violated the sale
15 and use provision.

16 For the reasons stated below, the Commission dismisses the allegations that Roger A.
17 Stone violated 52 U.S.C. § 30111(a)(4), as a matter of prosecutorial discretion, pursuant to
18 *Heckler v. Chaney*, 470 U.S. 821 (1985).

19 **II. FACTUAL SUMMARY**

20 Between December 2014 and August 2015, SWT rented a commercial mailing list to
21 political customers called the Republican Elite Donors ("RED") List that was generated by
22 "narrowing down" the 190 million names in SWT's "voter file" database to the approximately
23 200,000 names comprising the RED List who were deemed most likely to donate to Republican
24 or conservative organizations.¹ This was accomplished, in part, by matching the pre-existing

¹ Letter from Mike Wittenwyler and Nate Zolik, Godfrey & Kahn S.C., to CJ Pavia, Attorney, FEC ¶ (B)(2) (Sept. 6, 2017) ("Sept. 2017 Post-RTB Resp."); Stone Dep. Tr. at 33:4-8, 99:16-17 (Oct. 25, 2018); MUR 6991 Compl. (Dec. 7, 2015), Ex. B at 2 (RED List data card).

1 names in the voter file to disclosure reports obtained from the Commission's website that were
2 filed by the RNC and NRCC, and identifying known political contributors.² SWT explained that
3 its object in reviewing the RNC and NRCC data was to match the information with the pre-
4 existing list of names in the voter file, not to copy new names or addresses.³

5 Complainants include "salted" names on their FEC disclosure reports to deter illegal use
6 of their contributor information.⁴ In June 2015, the RNC received solicitation packages that
7 were addressed to salted names from the National Rifle Association and Jeb 2016.⁵ The RNC
8 contacted the mailing vendor and discovered that it had used the RED List.⁶ SWT was alerted by
9 the RNC that the RED List appeared to contain FEC data.⁷ SWT deleted only those records that
10 had been added as part of a recent update and continued to rent the RED List to customers.⁸
11 Several weeks later, in late June, July, and August of 2015, the RNC received additional
12 solicitation packages addressed to salted names from Jeb 2016 and Carson America that were
13 also traced back to the RED List.⁹ Meanwhile, in August 2015, the NRCC received a solicitation
14 package addressed to a salted name from Cruz for President.¹⁰ The NRCC contacted Cruz for

² Stone Dep. Tr. at 49:21-25; *see* Letter from Brian Svoboda and Karl Sandstrom, Perkins Coie LLP, to CJ Pavia, Attorney, FEC ¶¶ 1(c)-(d), 3(a) (Oct. 10, 2018) ("Oct. 2018 Subpoena Resp.").

³ Stone Dep. Tr. at 74:23.

⁴ MUR 6991 Compl. at 1 (Dec. 7, 2015); MUR 6960 Compl. at 1 (Aug. 27, 2015); *see also* 52 U.S.C. § 30111(a)(4) (providing that political committees may submit up to ten fictitious names, *i.e.*, "salted" names, on each disclosure report for the purpose of determining whether the names and addresses of their contributors are being used without consent to solicit contributions or for commercial purposes); 11 C.F.R. § 104.3(e) (same).

⁵ MUR 6991 Compl. at 2.

⁶ *Id.*

⁷ MUR 6991 Resp. at 2 (Jan. 19, 2015); MUR 6991 Compl., Ex. D; *see* Stone Dep. Tr. at 58:16-60:12.

⁸ Stone Dep. Tr. at 58:11-15, 70:8-72:11; Sept. 2017 Post-RTB Resp. ¶ (C)(2).

⁹ MUR 6991 Compl. at 2.

¹⁰ MUR 6960 Compl. at 1.

1 President and discovered that it had similarly used the RED List to compile addresses for the
2 solicitation.¹¹ SWT was alerted by the NRCC that the RED List appeared to contain FEC data
3 and pulled the list from the market entirely.¹²

4 The MUR 6960 Complaint (August 2015) and the MUR 6991 Complaint (January 2016)
5 included the salted names at issue.¹³ SWT used the salted names to perform a targeted search of
6 its system, which revealed that the raw FEC data files containing disclosure reports filed by the
7 RNC and NRCC — intended to be matched with the voter file, as described above — had been
8 transmitted to the company responsible for marketing the RED List and handling individual
9 client orders, and added to the RED List.¹⁴ SWT was unable to establish precisely how or when
10 this occurred, but concluded that the raw FEC data files had been “inadvertently” transmitted.¹⁵
11 SWT deleted the raw FEC data files from its system, removed the notations in the voter file
12 showing contribution histories, and also discontinued sales of the RED List.¹⁶ SWT asserts that
13 using FEC data is “no longer a part of [its] business model.”¹⁷

14 III. LEGAL ANALYSIS

15 The Act requires political committees to report the name, mailing address, occupation,
16 and employer of each person who makes an aggregate contribution in excess of \$200 within the

¹¹ *See id.*

¹² MUR 6960 Compl., Ex. D; MUR 6991 Resp. at 2; Stone Dep. Tr. at 72:23-73:12.

¹³ MUR 6960 Compl., Ex. A; MUR 6991 Compl., Exs. E, F.

¹⁴ Stone Dep. Tr. at 73:17-74:4; 75:4-77:16.

¹⁵ Stone Dep. Tr. at 89:20-90:6; MUR 6991 Resp. at 2; Sept. 2017 Post-RTB Resp. at 6; *see* Stone Dep. Tr. at 57:9-58:1, 78:8-16.

¹⁶ Stone Dep. Tr. at 52:18-53:11, 81:25-82:16; Sept. 2017 Post-RTB Resp. at 6; SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data); *see* Stone Dep. Tr. at 53:12-14 (confirming that “the voter file is in a state right now as if the FEC database doesn’t exist”).

¹⁷ Stone Dep. Tr. at 96:13.

1 calendar year (or election cycle, in the case of an authorized committee), together with the date
2 and amount of any such contribution.¹⁸ Further, the Act requires that the Commission make all
3 such reports available for public inspection and copying, except that information copied from
4 such reports “may not be sold or used by any person for the purpose of soliciting contributions or
5 for commercial purposes, other than using the name and address of any political committee to
6 solicit contributions from such committee.”¹⁹

7 The sale and use provision applies to “any person” who sells or uses FEC data for the
8 purpose of soliciting contributions or for commercial purposes.²⁰ Stone, the executive officer
9 from SWT responsible for managing the RED List, had 30 years of experience in politics and
10 with Commission regulations, and was aware that simply copying and selling names from the
11 FEC database would run the risk of mailing a salted name.²¹ The RED List was owned by SWT
12 as a corporate asset, not by Stone personally.²² Moreover, Stone testified that he was unaware
13 that names and addresses from the FEC database had been added to the RED List,²³ and SWT
14 produced emails showing that Stone initiated and participated in efforts to correct the problem
15 and voluntarily delete FEC data from SWT’s system.²⁴ Although Stone directed FEC data to be
16 matched with pre-existing names in the voter file to identify known contributors for the purpose

¹⁸ 52 U.S.C. §§ 30101(13)(A), 30104(b)(3)(A).

¹⁹ *Id.* § 30111(a)(4); *see also* 11 C.F.R. § 104.15(a).

²⁰ 52 U.S.C. § 30111(a)(4).

²¹ MUR 6960 Resp. at 1 (Oct. 20, 2015); Stone Dep. Tr. at 59:9-19 (“I’ve been working with lists since 1986.”). Stone said that he understood the provision to restrict the sale and use of names and addresses, and that it did not restrict the matching of contribution histories to pre-existing names to target solicitation prospects. *See id.* at 96:14-98:1.

²² Sept. 2017 Post-RTB Resp. ¶ (A)(1).

²³ Stone Dep. Tr. at 59:23-60:12.

²⁴ *E.g.*, SWT000023-24 (emails from Stone to database managers, on Oct. 16, 2015, at 2:46pm, and Oct. 29, 2015, at 12:14pm, with instructions relating to disposal of FEC data).

1 of potentially targeting or flagging those individuals as solicitation prospects, Stone attests that
2 he did not understand this to be a violation of the law because it did not involve the direct sale of
3 names and addresses from the FEC database.²⁵

4 The Commission has generally refrained from pursuing violations of the sale and use
5 provision against individuals who acted in their official capacity and without knowledge of
6 illegality.²⁶ The Commission's interest in safeguarding its data, under these circumstances, is
7 served by enforcing the sale and use provision against the corporation. Therefore, the
8 Commission dismisses the allegations that Stone violated 52 U.S.C. § 30111(a)(4) in his
9 individual capacity, as a matter of prosecutorial discretion, pursuant to *Heckler v. Chaney*, 470
10 U.S. 821 (1985).

²⁵ Stone Dep. Tr. at 96:14-98:1.

²⁶ See, e.g., Factual & Legal Analysis at 1, 3-4, MUR 6290 (Gillette) (dismissing allegations against an official from a non-profit corporation because it appeared she had "acted solely in her capacity as an agent" of the corporation and "not in her own independent personal interest"). In matters where the complaint did not specifically name any corporate officials as respondents, the Commission has generally not sought to personally notify such corporate officials. See, e.g., MUR 6334 (Aristotle Int'l, Inc.).