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MEMORANDUM

CLIENT-MATTER NUMBER
999100-0100

TO: Kathryn Ross, Paralegal
Federal Election Commission

FROM: Cleta Mitchell, Esq., Counsel 
Rebuilding America Now

DATE: November 30, 2016

RE: Substitute Filing with Original Signatures - MUR 7147

Ms. Ross – as promised, please find enclosed the Response to the Complaint in MUR 7147, substituting the filing with the original signatures for the filing sent on Monday, November 28, 2016.

Please let me know if there is anything further required on my part with regard to this response.

Thank you for your assistance.

**IN AND BEFORE THE
FEDERAL ELECTION COMMISSION**

In Re:)	
)	
Rebuilding America Now)	MUR 7147
Ryan Call, Treasurer)	
)	
Respondent)	

RESPONSE TO COMPLAINT AND MOTION TO DISMISS

Rebuilding America Now and its Treasurer, Ryan Call, in his official capacity as Treasurer of the Committee (the “Treasurer”), (collectively hereafter the “Respondent”), files this Response and Objections to the Complaint filed with the Federal Election Commission (“Commission” or “FEC”) in the above-referenced Matter Under Review 7147 (“the MUR”).

Respondent denies the allegations contained in the Complaint and moves for its dismissal because there is no reason to believe that Respondent has violated the law.

The Complaint alleges that Respondent violated the Federal Election Campaign Laws, Title 52 United States Code, Subtitle III, Chapter 301, Subchapter I (“the Act”), and the regulations promulgated thereunder (“FECA”), by making in-kind contributions to Donald J. Trump for President, Inc. (“Trump” or “Trump campaign”) in the form of coordinated communications through former employees and by republishing campaign materials.

Respondents affirmatively state that neither the Committee nor its Treasurer has committed any violation of the Act and the Complaint should be dismissed.

I. Factual Background

For the relatively short period of mid-April to late May, Kenneth K. McKay IV (“Mr. McKay”) and Laurance W. Gay (“Mr. Gay”) served separately as volunteers for the Trump Campaign in different states, receiving no compensation for any of their activities related to the campaign, nor were either of them involved in the creation, development or production of any public communications regarding the Trump campaign during their volunteer service. See Affidavits of Laurance W. Gay and Kenneth K. McKay IV.

During their brief stints with the Trump Campaign, both individuals performed specific volunteer activities totally unrelated to the development of public communications for the Trump campaign. For example, Mr. Gay organized and brought together supporters of Donald Trump at grassroots rallies in California prior to the California Republican Primary held on June 7, 2016. Mr. McKay was dispatched as a volunteer to several states in the late spring of

2016, assisting the Trump campaign with delegate selection and slating of delegates to the Republican National Convention.

In their respective capacities with the campaign, neither Mr. McKay nor Mr. Gay were privy to any proprietary, non-public information as to the needs, activities, plans, or projects of the Trump campaign relating to the general election.

Indeed, as multiple news outlets have reported,¹ the Trump campaign largely didn't even *have* a general election campaign strategy at the time that Mr. Gay and Mr. McKay were volunteers in their respective states and efforts.

According to Time.com:

“Trump is smashing the conventions of campaigning like a wrecking ball on one of his real-estate projects. He has planned no big fundraising blitz or major TV ad campaign for the fall. He has little interest in the latest advances in data analysis or digital strategy. And despite a personal fortune that runs into the billions, Trump does not want to hire a big staff in the states to get out the vote and to court local leaders.”²

Mr. McKay and Mr. Gay both affirm in their affidavits that during their time as campaign volunteers, neither had access to any campaign polls, plans, or any other proprietary information as to the Trump campaign's plans for anything, let alone proprietary information relating to Trump's general election “strategy”. Both Mr. McKay and Mr. Gay were volunteers, neither of whom were employees, vendors, or agents of the Trump campaign, having no authority, real or implied, to create, produce, develop or distribute public communications for the Trump campaign.

Rebuilding America Now (“RAN”) was formed in June 2016 to support Donald Trump's candidacy during the 2016 General Election against Hillary Clinton. RAN was established well after and for a wholly different purpose than the volunteer activities in which either Mr. McKay or Mr. Gay were involved.

In July, 2016, Rebuilding America Now (“RAN”) independently created a 60-second advertisement called *America Soaring*. The ad discusses how skilled workers throughout America will help rebuild the economy.

At its conclusion, the Trump-Pence logo is featured in the background of the ad. The logo was obtained by Rebuilding America Now from the Trump campaign's publicly available website. Rebuilding America Now did not communicate with the Trump campaign regarding the logo or any other matter, nor did it in any way cooperate, consult, or work in

¹ Greg Sargent, *Trump just said he has a secret plan to win. In reality, he has no strategy*, The Washington Post (August 3, 2016), https://www.washingtonpost.com/blogs/plum-line/wp/2016/08/03/trump-just-said-he-has-a-secret-plan-to-win-in-reality-he-has-no-strategy/?utm_term=.2e3d3031867f; Benjy Sarlin, Katy Tur, Ali Vitali, *Donald Trump Does Not Have a Campaign*, NBC News (June 6, 2016), <http://www.nbcnews.com/politics/2016-election/donald-trump-does-not-have-campaign-n586356>;

² Zeke J. Miller, *Mismatch 2016*, Time (June 7, 2016) <http://time.com/trump-clinton-mismatch/>.

concert with or at the request or suggestion of, the Trump campaign in creating the *America Soaring* ad, or any other public communication.

II. The Complaint

The Complainant alleges two causes of action against Rebuilding America Now.

First, the Complaint alleges Rebuilding America Now illegally made in-kind contributions to Donald J. Trump for President, Inc. in the form of coordinated communications through “former employees.” Complaint, Pg. 48. The Complaint alleges (falsely) that Mr. McKay and Mr. Gay were employees of the Trump campaign within the 120 days prior to becoming employees of Rebuilding America Now and the airing of communications by Rebuilding America Now. Complaint, ¶113. The Complainant points to no facts in support of its bare and incorrect allegations that Mr. McKay and Mr. Gay were ‘employees’ of the Trump campaign. Further, the Complaint has no facts to support its bare and incorrect allegation that Rebuilding America Now’s public communications resulted from proprietary information regarding the campaign plans, projects, activities, or needs of the Trump campaign. There was no such information that in any way aided RAN or were used in the creation, development or production of communications by Rebuilding America Now. Nevertheless, the Complaint implores the Commission to conduct further investigation into this matter. Complaint, ¶114.

Second, the Complaint alleges that Rebuilding America Now has made an illegal in-kind contribution to Donald J. Trump for President, Inc. by republishing campaign materials. Complaint, Pg. 52. Specifically, the Complaint takes issue with Rebuilding America Now’s alleged use of the Trump-Pence logo for a mere eight seconds of a full 60-second long ad entitled *America Soaring*. Complaint, ¶118. This, according to the Complainant, constitutes a violation of 2 U.S.C. § 30116(a)(7)(B)(iii) and 11 C.F.R. § 109.23 as republication of campaign materials.

Neither allegation has merit under FECA and the controlling authorities articulated by the Commission.

III. Rebuilding America Now did not make an in-kind contribution because neither Mr. McKay nor Mr. Gay were agents, employees of or vendors to the Donald J. Trump for President, Inc.

Rebuilding America Now did not make an in-kind contribution to Donald J. Trump for President, Inc. in the form of coordinated communications through “former employees” because neither Mr. McKay nor Mr. Gay were agents, employees or vendors of the Trump campaign. Rather, Messrs. McKay and Laurance were merely short-term volunteers to the Trump campaign, unpaid for any of their activities and each of whom lacked authority to develop, produce, create or disseminate public communications for the Trump campaign.

a. Legal Analysis – Former Employee

A communication will be considered coordinated with a candidate or authorized committee if it satisfies three criteria: (1) the communication is paid for by a person other than the candidate or the authorized committee (the “payment prong”); (2) it satisfies at least one of

the five standards of the “content prong”; and (3) it satisfies at least one of the six standards under the “conduct prong.” 11 C.F.R. § 109.21(a).

The “conduct prong” of the test is only met if at least one of six enumerated standards are met. 11 C.F.R. § 109.21(a)(3). Relevant here, the “former employee” standard of the conduct prong is satisfied if the following two conditions are met:

First, “the communication is paid for by a person, or by the employer of a person, who was an *employee or independent contractor* of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days.” 11 C.F.R. § 109.21(d)(5)(i) (emphasis added).

Second, the employee or former independent contractor must use or convey to the person paying for the communication:

- Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or
- Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

11 C.F.R. § 109.21(d)(5)(ii).

The first condition requires that the payor of the communication employ a person who was an “employee or independent contractor” of the clearly identified candidate or candidate's opponent. As the Complaint correctly points out, the FEC regulations do not define “employee,” but in promulgating 11 C.F.R. § 109.21(d)(5), the Committee clearly stated the term “former employee” does not apply to individuals who are “volunteers” (i.e., unpaid individuals working for the campaign). *Coordinated and Independent Expenditures*, Final Rules & Explanation & Justification, 68 Fed. Reg. 439 (Jan. 3, 2003).

The Commission even recognized situations in which some volunteers do in fact “operate as highly placed consultants who might be given information about the plans, projects, activities, or needs of the candidate.” *Id.* “*Nevertheless*,” the Committee stated, it was “not extending the scope of ‘former employee’ to encompass such volunteers” because it viewed the choice of the word “employee” in Section 214(c)(3) as a significant indication of Congressional intent—Congressional intent an individual be employed by the campaign “directly”. *Id.* (emphasis added). In other words, even though the Committee recognized that some volunteers may hold high positions in a campaign and become privy to plans, projects, activities, or needs

of the candidate, the Commission chose not to extend the reach of the statute to such individuals to ensure the regulations mirror Congressional intent.

b. Application to Mr. McKay and Mr. Gay – Not Employees of the Trump Campaign

Communications by Rebuilding America Now cannot be deemed coordinated communication(s) because neither Mr. McKay nor Mr. Gay were employees or agents³ of the Trump campaign at any point prior to joining Rebuilding America Now. Throughout their time with the Trump campaign, both individuals were unpaid volunteers of the campaign. Both individuals performed their activities as campaign volunteers by organizing events (in the case of Mr. Gay) or preparing Trump delegate slates (in the case of Mr. McKay). Neither had authority to create, produce or disseminate public communications and neither were paid employees. As the Commission's *Explanation and Justification* makes clear, short term volunteers will not be considered employees, regardless of whether they may have been in a position to receive information about the plans, projects, activities, or needs of the campaign. In this case, they were short term volunteers who did *not* receive any proprietary information about the plans, projects, activities or needs of the Trump campaign.

The Complainant would have the Commission believe that Congress could not have meant to exclude all unpaid individuals. Surely such a result would be inconsistent with Congressional intent by allowing volunteers to hold high level consulting positions with a campaign and gain valuable information. Consequently, the Complainant implores the Commission to look beyond its own characterization of the term "employee" and instead impart general principles of agency and the Internal Revenue Code definitions of the term "employee" to encompass these volunteers. Such a result is well beyond the Commission's regulations and Congress's intent.

Despite the Complainant's urging to the contrary, the Commission has already addressed and rejected this approach. The Commission recognizes that yes, some volunteers may be in a position to receive information about the plans, projects, activities, or needs of the campaign. Nevertheless, the Commission *did not* extend the reach of § 109.23(d)(5) to such individuals. Not because these individuals couldn't gain valuable information, but because the Commission was following *Congressional Intent* that only employees "directly employed" by the campaign be covered under the rule. Because Mr. McKay and Mr. Gay were never employed by the campaign, they cannot be considered former employees. Thus, the Commission should dismiss Count III of the Complaint against Rebuilding America Now on these grounds.

IV. Mr. McKay and Mr. Gay were not agents of the campaign because they did not have any actual authority to act on behalf of the Trump campaign and did not engage in activities required under 11 C.F.R. §109.3(b) during their volunteer service to the Trump campaign

As unpaid volunteers of the Trump campaign, neither Mr. McKay or Mr. Gay had any authority to act on behalf of the campaign, and thus, were not agents of the campaign.

³ Neither Mr. Gay nor Mr. McKay meet the definition of 'agent' as that term is defined in 11 C.F.R. §109.3(b) for purposes of 11 C.F.R. §109.21 analysis.

a. Legal Analysis – Agent

For purposes of FECA, an agent is defined as “any person who has actual authority, either express or implied, to engage in any of the following activities on behalf” of a candidate:

- To request or suggest that a communication be created, produced, or distributed;
- To make or authorize a communication that meets one or more of the content standards set forth in 11 C.F.R. § 109.21(c);
- To request or suggest that any person create, produce, distribute any communication;
- To be materially involved in decisions regarding:
 - The content of the communication;
 - The intended audience for the communication;
 - The means or mode of the communication;
 - The specific media outlet used for the communication;
 - The timing or frequency of the communication;
 - The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.
- To provide material or information to assist another person in the creation, production, or distribution of any communication; or
- To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a different candidate.

See 11 C.F.R. § 109.3(b).

The definition of agent focuses on whether the individual had “actual authority” to engage in one or more of the specified activities on behalf of a candidate. *Coordinated and Independent Expenditures*, 68 Fed. Reg. 423 (Jan. 3, 2003). Thus, a person only qualifies as an agent if he or she “(1) [r]eceives actual authorization, either express or implied, from a specific principal to engage in the specific activities listed in 109.3; (2) engages in those activities on behalf of the specific principal; and (3) those activities would result in a coordinated communication if carried out directly by the candidate, authorized committee staff, or a political party official. *Coordinated and Independent Expenditures*, 68 Fed. Reg. 424 (Jan. 3, 2003).

If an individual does not have authority to engage in the foregoing activities, then the individual is not an agent of the candidate, and any communication resulting from the individual's request, suggestion, direction, or material involvement is not a coordinated communication.

b. Application to Mr. McKay and Mr. Gay – Not Agents of the Trump Campaign

During their time with the Trump campaign, neither Mr. McKay nor Mr. Gay had any authority to engage in any of the enumerated activities on the Trump campaign's behalf. In fact, the Complainant has failed even to *allege* that either Mr. McKay or Mr. Gay had any authority to engage in activities on behalf of the Trump campaign. Rather, the Complainant merely alleges (falsely and without any factual support) that under basic agency principles, the Trump campaign had the "right" to control the activities of both individuals, thus making them agents and employees of the campaign. Complaint, Pg. 50 at n. 128.

This is a distorted application of basic agency principles, and falls well short of the Commission's rules for determining an 'agent' of a federal candidate / campaign.

Because neither Mr. McKay nor Mr. Gay was ever paid by the Trump campaign and did not in fact have any authority, express or implied, to act on behalf of the campaign to approve or authorize expenditures by the Trump campaign, or to create, produce, disseminate or distribute any public communication on behalf of the Trump campaign, neither individual can be considered an agent of the Trump campaign.

V. Mr. McKay and Mr. Gay were not common vendors of Donald J. Trump for President, Inc. and Rebuilding America Now.

Mr. McKay and Laurance Gay are also not "common vendors" of both Rebuilding America Now and Donald J. Trump for President, Inc. because they were not paid by the campaign for any of their activities as volunteers.

a. Legal Analysis – Common Vendor

The "common vendor" standard of the conduct prong is satisfied if all of the following three conditions are met:

First, "[t]he person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor... to create, produce, or distribute the communication." 11 C.F.R. § 109.21(d)(4)(i). A "commercial vendor" is defined as "any person providing goods or services to the candidate or political committee whose usual and normal business involves the sale, rental, or provision of those goods or services." 11 C.F.R. § 116.1(c). The standard only applies to a vendor whose usual and normal business "includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture. *Coordinated and Independent Expenditures*, 68 Fed. Reg. 436 (Jan. 3, 2003).

Second, “[t]hat commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided services to the candidate who is clearly identified in the communication.. or the candidate’s opponent... during the previous 120 days.” 11 C.F.R. § 109.21(d)(4)(ii). The Commission’s regulations enumerate nine specific services that put the commercial vendor in a position to acquire information about the campaign plans, projects, activities, or needs of the candidate that is material to the creation, production or distribution of the communication. *Coordinated and Independent Expenditures*, 68 Fed. Reg. 436 (Jan. 3, 2003). These nine services are:

- Development of media strategy, including the selection of purchasing and advertising slots;
- Selection of audiences;
- Polling;
- Fundraising;
- Developing the content of a public communication;
- Producing a public communication;
- Identifying voters or developing voter lists, mailing lists, or donor lists;
- Selecting personnel, contractors, or subcontractors; or
- Consulting or otherwise providing political or media advice.

11 C.F.R. § 109.21(d)(4)(ii).

Third, the commercial vendor must use or convey to the person paying for the communication:

- Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or
- Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

11 C.F.R. § 109.21(d)(4)(iii).

b. Application to Mr. McKay and Mr. Gay – No Common Vendor Status

Neither Mr. McKay nor Mr. Gay fall within the definition of a “commercial vendor” for both Rebuilding America Now and Donald J. Trump for President, Inc. Both individuals served as unpaid volunteers for the Trump campaign and provided services specifically described herein, *none* of which services or activities are included in the list of ‘common vendor’ services. Because neither individual was paid by the Trump campaign to offer any of the nine services enumerated under 11 C.F.R. § 109.21(d)(4)(ii) required for classification as a commercial vendor, the Complaint fails the second requirement of the “common vendor” standard. As a result, there can be no in-kind contribution from RAN to the Trump campaign by virtue of the “common vendor” standard under 11 C.F.R. § 109.21(d)(4).

II. Rebuilding America Now’s use of the Trump-Pence Logo for a brief time in its “America Soaring” ad does not qualify as republication of campaign materials because there was no coordination with Donald J. Trump for President, Inc.

a. Legal Analysis – Republication of Materials

The republication of materials can be considered a contribution to a candidate or candidate committee only under certain circumstances. According to the FECA “the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure.” 52 U.S.C. § 30116(a)(7)(B)(iii).

The FECA’s republication provisions “[is] designed to capture situations where third parties, in essence, subsidize a candidate’s campaign by expanding the distribution of communications whose content, format, and overall message are devised by the candidate.”⁴ In order to be a republication, there needs to be “more than creating and paying for advertisements that incorporate background footage posted on publicly accessible websites” by authorized committees or campaigns. *Id.*

Contrary to the claims of the Complaint, if simple republication occurs, the expenditure is not automatically an in-kind contribution to a candidate or candidate committee. Rather, in order to be considered a contribution to a candidate, there must be more than the simple republication of materials. The republication must also be made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate or the candidate’s authorized committee.” 52 U.S.C. § 30116(a)(7)(B)(i).

The Commission has confirmed that the statute must be read in this straight-forward manner, stating:

⁴ MUR 6357 (American Crossroads), Statement of Reasons, Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, at 4; see also MUR 6603 (Ben Chandler for Congress), 6777 (Kirkpatrick for Arizona), 6801 (Senate Majority), 6870 (American Crossroads), 6902 (Al Franken for Senate) Statement of Reasons, Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee. E. Goodman, at 1.

“An additional point is necessary on the republication recommendations: it has been noted that the Office of General Counsel (‘OGC’) has shifted its views regarding the republication of campaign materials by a committee that accepts corporate contributions. MUR 6617 (Christie Vilsack) & MUR 6667 (Cherie Bustos, Statement of Reasons, Commissioners Caroline C. Hunter. A straightforward reading of the Act *precludes any conclusion that non-coordinated republication* constitutes a contribution, including any potentially prohibited corporate contribution.”⁵

Thus, in order for the Commission to find that committee has made an illegal in-kind contribution to a candidate or candidate committee, there must be both:

- A political committee that disseminates, distributes, or republishes, in whole or in part, any campaign materials prepared by a candidate or candidate committee; and
- Cooperation, consultation, or concert with, or the request or suggestion by, the candidate or the candidate’s authorized committee.

Any other reading of the statute would completely ignore Congressional intent when drafting the statute and the multiple decisions of the Commission since promulgating its regulations under the Act.

b. Application to Rebuilding America Now

The use of the Trump-Pence logo by Rebuilding America Now in its ad *America Soaring* does not rise to the level of a contribution by virtue of republication. First, the logo was obtained from a public source. Further, the ad merely used the Trump-Pence logo as background footage to the unique message of the video. The video discusses the hardships of skilled craftsmen and trade people losing jobs to overseas manufacturers. Rather than accepting those losses, the video encourages the view that it doesn’t have to be this way. The Trump-Pence logo is merely the background to this strong message of using America’s skilled workers to turn around the economic fortunes of the country.

The reasoning of the Commission in the above-referenced MURs are equally applicable in this case. Republication requires more than creating and paying for advertisements that incorporate a logo available on publicly accessible websites. Here, Rebuilding America Now crafted its own strong message about what it takes to revive the American economy. The entire video includes a message exclusive to Rebuilding America Now. It incorporated its own audio, video, and narration to create its own message. The Trump-Pence logo merely sits in the background at the conclusion of the video.

⁵ MUR 6357 (American Crossroads), Statement of Reasons, Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, at 4; *see also* MUR 6603 (Ben Chandler for Congress), 6777 (Kirkpatrick for Arizona), 6801 (Senate Majority), 6870 (American Crossroads), 6902 (Al Franken for Senate) Statement of Reasons, Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee. E. Goodman, at 2, n. 4 (emphasis added).

Even if such use of the Trump-Pence logo does rise to the level of republication, such a republication in and of itself does not constitute a contribution to Donald J. Trump for President, Inc. As the plain language of the statute makes clear, republication shall be considered to be an expenditure. 52 U.S.C. § 30116(a)(7)(B)(iii). As the Commission has recently stated in MUR 6357, there must also be cooperation, consultation, or other facts that meet the “conduct prong” of the standards for coordinated public communication, and specifically regarding the use of campaign materials before such use can rise to the level of a coordinated public communication that can be deemed to constitute an illegal in-kind contribution.

In making the *America Soaring* ad, there was absolutely no cooperation, consultation, or other coordination with the Donald J. Trump for President, Inc. by Rebuilding America Now. In fact, the Complaint fails to allege a single fact or incidence of communications between RAN and the Trump campaign regarding the making of the *American Soaring* ad. Instead, the Complainant chooses to rely on an obviously incorrect reading of the statute and regulations, completely ignoring the coordination regulations and the Commission’s established requirements regarding the conduct standard as a condition precedent to a coordinated public communication.

As a result, Count IV of the Complaint should be dismissed in its entirety for failure to state a factual situation for which there is reason to believe a violation has occurred.

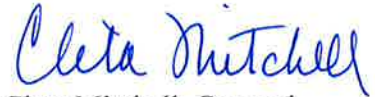
CONCLUSION

The Complaint states no facts to support its false allegations that the public communications by Rebuilding America Now were coordinated with the Trump campaign by virtue of the prior volunteer activities of two of the PAC’s principals. Neither Mr. McKay nor Mr. Gay were, at any time employees, agents or vendors of the Trump campaign. And each have attested to the fact that *all* public communications by Rebuilding America Now were independently developed, created and produced by RAN, without any involvement by or discussion with the Trump campaign. Both Mr. McKay and Mr. Gay have further attested under oath that, during their stints as Trump campaign volunteers, neither of them were privy to any proprietary, non-public information regarding the needs, activities, plans or projects of the Trump campaign.

The use by RAN of a Trump campaign logo in an television commercial produced and disseminated by RAN is likewise not actionable under FECA. There was no discussion or involvement whatsoever by RAN with anyone from the Trump campaign regarding the use of the logo. And absent any evidence of the presence of the ‘conduct’ standard required for a ‘coordinated public communication’, the use of the logo does not run afoul of the law.

Accordingly, the Complaint has no merit and must be dismissed, because there is no reason to believe that Rebuilding America Now has violated the Federal Election Campaign laws.

Respectfully submitted,



Cleta Mitchell, Counsel
Rebuilding America Now

Done this 28th day of November, 2016

State of Rhode Island

County of Washington

AFFIDAVIT OF KENNETH K. MCKAY IV

I, Kenneth K. McKay IV, of lawful age and a resident of the State of Rhode Island, do hereby affirm and state:

1. I was never a paid employee or vendor to the Donald J. Trump ("Trump") presidential campaign.
2. I served as a volunteer for the Trump campaign from approximately April 20th until on or about May 21st, until Donald Trump was the presumptive Republican nominee for President. I was a volunteer assisting the Trump campaign to work with delegate selection in several states, preparing slates of Trump delegates to the national Republican convention in Cleveland held in July 2016.
3. I was never an agent of the Trump campaign, and I had no decision-making authority, real or apparent, nor did I engage in any actions or activities to create, develop, produce, distribute or disseminate, any public communication(s) regarding Donald Trump, or the Trump campaign.
4. Because I was not a vendor to the Trump campaign, I could not be and was not a common vendor to the Trump campaign and Rebuilding America Now ("RAN").
5. I had no involvement with or knowledge of any public communications by the Trump campaign in the general election, nor was I at any time paid to create, produce, develop, distribute or disseminate any public communication by, for or about the Trump campaign or Donald Trump or Mr. Trump's opponents in the 2016 general election.
6. During my volunteer services for the Trump campaign, I had not authority, real or implied, to develop, create, produce or disseminate public communications for or on behalf of the Trump campaign.
7. I was never privy to any non-public proprietary information about the needs, activities, plans or projects of the Trump campaign, generally, or specifically with regard to the general election campaign in 2016.
8. RAN was founded to support the election of Donald Trump against Hillary Clinton during the general election of 2016.
9. All public communications produced, developed and disseminated by RAN were based on RAN's own research and the independent information and knowledge of RAN principals, and were never based upon any non-public proprietary information from the

Trump campaign regarding the needs, activities, plans or projects of the Trump campaign.

- 10. RAN had no material involvement with the Trump campaign, Donald Trump or any agent of the Trump campaign.
- 11. I engaged in no substantial discussions and had no material involvement regarding RAN and / or its activities or public communications with anyone in the Trump campaign.
- 12. There were no substantial discussions nor material involvement between any person involved with RAN and the Trump campaign, Donald Trump or any agent or employee of the Trump campaign.
- 13. RAN's public communications were not made at the behest, suggestion, or request of the Trump campaign, Donald Trump or any agent of the Trump campaign.
- 14. RAN did not make any coordinated public communications at any time regarding Donald Trump's candidacy for President in 2016.

The above and foregoing statements are true and correct to the best of my knowledge and belief.



 Kenneth K. McKay IV

Attested:

Before me appeared this 28 day of November, 2016, Kenneth K. McKay IV, who affirmed under penalty of perjury that the above and foregoing is true and correct to the best of his knowledge and belief.

SEAL



 NOTARY PUBLIC

My Commission Expires:

5.19.17

State of Connecticut

County of Litchfield

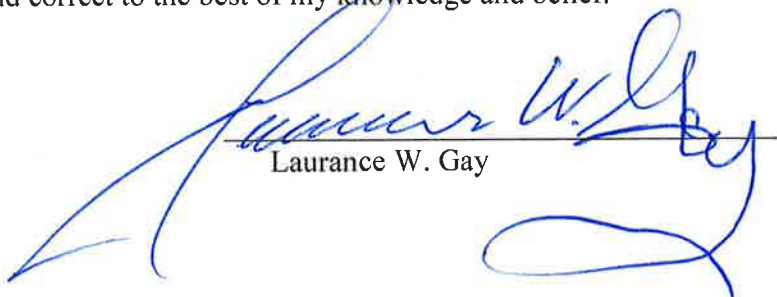
AFFIDAVIT OF LAURANCE W. GAY

I, Laurance W. Gay, of lawful age and a resident of the State of Connecticut do hereby state and affirm under penalty of perjury as follows:

1. I was never a paid member of the Donald J. Trump for President, Inc. ("Trump") campaign staff nor did I serve as a vendor to the Trump campaign at any time.
2. I served as a volunteer to the Trump effort in California and assisted in organizing some events featuring Mr. Trump prior to the California primary in June 2016.
3. I was never privy to any non-public proprietary information about the needs, activities, plans or projects of the Trump campaign, either with regard to the California primary or regarding the general election campaign in 2016.
4. During my volunteer activities during the weeks preceding the California primary, I was not authorized to and did not create, develop, produce, disseminate or distribute any public communication(s) for or on behalf of the Trump campaign.
5. Rebuilding America Now ("RAN") was founded to support Mr. Trump against Hillary Clinton during the general election of 2016.
6. All public communications produced, developed and disseminated by RAN were based on RAN's own research and the independent information and knowledge of RAN principals, and were never based upon any non-public proprietary information from the Trump campaign regarding the needs, activities, plans or projects of the Trump campaign.
7. RAN's activities and public communications were not created, developed or produced with any involvement or discussion whatever by the Trump campaign or any agent or vendor of the Trump campaign.
8. The Trump campaign, its agents, employees, or representatives had no material involvement or substantial discussions regarding RAN's activities or communications.
9. RAN's public communications were not made at the behest, suggestion, or request of the Trump campaign, Donald Trump or any agent of the Trump campaign.
10. RAN did not make any coordinated public communications at any time regarding Donald Trump's candidacy for President.

11. The Trump logo used by RAN in television commercials or other RAN communications was obtained from a publicly available source, and there was no contact or communication with the Trump campaign or any agent, employee or vendor to the Trump campaign regarding RAN's use of the logo.

The above and foregoing is true and correct to the best of my knowledge and belief.


Laurance W. Gay

ATTESTED:

Before me this 28th day of November 2016, appeared Laurance W. Gay, who affirmed under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief.

SEAL


NOTARY PUBLIC

My Commission Expires:

