BEFORE THE FEDERAL ELECTION COMMISSION

)
) **MURs 7147/7193**
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RESPONSE OF DONALD J. TRUMP FOR PRESIDENT, INC. AND BRADLEY T. CRATE, AS TREASURER, TO THE COMPLAINTS

By and through undersigned counsel, Donald J. Trump for President, Inc. and Bradley T. Crate, as Treasurer ("Respondents" or the "Campaign"), respond to the Complaints in the above-captioned MURs.[1] We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the Complaints, and close the files.

I. BACKGROUND

One month before the 2016 general election, Complainants filed the Complaint in MUR 7147, as well as another Complaint against Correct the Record, an independent expenditure-only political committee ("IEOPC") supporting Hillary Clinton. They hyped their filings in a sensationalized press release, which characterized the FEC as "dysfunctional," and attempted to garner attention for their campaign finance reform agenda by posing pointed questions to the two major parties' presidential candidates about their plans to "fix the broken system." *See* Press Release, Campaign Legal Center, FEC Must Investigate Unprecedented Violations of Campaign Finance Laws By Clinton, Trump (Oct. 6, 2016), http://www.campaignlegalcenter.org/news/press-

[1] Although this response focuses on MUR 7147, Respondents submit it to address the allegations set forth in the Complaint in MUR 7193 as well. MUR 7193 contains non-specific allegations similar to, though less detailed than, the allegations leveled in MUR 7147. Both Complaints allege that the Campaign improperly coordinated with two outside groups—Rebuilding America Now and Make America Number 1. Yet the Complaint in MUR 7193 provides only three paragraphs to support its allegations and does not even name the individuals it alleges violated the "former employee" provisions of the coordination regulations. Therefore, in addition to the reasons set forth in this combined response, the Commission should dismiss MUR 7193 because it fails to allege with any specificity a violation of law and fails to meet the minimum requirements for a complaint outlined at 11 C.F.R. § 111.4(d)(3). The Commission's precedent is to dismiss complaints for failure to provide information sufficient to establish a violation. *See, e.g.*, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1 (Dec. 21, 2000) ("The Commission may find 'reason to believe' only if a complaint sets forth specific facts, which, if proven, would constitute a violation of the FECA."). Given the blatant factual and legal deficiencies of the Complaint in MUR 7193, the Commission should find no reason to believe a violation of law occurred, dismiss the Complaint in the matter, and close the file.

releases/fec-must-investigate-unprecedented-violations-campaign-finance-laws-clinton. Complainants are quite obviously using the FEC's complaint process in an attempt to remake the law into what they believe it ought to be, particularly with respect to the coordination regulations, which they allege the Campaign violated. The Campaign fully understands the strict prohibition against coordination with outside groups such as those named in the Complaint. And, as supported by the facts on the record in this matter, there is no evidence that the Campaign engaged in the coordination scheme alleged in the Complaints, there is no legal basis for the Complainants' claims that outside groups republished Campaign materials, and there is no evidence that any of the IEOPCs cited in the Complaint subsidized Campaign activities by making payments to common vendors for services or expenses that should have been paid for by the Campaign.

Therefore, there is no reason to believe that either of the IEOPCs named in the complaint—Rebuilding America Now ("RAN") and Make America Number 1 ("MAN1")—has made in-kind contributions to the Campaign in the form of coordinated communications, republished campaign materials, or compensation for services provided to the Campaign. Since the Campaign has not received unlawful in-kind contributions from either entity, it has not failed to report required information. Respondents therefore respectfully request that the Commission dismiss this matter and close the file.

II. ANALYSIS

Complainants allege that the Campaign accepted unlawful and unreported in-kind contributions from two IEOPCs: RAN and MAN1. As demonstrated below, there is no reason to believe that the Campaign received contributions from either committee.

A. Rebuilding America Now

i. The operatives retained by RAN – Ken McKay and Laurence Gay – were never employees or independent contractors of the Campaign and therefore their work on behalf of RAN does not satisfy the "former employee" provision of the coordination regulations.

Complainants allege that RAN illegally has made in-kind contributions to the Campaign in the form of coordinated communications through two individuals, Ken McKay and Laurence Gay, who Complainants allege are former "employees" of the Campaign and violated the "former employee" conduct provisions in the coordination regulations at 11 C.F.R. § 109.21(d)(5). But the plain language of the "former employee" provisions makes clear that they apply only to communications paid for by the employer of a "person, who was an **employee or independent contractor** of the candidate who is clearly identified in the communication." 11 C.F.R. § 109.21(d)(5)(1) (emphasis added). Neither McKay nor Gay was ever an employee or independent contractor to the Campaign. Indeed, the Campaign's internal records do not reflect either individual ever having an employment or consulting contract with the Campaign, and, as the Campaign's FEC filings affirm, the Campaign never made any disbursements for salary or consulting fees to McKay or Gay or any consulting firm associated with either individual. Ex A (Affidavit of Bradley T. Crate) at ¶¶ 4-7. Instead, both veteran political operatives briefly assisted the Campaign on a narrow volunteer basis, providing historical knowledge regarding the presidential primary process.

We understand that McKay provided volunteer assistance to the Campaign in the delegate selection process in advance of the Republican National Convention and that Gay provided volunteer assistance to the Campaign in California in advance of the state's June 7, 2016 primary election. McKay and Gay thus were neither employees nor independent contractors to the Campaign—they were volunteers—and necessarily cannot have violated the "former employee" conduct prong of the coordination regulations. *See* 11 C.F.R. § 109.21(d)(5).

The Commission already specifically rejected an effort to extend the "former employee" provisions of the coordination regulations to include "volunteers," stating that, "[t]he Commission views the choice of the word 'employee' in section 214(c)(3) as a significant indication of Congressional intent that the regulations be limited to individuals who were in some way employed by the candidate's campaign or political party committee, either directly or as an independent contractor." Explanation & Justification, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 439 (Jan. 3, 2003) (hereinafter "2003 Coordination E&J"). Despite acknowledging this guidance, Complainants' erroneously assert that "in order to effect Congressional intent, the term 'employee' must be interpreted pursuant to common law agency principles." Campaign Legal Center Complaint MUR 7147, at 28-29 n. 71. Under common law agency principles, these unpaid, short-term advisors on discreet primary election-related issues plainly would not qualify as "employees" of the Campaign, but that is of no matter here because the Commission specifically recognized in its rulemaking that "former employee,' as that term is used in the statute, must be different from 'agent,'" and that volunteers, though they could qualify as agents, are not "employees" or independent contractors. *See id.* ("The Commission also notes that even though volunteers are not subject to the 'former employee' conduct standard . . . in some cases a volunteer may qualify as an agent of a candidate or political party."). Given its own clear and unambiguous construction of "former employee," the Commission would have no reason to go beyond the rule or the statute to construe the term in this instance. For Complainants to suggest that the Commission should now expand the scope of the term by looking to the definition of "employee" elsewhere in the U.S. Code or by importing concepts from the common law of agency disregards the plain language of the regulation, the Commission's rulemaking, and the basic principles of administrative law as enunciated by the Supreme Court in *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984).

In sum, neither McKay nor Gay was a former employee or independent contractor of the Campaign and so neither individual could have satisfied the conduct prong of the coordination regulations. Therefore, there is no reason to believe that any of the communications aired by RAN was a coordinated communication under 11 C.F.R. § 109.21.

ii. McKay and Gay did not have non-public information about the Campaign's plans, projects, activities or needs that was material to the creation, production or distribution of any communication aired by RAN.

Even if the Commission wrongly determined that McKay and Gay were former employees or independent contractors of the Campaign, neither was in a position to be privy to any non-public information regarding the Campaign's plans, projects, activities or needs. Relatedly, none of the communications disseminated by RAN appear to have been based on any non-public proprietary information from the Campaign regarding its plans, projects, activities or needs. Certainly, none of the communications were disseminated at the request or suggestion of the Campaign or as a result of substantial discussion or material involvement between the Campaign and RAN.

This is hardly surprising. Neither McKay nor Gay assisted the Campaign with efforts to create, develop, distribute or disseminate public communications. These individuals were associated with the campaign for short periods of time and focused on discreet projects during the primary election unrelated to RAN's subsequent general election activities. As the Commission understands, the "former employee" coordination regulations require that the former employee either **"use[] or convey[]"** to a third-party spender such information. *See* 11 C.F.R. § 109.21(d)(5)(ii). Since neither McKay nor Gay had non-public material information, neither could have used or conveyed any such information to RAN to trigger the conduct prong of the coordination regulations. Therefore, for this reason as well, the Commission cannot find reason to believe a violation occurred.

iii. The information material to the creation of the ads aired by RAN appears to have been obtained from publicly available sources in accordance with the public information exception to the former employee provisions of the coordination regulations.

The Commission must also reject Complainants' assertion that RAN's communications satisfy the conduct prong of the coordination regulations for yet another, simple reason: all of the information material to the creation of RAN's ads appears to have been obtained from publicly available sources. The conduct prong "is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source." 11 C.F.R. § 109.21(d)(5)(ii). The television advertisements aired by RAN and posted to its YouTube page, however, tracked a handful of major themes repeatedly touted publicly by the Campaign—in publicly televised rallies and speeches and on the Campaign's website—and give no indication that RAN had any specialized knowledge about the Campaign's internal strategies or needs. These themes included:

- Restoring American jobs/economy;
- Hillary Clinton's ethical judgment and trustworthiness;
- Political Correctness;
- National Security; and
- Education Reform.

Consider the following quotes from Donald Trump on the themes listed above, which were within the public domain around the time that RAN aired ads featuring the same themes:

- *Donald J. Trump on Restoring American Jobs/Economy:*

> My economic plan rejects the cynicism that says our labor force will keep declining, that our jobs will keep leaving, and that our economy can never grow as it did once before. We reject the pessimism that says our standard of living can no longer rise, and that all that's left to do is divide up and redistribute our shrinking resources. Everything that is broken today can be fixed, and every failure can be turned into

> a great success. Jobs can stop leaving our country, and start pouring in.

Speech of Donald J. Trump at N.Y. Economic Club (Sept. 15, 2016), https://www.donaldjtrump.com/press-releases/trump-delivers-speech-on-jobs-at-new-york-economic-club.

- *Donald J. Trump on Hillary Clinton's Ethical Judgment/Trustworthiness:*

> No one is above the law. Clinton and her cronies will say anything, do anything, lie about anything to keep their grip on power, to keep their control over our country.
>
> Twenty-two groups paid Bill Clinton for speeches, lobbied the State Department, while Hillary was secretary of state. Shocking. Favors and access were granted to those who wrote checks. She put the office of secretary of state up for sale . . . if she gets the chance, she will put the Oval Office up for sale like she always does. Remember, folks, she's been doing this for 30 years and she—she just doesn't produce. She deleted and bleached 33,000 e-mails after a congressional subpoena. You can't do that.

Remarks of Donald J. Trump at a Campaign rally in Novi, Mich. (Sept. 30, 2016), http://www.realclearpolitics.com/video/2016/09/30/trump_to_obama_do_not_pardon_hillary_clinton_or_her_co-conspirators.html.

- *Donald J. Trump on Political Correctness:*

> I think the big problem this country has is being politically correct. I've been challenged by so many people and I don't, frankly, have time for total political correctness. And to be honest with you, this country doesn't have time, either.

Remarks of Donald J. Trump at Republican Presidential Debate, Cleveland, Ohio (Aug. 6, 2015), http://www.nytimes.com/live/republican-debate-election-2016-cleveland/trump-on-political-correctness/.

- *Donald J. Trump on National Security:*

> After four years of Hillary Clinton, what do we have? ISIS has spread across the region, and the world. Libya is in ruins, and our

> Ambassador and his staff were left helpless to die at the hands of savage killers. Egypt was turned over to the radical Muslim brotherhood, forcing the military to retake control. Iraq is in chaos.

Remarks of Donald J. Trump to the 2016 Republican National Convention (July 21, 2016), http://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974.

- *Donald J. Trump on Education/School Choice:*

> As your President, I will be the nation's biggest cheerleader for school choice. I want every single inner city child in America who is today trapped in a failing school to have the freedom – the civil right – to attend the school of their choice. I understand many stale old politicians will resist. But it's time for our country to start thinking big once again. We spend too much time quibbling over the smallest words, when we should spend our time dreaming about the great adventures that lie ahead.

Remarks of Donald J. Trump at a Campaign speech in Cleveland, Ohio (Sept. 8, 2016), https://www.donaldjtrump.com/press-releases/donald-j.-trump-remarks-on-school-choice.

In light of these highly publicized comments (which are simply representative examples chosen from a vast archive of similar quotes), it is unsurprising that an independent group such as RAN would repeat these themes in its ads. For example, public records indicate RAN's first major ad buy, entitled "America Soaring," emphasized the need to restore American manufacturing jobs, a theme that Donald J. Trump had repeated throughout the Campaign and one of obvious importance to working-class voters whom general election presidential candidates have attempted to reach for decades. Indeed, anyone reading the news and keeping up with campaign themes, as any independent spender in the presidential race was certainly doing, could discern that these themes were central to the Campaign. In fact, any group supporting Donald J. Trump would likely share in and stress similar ideological views. Quite obviously, an independent group supporting the Republican presidential nominee would air ads opposing Hillary Clinton. Furthermore, it is

unremarkable that, in the general election, an independent group supporting the Republican presidential nominee would air ads touting themes such as a strong national defense, a central tenet of the Republican Party's platform for decades. In sum, amplifying these themes through independent speech did not require knowledge of any internal needs, plans or strategies of the Campaign. Complainants fail to identify any content in the advertisement that could not have been based on publicly available information or a simple understanding of the political landscape. Therefore, Complainants have failed to establish that the conduct prong of the coordination regulations has been satisfied. For this independent reason, the Commission should not find reason to believe that RAN's ads were coordinated communications.

iv. RAN did not republish campaign materials, since the fleeting image of a Campaign logo was incorporated into a communication that constituted an expression of the sponsor's independent views.

In addition, Complainants allege that by including a fleeting image of the Trump Pence "official logo" at the end of the 60-second "America Soaring" ad, RAN made an illegal in-kind contribution to the Campaign by republishing campaign materials in violation of 11 C.F.R. § 109.23. First, the Campaign had no knowledge of RAN's use of its logo. Thus, it cannot be an in-kind contribution that was "accepted" by the Campaign. *See* MUR 6357 (American Crossroads), Factual & Legal Analysis for Portman for Senate Committee at 6-7 (Jan. 27, 2012) ("[I]n considering whether the recipient committee of an alleged republication benefit receives or accepts an in-kind contribution in the coordination context, the republication conduct standard applies only if there was a request or suggestion, material involvement, or substantial discussion that took place after the original preparation of the campaign materials that are . . . republished."); *see also* Advisory Opinion 2008-10 (VoterVoter.com) (concluding that footage of a candidate appearance at a public event which includes images of campaign signs, buttons or t-shirts with campaign slogans would not constitute republication of campaign materials by the creator unless the creator arranged for such

materials to be displayed for the purpose of being shown in the ad). Second, RAN used a brief snippet of the image in a 60-second ad that was replete with its own images, narrative and text that constituted its independent speech—conduct that is in line with extensive Commission precedent permitting such a practice. For example, in the American Crossroads MUR, the Commission did not find reason to believe that American Crossroads republished campaign materials by including in its ad a brief snippet of campaign video footage downloaded from a campaign's publicly available website. *See* MUR 6357, Statement of Reasons of Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 3 (Feb. 22, 2012). The footage was obtained from a publicly available website without direct contact with the campaign. *Id.* Furthermore, the overall audio and visual presentation of the American Crossroads ad included the group's own "text graphics, audio and narration to create its own message." *Id.* at 4. Other matters reached the same result. For example, there was no reason to believe that two third-party groups and three candidate committees violated the republication regulations because "republication requires more than respondents creating and paying for advertisements that incorporate as background footage brief segments of video footage posted on publicly accessible websites by authorized committees of federal candidates." MURs 6603, 6777, 6801, 6870, 6902 (House Majority PAC), Statement of Reasons of Commissioners Matthew S. Petersen, Caroline C. Hunter, and Lee E. Goodman at 2 (Dec. 17, 2015). Instead, the snippets of footage from candidate websites were "incorporated into [] communication[s] in which [respondents] add[ed] their own text, graphics, audio and narration to create [their] own message." *Id.* at 2 (citing MUR 6357 (American Crossroads), Statement of Reasons of Chair Hunter and Commissioners McGahn and Petersen at 4). In another instance, Commissioner Weintraub noted that "downloading a photograph from a candidate's website that is open to the world, for incidental use in a large mailer that is designed, created, and paid for by a political committee as part of an independent expenditure without any coordination with the

candidate, does not constitute the 'dissemination, distribution or republication of candidate campaign materials.'" MUR 5743 (Betty Sutton for Congress), Statement of Reasons of Commissioners Hans. A. von Spakovsky and Ellen Weintraub at 4-5 (Jan. 23, 2007).

The reasoning in these prior matters applies equally here. Without the Campaign's knowledge, RAN obtained a publicly available graphic and included a fleeting image of that graphic in an ad replete with RAN's own independent graphics, text, and images. In sum, the ads were clearly RAN's independent speech and therefore the Commission should follow its well-established precedent and not find reason to believe that RAN republished campaign materials.

B. Make America Number 1

The allegations that the Campaign coordinated with MAN1, another IEOPC, and received unlawful in-kind contributions in the form of personal compensation are also without any merit.

i. The common vendors cited in the Complaint had a firewall.

The Complaint alleges—with no supporting evidence—that any communications disseminated by MAN1 were coordinated with the Campaign through two common vendors: Cambridge Analytica ("CA") and The Polling Company ("TPC"). The mere existence of a common vendor, in and of itself, does not violate the FEC's coordination regulations. Indeed, the Commission has definitively stated that vendors "are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders" provided that they do not share "information about plans, projects, activities or needs of a candidate or political party . . . to the spender who pays for a communication." 2003 Coordination E&J at 436. It is thus routine for campaigns and outside groups to use common vendors and implement a firewall that "prohibit[s] the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate." 11 C.F.R. § 109.21(h).

Consistent with the common vendor provisions in the coordination regulations, the Campaign required its consultants to implement any safeguards necessary, such as a firewall. Ex. A at ¶ 10. For example, in CA's contract with the Campaign, CA "represents and agrees that it is generally familiar with the federal laws and regulations governing improper 'coordination' of political and issue communications and will abide by such laws and regulations, including, but not limited to, implementing any safeguards necessary for common vendors, if applicable." *See* Ex. B (Redacted Contract). The record similarly does not support the Complaint's allegations that non-public information about the Campaign was conveyed to individuals at CA working with MAN1 by Campaign Chief Executive Officer Stephen K. Bannon, a former CA board member and consultant. In a sworn affidavit submitted to the Commission, Mr. Bannon states that he did not provide any non-public, proprietary information regarding the messaging, plans, projects, activities or needs of the Trump Campaign to the PAC through CA. *See* Response of MAN1, Ex. 5 (Affidavit of Stephen K. Bannon) ¶ 6 (hereinafter "Bannon Affidavit"). In addition, he asserts that upon joining the Campaign, he took a leave from CA's board of directors and did not engage in any work on CA's behalf. *Id.* ¶ 4. Mr. Bannon further declares that at no time after joining the Campaign did he discuss any non-public proprietary information regarding the Campaign's plans, projects, activities or needs with anyone associated with MAN1. *Id.* ¶ 8.

With respect to TPC, Complainants imply that because Kellyanne Conway previously provided consulting services to an earlier incarnation of MAN1, she must have continued providing those services to the group. This is directly contradicted by both Ms. Conway's contemporaneous statements in the media and an affidavit she submitted to the FEC in this matter. Ms. Conway, TPC's former President, told *Politico* that she had "never been inside the PAC firewall and have done no work for this PAC [MAN1]." Kenneth P. Vogel and Jake Sherman, *Trump's Campaign Manager Cashes In* (Oct. 3, 2016), POLITICO, http://www.politico.com/story/2016/10/trumps-campaign-

manager-kellyanne-conway-229027. In addition, she added, "'there was no overlap for me[.]'" *Id.* These contemporaneous public comments track a sworn affidavit submitted by Ms. Conway in which she states that beginning in early June, she stopped performing any work for MAN1 and subsequently resigned from MAN1 on June 22, 2016, prior to joining the Campaign on July 1, 2016. *See* Response of MAN1, Ex. 1 (Affidavit of Kellyanne Conway) ¶ 5 (hereinafter "Conway Affidavit"). In addition, Ms. Conway asserts that she did not provide any non-public, proprietary information from the campaign to the PAC or the staff at TPC working on PAC matters. *Id.* ¶ 9.

In sum, representatives of both common vendors have provided evidence to the Commission that they adhered to a firewall policy to ensure information was not shared, and Complainants have offered no evidence that either common vendor served as a conduit for non-public proprietary information from the Campaign to MAN1. Therefore, Complainants have identified no specific activity providing reason to believe that a violation has occurred.

ii. There is no reason to believe that the Campaign's agents discussed non-public information or requested or suggested that Rebekah Mercer, Chairwoman of MAN1, air public communications on the Campaign's behalf.

Finally, Complainants cite to two meetings between Campaign supporter and contributor, Rebekah Mercer, Chairwoman of MAN1, and agents of the Campaign and imply that those meetings somehow violated the FEC's coordination regulations. Although Complainants do not specifically allege that these meetings constituted unlawful coordination, we will address the implication head on. Based on the facts alleged in the Complaint, the two meetings were nothing more than donor meetings with a Campaign supporter. Although the Complainants make the conclusory assertion that the Campaign must have conveyed non-public information at the meetings, there is nothing in the articles cited to suggest that occurred. The articles mention that Mercer recommended Bannon and Conway for roles on the Campaign, which is not a discussion of non-public strategic information within the meaning of the coordination regulations.

Furthermore, the FEC has provided clear guidance that permits federal candidates and their agents to attend IEOPC events and meetings. *See generally* 11 C.F.R § 300.64(b); Explanation & Justification, *Participation by Federal Candidates and Officeholders at Non-Federal Fundraising Events*, 75 Fed. Reg. 24,375 (May 5, 2010) ("2010 Non-Federal Fundraising E&J"); Advisory Opinion 2011-12 (Majority PAC). Indeed, the FEC recently concluded that a candidate may attend an IEOPC event that consisted of a meeting with one donor. *See* Advisory Opinion 2015-09 (Senate Majority PAC & House Majority PAC) (reasoning that there was no minimum number of required attendees at an IEOPC meeting provided that the event followed established guidelines to ensure that the federal candidate or officeholder did not solicit funds outside the federal limits or source prohibitions). This case is a much easier call than those prior precedents. Thus, there is no basis for the Commission to find reason to believe that the Campaign violated the coordination provisions through the participation in the cited meetings.

iii. Complainants' speculation that payments from MAN1 to common vendors also providing services to the Campaign subsidized Campaign expenses is unfounded.

Complainants also speculate that because the Campaign and MAN1 shared a common vendor, disbursements from MAN1 to the vendor were actually subsidies for expenses that should have been paid by the Campaign, and that the vendor then funneled these payments to individuals working for the Campaign. Yet Complainants fail to provide any evidence or allege any specific acts demonstrating the payments were anything but lawful payments to a common vendor by another client for *bona fide* services.

For example, Complainants conjecture that even though the Campaign paid TPC more than $120,000 in August 2016, a disbursement by MAN1 to TPC that same month must have been a payment for services actually rendered to the Campaign. These wildly speculative allegations, however, are directly refuted by the facts. The Campaign paid an invoice provided by TPC on

September 28, 2016, for Ms. Conway's consulting services during the months of July, August, September and October. *See* Ex. A at ¶ 9. This disbursement was made, along with another payment for a polling expense, and reported to the FEC on the Campaign's regular report. *See* Donald J. Trump for President, Inc. September Monthly Report, http://docquery.fec.gov/cgi-bin/fecimg?_201612219040868605+16822. Therefore, there is no basis for the charge that payments to TPC from MAN1 were for services rendered by Ms. Conway to the Campaign. *See* Conway Affidavit ¶ 10 (stating that at no point did she receive compensation from the MAN1 for her work at the Campaign).

In another instance, Complainants assume that just because Mr. Bannon previously served as a consultant and board member for CA, any payments by MAN1 to CA must actually have been for services Mr. Bannon rendered to the Campaign, and that the payments from MAN1 were funneled to him through CA. Yet, again, they provide no evidence whatsoever, while Mr. Bannon's sworn affidavit rejects their allegations. *See* Bannon Affidavit ¶ 5 (asserting that during the course of the Campaign he did not receive any payments from CA).

Complainants' bare assertions that payments from MAN1 to a common vendor must have been disguised payments to Mr. Bannon and Ms. Conway do not stand up to the facts or the law. As the Commission has long held, unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true and cannot support a finding of reason to believe. *See*, *e.g.*, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 2 (Dec. 21, 2000); MUR 4869 (American Postal Workers Union), Statement of Reasons of Chairman Darryl R. Wold, Vice Chairman Danny L. McDonald, and Commissioners David M. Mason, Karl J. Sandstrom and Scott E. Thomas at 2 (March 21, 2000) (finding that complaint failed to allege violation of the Federal Election Campaign Act). Indeed, principles of due process and

fundamental fairness dictate that the burden must not shift to a respondent merely because a complaint is filed with the FEC. *See* MUR 4850 (Deloitte & Touche, LLP), Statement of Reasons of Chairman Darryl R. Wold and Commissioners David M. Mason and Scott E. Thomas at 2 (July 20, 2000) (rejecting the Office of General Counsel's recommendation to find reason to believe because the respondent did not specifically deny conclusory allegations, and holding that "[a] mere conclusory allegation without any supporting evidence does not shift the burden of proof to the respondents"). The Complaint is nothing more than an attempt to shift the burden to the Respondents through the use of innuendo and conjecture. *See Machinists Non-partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) ("[M]ere 'official curiosity' will not suffice as the basis for FEC investigations."). Therefore, the Complaint is facially deficient, and the Commission should find no reason to believe a violation has occurred, dismiss the Complaint, and close the file.

III. Conclusion

While Complainants recite the coordination regulations in great detail and reprint a string of largely irrelevant news articles, they have not presented facts providing reason to believe the Campaign violated the law. Therefore, Respondents respectfully request that the Commission dismiss the Complaint and close the file.

Respectfully,

Megan Sowards Newton

Eric Snyder
Megan Sowards Newton
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
(202) 879-3939

Counsel for Donald J. Trump for President, Inc. and Bradley T. Crate as Treasurer

EXHIBIT A

Commonwealth of Massachusetts
County of Essex

AFFIDAVIT OF BRADLEY T. CRATE

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

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

2. Red Curve has provided compliance and treasury services to Donald J. Trump for President, Inc. (the "Campaign") beginning from the Campaign's registration with the FEC in June 2015 to the present.

3. During the 2016 election, as President of Red Curve, I led the team responsible for providing treasury and accounting services to the Campaign. I became FEC Treasurer of the Campaign on January 20, 2017, and am the custodian of the Campaign's records.

4. The Campaign's internal records do not include an employment or consulting contract between the Campaign and Kenneth K. McKay.

5. The Campaign's records of disbursements from the 2016 election cycle do not show any disbursement or payment to Kenneth K. McKay or any consulting firm associated with Kenneth K. McKay.

6. The Campaign's internal records do not include an employment or consulting contract between the Campaign and Laurence Gay.

7. The Campaign's records of disbursements from the 2016 election cycle do not show any disbursement or payment to Laurence Gay or any consulting firm associated with Laurence Gay.

8. Kellyanne Conway provided consulting services to the Campaign as an independent contractor. She invoiced the Campaign for those services through her company, The Polling Company. This is a standard industry practice for political consultants.

9. The Campaign's disbursement of $112,920.80 on September 28, 2016 to The Polling Company included a payment for consulting services rendered by Kellyanne Conway for the months of July, August, September and October 2016. The disbursement also included a payment for polling.

10. In negotiating vendor contracts with independent contractors, the Campaign's standard practice was to require its consultants to implement any safeguards, such as a firewall, necessary to comply with the common vendor provisions of the FEC's coordination regulations.

Bradley T. Crate

Subscribed and sworn to before me, this 28th day of February, 2017.

NOTARY PUBLIC
My commission expires: June 22nd, 2018.

SEAL:

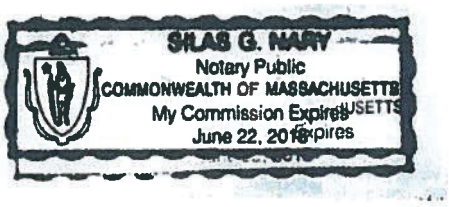


EXHIBIT B

CAMBRIDGE ANALYTICA

1 Wales Alley
Alexandria, VA 22314
Phone +1 (703) 997 1812
E-mail: info@cambridgeanalytica.org

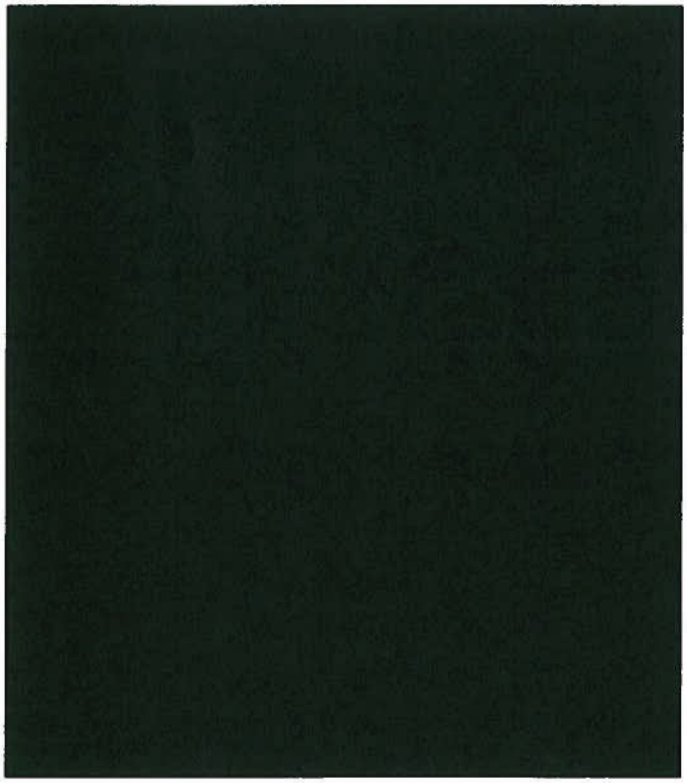
SHORT FORM SERVICES AGREEMENT

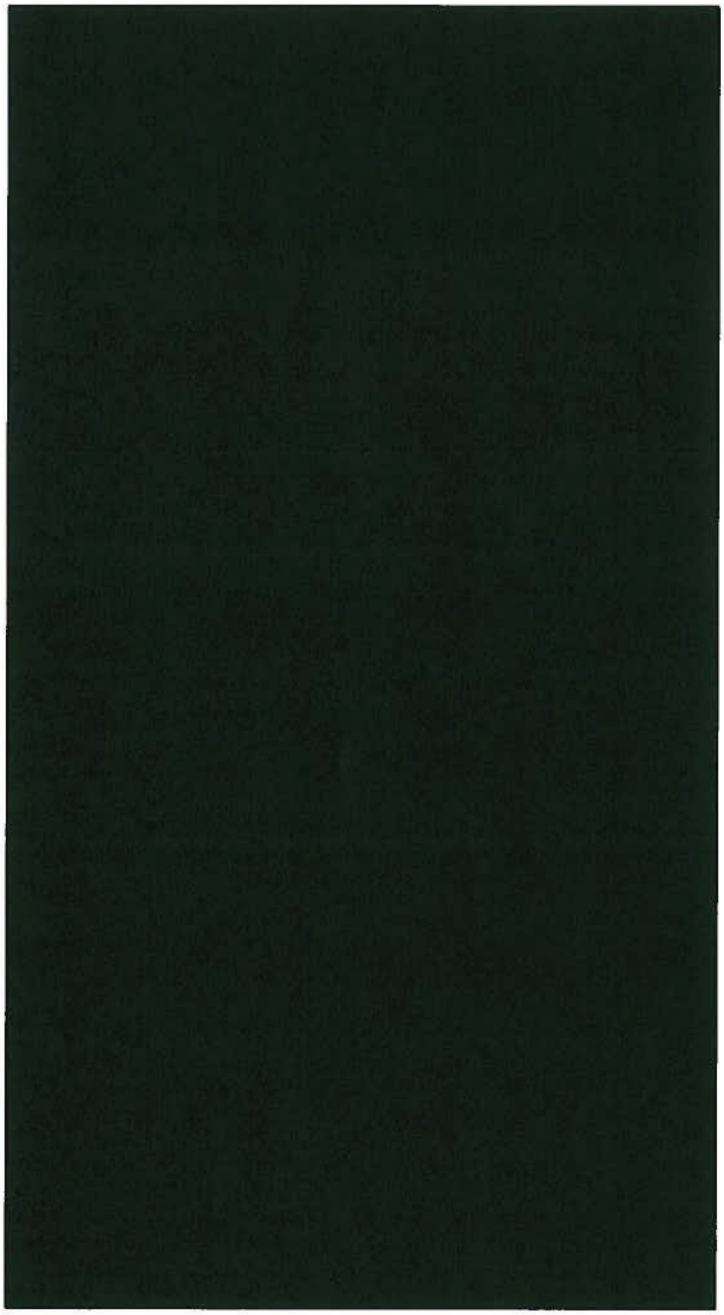
This Services Agreement ("Agreement") dated June 13th, 2016 is entered into by and between:

Cambridge Analytica LLC, a Delaware limited liability company with its principal executive office at The Corporation Trust Company, 1209 North Orange Street, Wilmington, Delaware 19801, ("Service Provider" or "Cambridge Analytica"); and

Donald J Trump for President Inc., a principal campaign committee with a registered address at 725 Fifth Avenue, New York, NY 10022 ("Client").

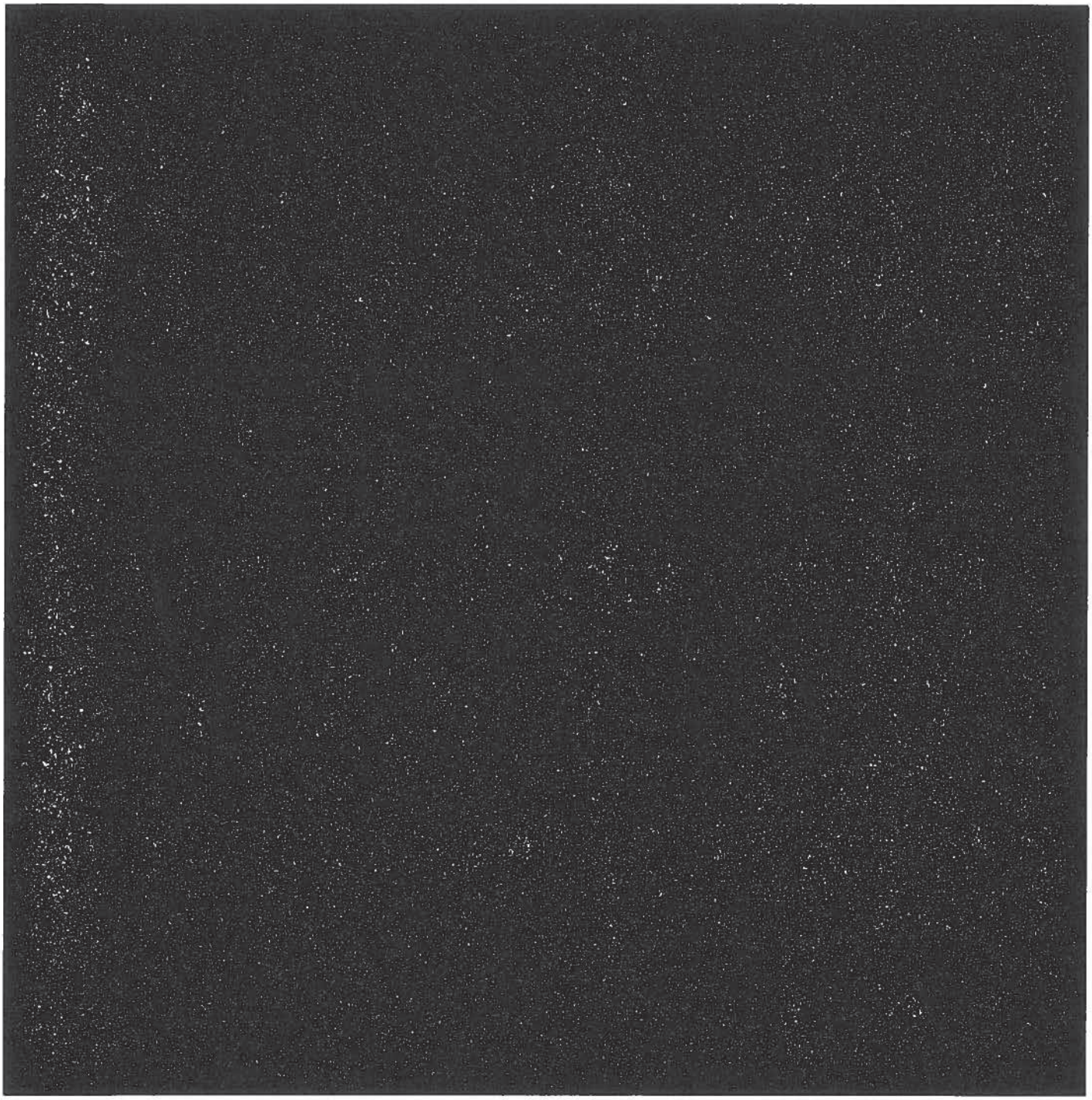
Each of Service Provider and Client may be referred to individually as a "Party" and collectively as the "Parties."





CAMBRIDGE ANALYTICA

1 Wales Alley
Alexandria, VA 22314
Phone +1 (703) 997 1512
E mail info@cambridgeanalytica org



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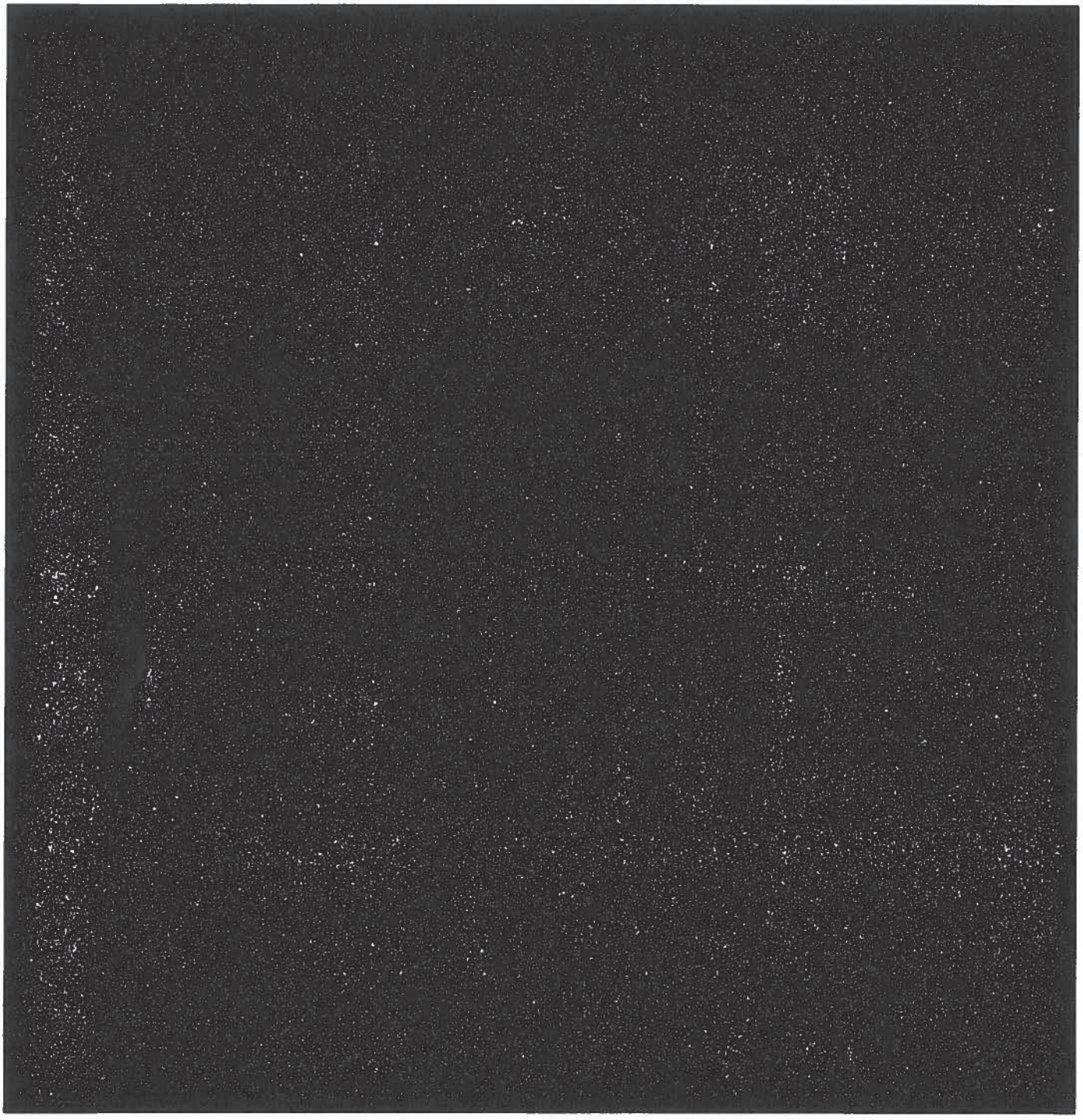

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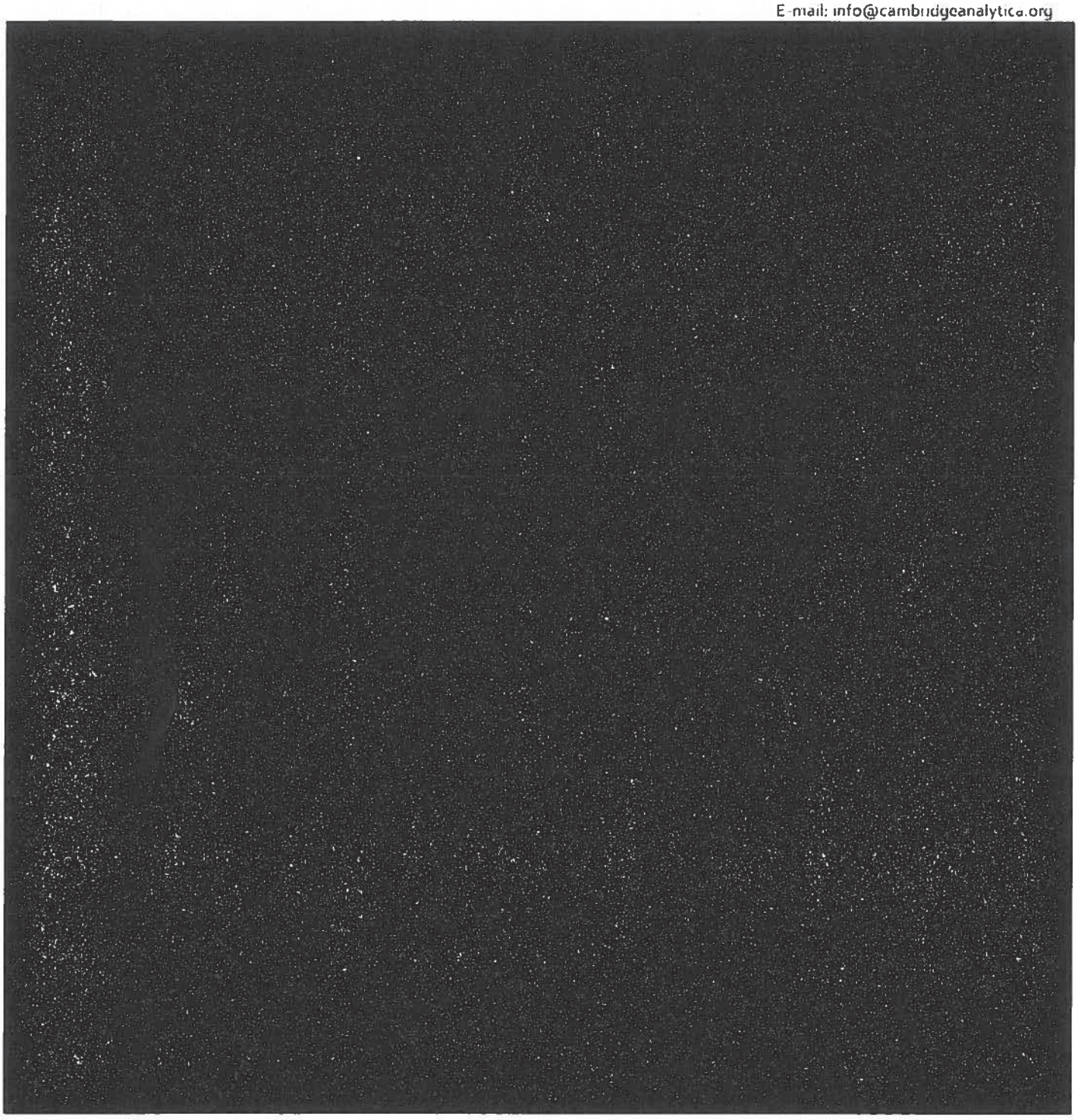

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[redacted]

8. Representations, Warranties and Covenants

Each party represents and warrants to and covenants with the other party that (i) it has all requisite power and authority to execute, deliver, and perform this Agreement, (ii) it has duly authorized, executed and delivered this Agreement and this Agreement is its legal, valid, and binding obligation enforceable against it in accordance with its terms, (iii) the execution, delivery, and performance of this Agreement will not violate or breach any provision of any other agreement, law, or order to which it is subject, (iv) it holds all necessary permits, licenses, and consents to conduct its operations and to perform this Agreement, and (v) it shall conduct its operations in accordance with all Applicable Laws.

Further, Service Provider represents and agrees that it is generally familiar with the federal laws and regulations governing improper "coordination" of political and issue communications and will abide by such laws and regulations, including, but not limited to, implementing any safeguards necessary for common vendors, if applicable.

[redacted]

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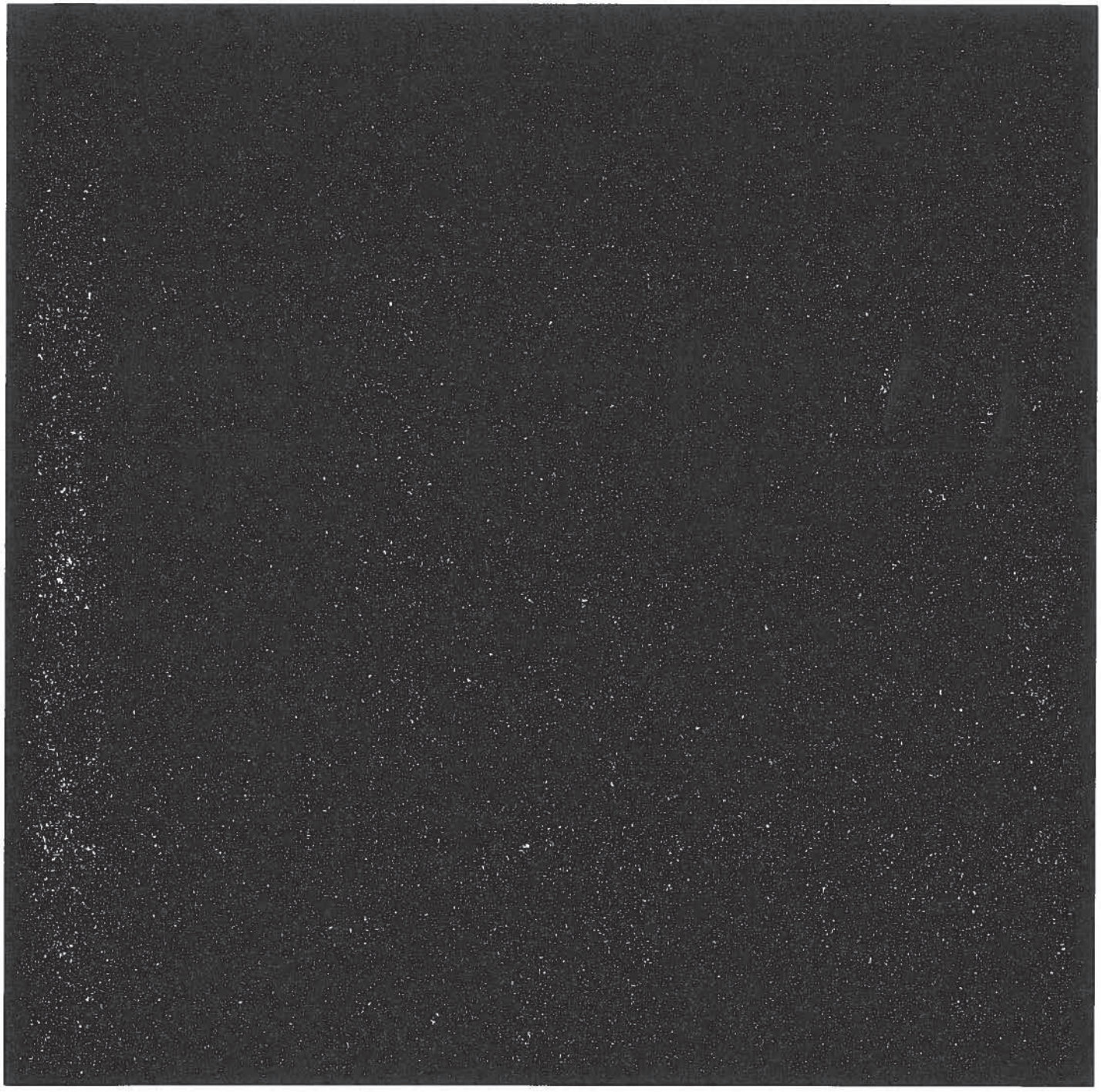

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IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement effective as of the date first set forth above.

Cambridge Analytica	**Donald J Trump for President Inc.**
By: [signature]	By: [signature]
Name: Alexander Nix	Name: ~~Corey Lewandowsk~~ Timothy Jost
Title: Director	Title: ~~Campaign Manager~~ Treasurer
Date: 6/23/16	Date: 6/23/16

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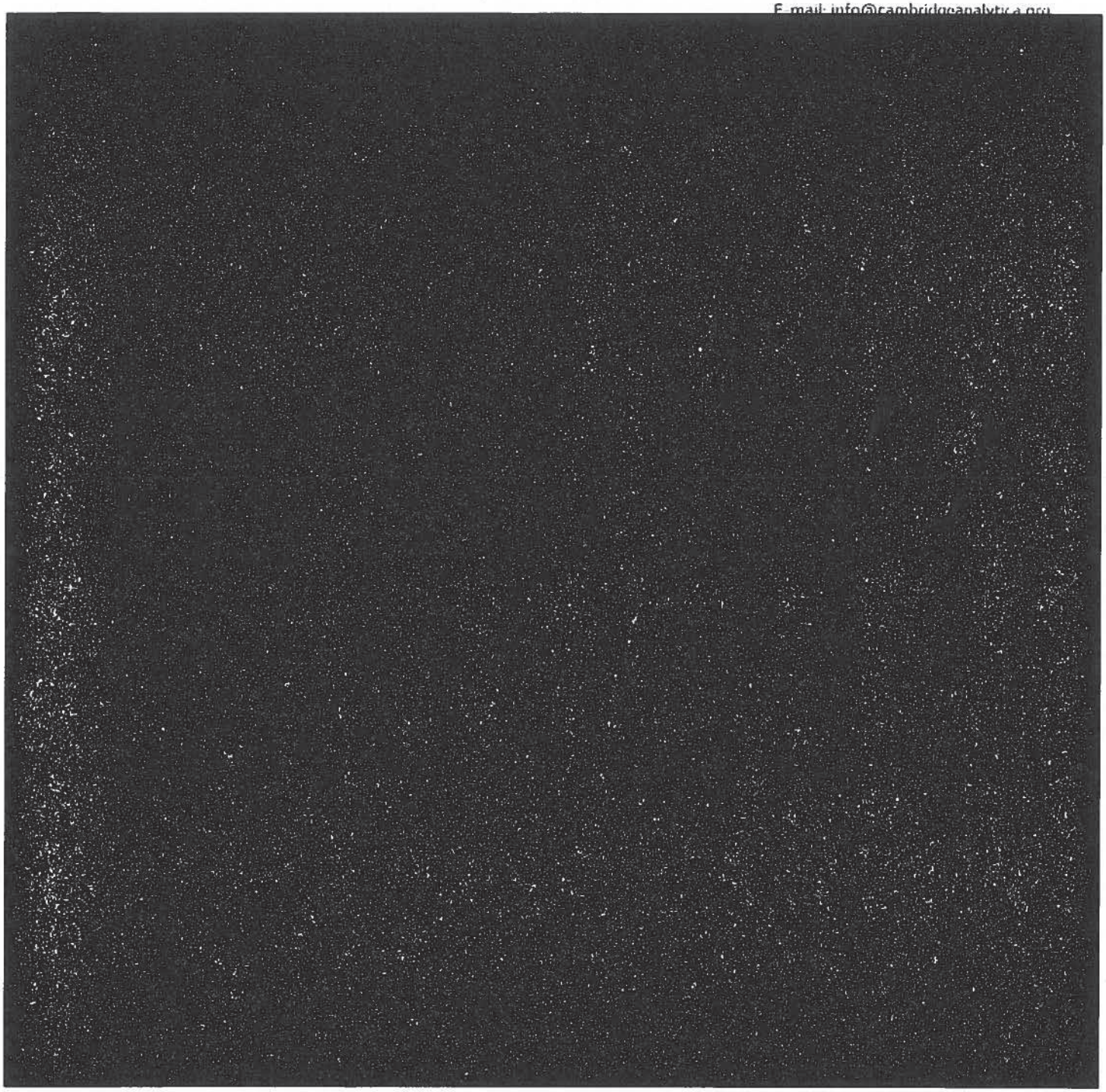

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