

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

4
5 **MUR 7147**

6 DATES OF COMPLAINTS: 10/6/16; 11/7/16
7 DATES OF SUPPLEMENTS: 12/2/16; 4/12/17
8 DATES OF NOTIFICATIONS: 10/14/16; 11/15/16;
9 12/5/16; 4/12/17
10 DATE OF LAST RESPONSE: 6/12/17
11 DATE ACTIVATED: 6/12/17
12 EPS:
13 ELECTION CYCLE: 2016
14 EXPIRATION OF SOL: Earliest: 4/25/21
15 Latest: 7/19/21
16

17 **COMPLAINANTS:**

Campaign Legal Center
Catherine Hinckley Kelley
Jill Stein¹

20
21 **RESPONDENTS:**

22 Make America Number 1 and Jacquelyn James in her
23 official capacity as treasurer
24 Donald J. Trump for President, Inc. and Bradley T. Crate
25 in his official capacity as treasurer
26 Rebuilding America Now and Ryan Call in his
27 official capacity as treasurer
28 Stephen K. Bannon
29 Kellyanne Conway²

30 **RELEVANT STATUTES**
31 **AND REGULATIONS:**

32 52 U.S.C. § 30101(8)(A)(ii)
33 52 U.S.C. § 30116(a), (f)
34 52 U.S.C. § 30118(a)
52 U.S.C. § 30104(b)

¹ Jill Stein is the complainant in MUR 7193, though she became a complainant in MUR 7147 through administrative severance of certain respondents from MUR 7193 to join them with MUR 7147. The complaint in MUR 7193 primarily focuses on allegations of coordination between Correct the Record and Hillary for America, but makes a brief allegation of coordination between Donald J. Trump for President, Inc., Make America Number 1, Rebuilding America Now, Stephen K. Bannon, and Kellyanne Conway. See MUR 7193 Compl. ¶¶ 14-17 (Nov. 7, 2016). In order to consider the totality of the information presented in both matters together, we administratively severed the Trump-related coordination issue and respondents from the complaint in MUR 7193, and joined them with MUR 7147. The First General Counsel's Report concerning the Clinton-related aspects of MUR 7193 was circulated to the Commission on October 18, 2018. See First General Counsel's Report, MURs 6490, 7097, 7146, 7160, and 7193 (Correct the Record *et al.*) at 4 n.4 (explaining administrative severance of Trump-related allegations and respondents from MUR 7193 and joining into MUR 7147).

² Kellyanne Conway was not initially named as a respondent in MUR 7147, though she became a respondent through administrative severance of certain respondents from MUR 7193 to join them with MUR 7147.

1 11 C.F.R. § 100.74
 2 11 C.F.R. § 109.20
 3 11 C.F.R. § 109.21
 4 11 C.F.R. § 109.23
 5

6 **INTERNAL REPORTS**

7 **CHECKED:** Disclosure Reports
 8

9 **AGENCIES CHECKED:** None
 10

11 **I. INTRODUCTION**
 12

13 The Complaint in MUR 7147 alleges that, during the 2016 general election, Rebuilding
 14 America Now (“RAN”) and Make America Number 1 (“MAN1”), independent expenditure-only
 15 political committees (“IEOPCs”) supporting Presidential candidate Donald Trump, made
 16 prohibited contributions to Donald J. Trump for President, Inc., and Bradley T. Crate in his
 17 official capacity as treasurer (the “Trump campaign”) and that the committees failed to report
 18 these contributions.³ The Complaint further alleges that MAN1 was so “inextricably
 19 intertwined” with the Trump campaign that many of MAN1’s expenditures should be deemed to
 20 be coordinated with the Trump campaign and, therefore, prohibited in-kind contributions.⁴ More
 21 specifically, the Complaint alleges that (1) the Trump campaign coordinated communications
 22 with RAN and MAN1 resulting in prohibited contributions, (2) RAN republished the Trump
 23 campaign logo in an advertisement that was disseminated on television and online, and (3)
 24 MAN1 paid for the personal services of two senior Trump campaign staffers for services
 25 rendered to the Trump campaign.

³ See MUR 7147 Compl. (Oct. 6, 2016); MUR 7147 First Supp. Compl. (Dec. 2, 2016); MUR 7147 Second Supp. Compl. (Apr. 12, 2017). The Trump-related aspects of the Complaint in MUR 7193 overlap with the first two of the MUR 7147 Complaint’s allegations. See MUR 7193 Compl. ¶¶ 14-17 (Nov. 7, 2016). Unless otherwise designated, all references and citations to the “Complaint” in this report refer to the Complaint in MUR 7147.

⁴ MUR 7147 Compl. ¶ 6; MUR 7147 First Supp. Compl. at 1; MUR 7147 Second Supp. Compl. at 1.

1 For the reasons that follow, we recommend that the Commission: (1) find reason to
2 believe that RAN violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making and failing to
3 report an in-kind contribution in the form of republishing the Trump campaign logo in a digital
4 and television advertisement; (2) take no action at this time as to RAN's alleged violation of 52
5 U.S.C. §§ 30116(a), 30118(a), pending investigation of whether it coordinated the republished
6 communications with the Trump campaign; (3) take no action at this time as to the Trump
7 campaign's alleged violation of 52 U.S.C. §§ 30116(f), 30118(a), 30104(b), pending
8 investigation of whether it coordinated republished communications with RAN or knowingly
9 accepted and failed to report in-kind contributions from RAN; (4) dismiss the allegation that
10 MAN1 violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making and failing to report in-
11 kind contributions in the form of payments to vendors to the Trump campaign that were actually
12 compensation for services rendered by senior staff members Kellyanne Conway and Stephen K.
13 Bannon; (5) dismiss the allegation that Kellyanne Conway and Stephen K. Bannon violated 52
14 U.S.C. § 30116(a) by making excessive contributions in the form of services rendered to the
15 Trump campaign; (6) dismiss the allegation that MAN1 violated 52 U.S.C. §§ 30116(a) 30118(a)
16 by coordinating communications or expenditures with the Trump campaign; (7) dismiss the
17 allegation that the Trump campaign violated 52 U.S.C. §§ 30116(f) 30118(a) and by
18 coordinating communications or expenditures with MAN1; and (8) authorize the use of
19 compulsory process, including the issuance of appropriate interrogatories, document subpoenas,
20 and deposition subpoenas, as necessary.

1 **II. FACTS**

2 On June 22, 2015, Donald Trump filed a Statement of Candidacy with the Commission
3 for the 2016 presidential election, designating Donald J. Trump for President, Inc., as his
4 principal campaign committee.⁵

5 **A. RAN**

6 RAN registered with the Commission on June 2, 2016 as an IEOPC.⁶ The Complaint
7 alleges that RAN coordinated communications with the Trump campaign via the use of former
8 Trump campaign employees and that RAN republished Trump campaign materials in RAN
9 advertisements.

10 1. RAN's Communications after Employing Former Trump Campaign Staff

11 The Complaint alleges that in June 2016, RAN coordinated with the Trump campaign to
12 spend \$1,431,503 on communications opposing Hillary Clinton.⁷ Specifically, the Complaint
13 alleges that Laurance Gay and Ken McKay, RAN's "Managing Director" and "Political
14 Director," respectively,⁸ were former employees of the Trump campaign who must have
15 provided information material to the creation, production, or distribution of RAN's
16 communications by virtue of their prior employment in the Trump campaign and positions at
17 RAN.⁹

⁵ Donald J. Trump Statement of Candidacy (June 22, 2015).

⁶ Rebuilding America Now Statement of Organization (June 2, 2016).

⁷ MUR 7147 Compl. ¶ 13; *see also* MUR 7193 Compl. at 4; RAN 2016 Amended July Quarterly Report (Oct. 21, 2016).

⁸ MUR 7147 Compl. ¶ 15; *see also id.* ¶ 11 (citing news report that Trump associate Tom Barrack called McKay and Gay the "principal operatives" of RAN).

⁹ *Id.* ¶¶ 112-114; MUR 7193 Compl. ¶ 4.

1 In April of 2016, two months prior to working with RAN, Gay and McKay joined the
2 Trump campaign as political operatives assisting Trump's convention delegate operations.¹⁰
3 Both Gay and McKay asserted in press reports after joining RAN, and in sworn affidavits
4 submitted with RAN's response, that they were unpaid volunteers for the Trump campaign.¹¹
5 The Complaint asserts that some "unpaid" Trump campaign staffers were not "volunteers" but,
6 rather, were simply not paid by the Trump campaign in a timely manner or were paid by other
7 sources.¹² The Complaint does not explicitly assert that either Gay or McKay was paid for
8 services rendered to the Trump campaign, but does note that the Trump campaign's press release
9 announcing McKay was "hire[d]" for the "job" of "Senior Advisor," differed from its press
10 release announcing Paul Manafort had joined the campaign as a "volunteer."¹³

¹⁰ MUR 7147 Compl. ¶¶ 9-11, 22 (citing Trump campaign press release and press reports describing McKay as "senior advisor" for Trump campaign delegate operations and Gay as having been installed in a "key spot" by Paul Manafort, who was then serving as Convention Manager for the Trump campaign).

¹¹ *Id.* ¶¶ 22-23; RAN Resp., Attach. 1 ¶ 2 Laurance W. Gay Aff. (Nov. 28, 2016) ("Gay Aff.") (stating, "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."); *id.*, Attach. 2 at ¶ 2 Kenneth K. McKay IV Aff. (Nov. 28, 2016) ("McKay Aff.") (stating, "I served as 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."); *see also Pro-Trump Super PAC Raises Millions at the Cleveland Convention*, ASSOCIATED PRESS, (July 22, 2016), <http://fortune.com/2016/07/22/trump-super-pacs-cleveland-gop-convention/> ("AP Article") (cited at MUR 7147 Compl. ¶ 21 n.24).

¹² *See* MUR 7147 Compl. ¶ 23 (quoting Michelle Conlin and Grant Smith, *One Secret of Trump's Low-Cost Campaign: Free Labor*, REUTERS, (Sept. 2, 2016), <http://www.reuters.com/article/us-usa-election-trump-staff-idUSKCN1181CV>, for proposition that at least one other "volunteer" – Michael Caputo – was not actually volunteering, but simply had not been paid and noting that RAN paid McKay and Gay immediately after they left Trump campaign); *id.* ¶ 25 (quoting Trump campaign "non-disparagement, non-disclosure and non-compete agreement" applicable to employees, contractors, and volunteers, which notes that agreement survives any employment relationship with Trump campaign or other persons that Trump campaign "has engaged").

¹³ *See id.* ¶ 112 n.128.

1 McKay asserts that he left the Trump campaign on or about May 21, 2016, and Gay
2 asserts that he left in “early June” 2016.¹⁴ RAN reported, in its first quarterly report, its first
3 payments to McKay and Gay: \$35,000 each on June 8, 2016, and \$25,000 each on June 15,
4 2016, for “political consulting services rendered.”¹⁵ RAN also reported disseminating
5 communications opposing Trump’s election opponent on June 8, 2016, just 6 days after RAN
6 registered with the Commission, and the same day it paid Trump’s former staffers, one of whom
7 admits to having left the Trump campaign that week.¹⁶

8 RAN denies that it coordinated communications with the Trump campaign via Trump
9 campaign “former employees,” arguing that Gay and McKay were strictly volunteers for the
10 campaign and did not qualify as former employees; RAN further denies coordination by other
11 means, denying that Gay or McKay were agents or common vendors, as set forth in the
12 coordination regulations.¹⁷ RAN also submits sworn affidavits from Gay and McKay asserting
13 that all public communications produced by RAN were based on its own research and
14 information. RAN further denies that it created any materials or communications with the

¹⁴ Gay Aff. ¶ 2; McKay Aff. ¶ 2.

¹⁵ RAN 2016 Amended July Quarterly Report at 9, 11 (Oct. 15, 2016). RAN continued to pay Gay and McKay \$35,000 each monthly, thereafter, for “political strategy consulting.” *See* RAN Disbursements to Gay, Jan. 1, 2015 to Dec. 31, 2016, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00618876&recipient_name=Gay&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016; RAN Disbursements to McKay, Jan. 1, 2015 to Dec. 31, 2016, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&committee_id=C00618876&recipient_name=mckay&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

¹⁶ RAN 2016 Amended July Quarterly Report at 21 (Oct. 15, 2016).

¹⁷ MUR 7147 RAN Resp. at 3-5; MUR 7193 RAN Resp. at 1 (Nov. 28, 2016) (incorporating by reference factual responses, legal arguments, and authorities submitted in response to MUR 7147).

1 material involvement of any member of the Trump campaign, or used non-public, proprietary
2 information from the campaign.¹⁸

3 2. RAN's Use of the Trump Campaign's Logo

4 On July 19, 2016, RAN began airing a 60 second digital and television ad supporting
5 Trump entitled "America Soaring" in which the Trump campaign logo fills nearly the entire
6 screen for the final eight seconds of the ad.¹⁹ RAN reported disbursements of \$30,000 and
7 \$44,000 for digital advertising disseminated between July 19 and July 25, 2016, and \$1,666,666
8 for "national cable and broadcast advertising" disseminated on July 25, 2016, in support of
9 Trump.²⁰

10 The Complaint alleges that RAN republished campaign material when it displayed the
11 Trump campaign logo in the "America Soaring" ad in online and television advertisements and
12 on the homepage of RAN's own website.²¹ The Complaint contends that RAN spent "at least"
13 \$1,864,586 on the ad, and claims the logo was displayed for 13% of the ad's time.²² Therefore,
14 the Complaint calculates that 13% of the expenditures on the ad dissemination — approximately

¹⁸ Gay Aff. ¶¶ 6-9; McKay Aff. ¶¶ 9-12; MUR 7193 RAN Resp. at 1.

¹⁹ MUR 7147 Compl. ¶¶ 16-17; *see also Rebuilding America Now: America Soaring*, YOUTUBE (Aug. 1, 2016), <https://www.youtube.com/watch?v=NMNZTcGSHLg>.

²⁰ RAN 24/48 Hour Report of Independent Expenditures at 1 (July 21, 2016); Amended RAN 24/48 Hour Report of Independent Expenditures at 3 (Aug. 3, 2016). Although the Complaint cites a July 18 press report about RAN's upcoming media buy for the "America Soaring" ad and these particular RAN 24/48 Hour Reports of Independent Expenditures, it is unclear whether these disbursements were all for the "America Soaring" ad or whether there were additional disbursements for these ads on other RAN 24/48 Hour Reports. *See* MUR 7147 Compl. ¶ 16. In total, RAN reported spending \$19,806,796.85 on independent expenditures for the 2016 general presidential election. *See* RAN 24/48 Hour Report of Independent Expenditures at 2 (Nov. 6, 2016).

²¹ MUR 7147 Compl. ¶¶ 118-119.

²² *Id.*

1 \$242,396 — in addition to production costs and the costs of placing the video on RAN's website,
2 should be deemed a prohibited in-kind contribution to the Trump campaign.²³

3 RAN argues against a republication finding because the display of the Trump campaign
4 logo, which RAN asserts was obtained from a publicly available source, was "brief" and used
5 only as "background footage" to RAN's own message.²⁴ RAN also contends that "simple"
6 republication of the logo is not a contribution because RAN did not coordinate or consult with
7 the Trump campaign in making the ad.²⁵ The Trump campaign responds that it had no
8 knowledge of RAN's use of its logo and, therefore, cannot be deemed to have accepted an in-
9 kind contribution in the form of republished campaign materials.²⁶

10 B. MAN1

11 MAN1 initially registered with the Commission on April 6, 2015 as an IEOPC named
12 "Keep the Promise 1" ("KTP1"); on June 22, 2016, it filed an amended Statement of
13 Organization with the "Make America Number 1" name.²⁷

²³ *Id.*

²⁴ MUR 7147 RAN Resp. at 9-10; MUR 7193 RAN Resp. at 1.

²⁵ MUR 7147 RAN Resp. at 10-11; MUR 7193 RAN Resp. at 1.

²⁶ MURs 7147 and 7193 Consolidated Trump Response ("Trump Resp.") at 9-11 (Mar. 1, 2017).

²⁷ MAN1 Statement of Organization (Apr. 6, 2015); MAN1 Amended Statement of Organization (June 22, 2016); *see also* MURs 7147 and 7193 Consolidated MAN1 Response ("MAN1 Resp.") at 1-2 (Feb. 22, 2017) (noting that KTP1 initially supported the candidacy of Ted Cruz for president but "reformed under its current name to support the Trump candidacy" after Cruz's primary defeat).

1 The Complaint alleges that MAN1 was so “inextricably intertwined with the Trump
2 Campaign” that many of MAN1’s expenditures were coordinated with the campaign such that
3 they should be deemed in-kind contributions to the campaign.²⁸

4 The Complaint alleges that the Mercer family, specifically Robert Mercer, the founder
5 and primary contributor to MAN1, and his daughter, Rebekah Mercer, who was chair of MAN1,
6 were heavily involved in the running the IEOPC²⁹ while also “meeting and conferring about
7 strategy” with the Trump campaign “on a regular basis.”³⁰ During the 2016 election cycle,
8 Robert Mercer made \$15.5 million of the \$20.7 million in contributions that MAN1 reported
9 receiving.³¹ The Complaint cites multiple press reports detailing the influence of the Mercers
10 and MAN1 on the Trump campaign and the overlapping relationships between the Mercers, their
11 associates and companies, and the Trump campaign.³²

²⁸ MUR 7147 Second Supp. Compl. at 1.

²⁹ MUR 7147 Compl. ¶¶ 27, 29 (quoting press report that Mercers “maintained close control over [KTP1 and MAN1’s] purse strings”); *see also* Zachary Mider, *Mega-Donor Mercer’s Daughter Takes Charge of Pro-Trump Group*, BLOOMBERG, (Sept. 7, 2016), <https://www.bloomberg.com/news/articles/2016-09-07/mega-donor-mercero-s-daughter-takes-charge-of-pro-trump-group> (stating that Rebekah Mercer “took charge of the day-to-day operations of the group” according to a spokesman for MAN1).

³⁰ MUR 7147 Compl. ¶ 73; *see also* Matea Gold, *Anti-Clinton Super PAC Kicks Off Ad Blitz With Relunched ‘Clinton Fatigue’ Spot*, WASH.POST, (Sept. 13, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/09/13/anti-clinton-super-pac-kicks-off-ad-blitz-with-new-clinton-fatigue-spot/?utm_term=.30cf776fa126 (cited at MUR 7147 Compl. ¶ 36 n.42).

³¹ MAN1 Receipts, Jan.1, 2015 – Dec. 31, 2016, https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00575373&contributor_name=mercero&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016. Mercer contributed almost 75% of this money (\$11 million) as seed money for KTP1.

³² MUR 7147 Compl. ¶¶ 27-37 (detailing, among other things, a May 2016 meeting between Rebekah Mercer, Conway, Ivanka Trump, and Jared Kushner after Cruz dropped out of the race and before KTP1 relaunched as MAN1; Mercer ownership of Cambridge Analytica; Mercer funding of various Bannon projects, including Breitbart News Network, LLC; and connections between the committees, Mercers, and Cambridge Analytica).

1 According to media reports, the Mercers met with Trump in early August 2016, and
2 recommended that he fire Manafort and bring in Bannon and Conway for Trump campaign
3 leadership positions (campaign chair and chief executive, respectively); Both Conway and
4 Bannon were reportedly longstanding allies of the Mercers, with Conway described as a
5 “sounding board” for Rebekah Mercer and Bannon serving on the board of Cambridge
6 Analytica, LLC alongside Rebekah Mercer, and working on other projects funded by the
7 Mercers.³³ Soon thereafter, Trump fired Manafort, hired Bannon as CEO, and promoted
8 Conway to Campaign Manager.³⁴ According to press reports, Trump also hired David Bossie,
9 who briefly succeeded Conway at MAN1, as Deputy Campaign Manager in September 2016,
10 after Rebekah Mercer “privately urged Trump to retool his campaign leadership.”³⁵ The
11 Complaint also cites news accounts suggesting that the Mercers urged the Trump campaign to
12 hire Cambridge Analytica to provide services to the campaign while Bannon sat on the
13 Cambridge Analytica Board of Directors and the Mercers and Bannon had ownership stakes in
14 Cambridge Analytica.³⁶ The Complaint contends that “[g]iven the Mercers have *de facto* control

³³ MUR 7147 Compl. ¶¶ 33, 35, 37, 73; MUR 7147 Second Supp. Compl. at 5-7; *see also* Rebecca Ballhaus, *Rebekah Mercer Takes Helm of Pro-Trump PAC, Extending Family's Influence in Campaign*, WALL ST. J. (Sept. 7, 2016), <https://blogs.wsj.com/washwire/2016/09/07/rebekah-mercero-takes-helm-of-pro-trump-pac-extending-family-influence-in-campaign> (cited at MUR 7147 Compl. ¶ 35 n.41); MAN1 Resp., Ex. 5, Stephen K. Bannon Affidavit (Feb. 13, 2017) (“Bannon Aff.”) ¶ 4.

³⁴ MUR 7147 Compl. ¶ 31.

³⁵ MUR 7147 Compl. ¶ 37; *see also* Matea Gold, *The Rise of GOP Mega Donor Rebekah Mercer*, WASH.POST, (Sept. 14, 2016), https://www.washingtonpost.com/politics/the-rise-gop-mega-donor-rebekah-mercero/2016/09/13/85ae3c32-79bf-11e6-beac-57-a4a412e93a_story.html (cited at MUR 7147 Compl. ¶ 37 n.43). Bossie was also reportedly a volunteer for the Trump campaign. Compl. ¶¶ 35, 73. Disclosure reports reveal one \$15,000 payment to Bossie on December 9, 2016 for “communications consulting.” Donald J. Trump for President, Inc., 2016 Second Amended Year End Disclosure Report at 24,212 (May 12, 2017), <http://docquery.fec.gov/pdf/207/201705129053689207/201705129053689207.pdf>.

³⁶ MUR 7147 Compl. ¶ 39; MAN1 Resp., Ex. 6, Julian Wheatland Aff. (Feb. 13, 2017) (“Wheatland Aff.”) ¶ 4. Prior to joining the Trump campaign, Bannon also served as Cambridge Analytica’s Vice President and Secretary. MUR 7147 Second Supp. Compl. at 6 (citing Bannon Ethics Disclosure Report (Mar. 30, 2016), attached

1 over the campaign and *de jure* control over the political committee, it is clear that Make America
2 Number 1's expenditures are not independent" and characterizes the Trump campaign and
3 MAN1 as "essentially joint ventures."³⁷

4 In addition to the general coordination allegations, the Complaint highlights two specific
5 categories of coordinated expenditures: compensation paid by MAN1 to Kellyanne Conway and
6 Stephen Bannon, through companies in which they had ownership interests, for personal services
7 rendered to the Trump campaign; and compensation paid by MAN1 to Conway and Bannon
8 through payments made to Conway and Bannon's companies, as common vendors to both
9 MAN1 and the Trump campaign, for coordinated communications.

10 1. Kellyanne Conway

11 Conway joined the Trump campaign as an independent contractor on July 1, 2016,
12 serving first as Senior Advisor and Pollster and then as Campaign Manager.³⁸ Prior to joining
13 the Trump campaign, Conway served as president of MAN1 in its former iteration as KTP1.³⁹
14 Conway was also the President and founder of The Polling Company, Inc./Women Trend
15 ("Polling Company"), a "primary research and consulting firm."⁴⁰

as an exhibit and available at <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>, and Jane Mayer, *The Reclusive Hedge-Fund Tycoon Behind the Trump Presidency*, THE NEW YORKER, at 36-37 (Mar. 27, 2016), <http://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency>).

³⁷ MUR 7147 Compl. ¶ 77.

³⁸ MAN1 Resp., Ex. 1, Kellyanne Conway Affidavit (Feb. 14, 2017) ("Conway Aff.") ¶ 1.

³⁹ *Id.* ¶ 2. MUR 7147 Compl. ¶ 27 (citing media report, published the day before MAN1 filed its amended Statement of Organization, that Kellyanne Conway was "president of Keep the Promise PAC").

⁴⁰ Conway Aff. ¶¶ 2-3.

1 Throughout the primary election season, Polling Company provided substantial services
2 to KTP1, including polling, assisting with media strategy and identifying potential donors.⁴¹ In
3 early June 2016, Conway states that she was contacted by the Trump campaign to assist the
4 campaign with its media strategy. She avers that “from that point forward,” she stopped
5 performing work for or receiving information regarding KTP1’s plans or strategies.⁴² Though
6 Conway invoiced the Trump campaign for her “consulting services” through Polling Company
7 and maintained her ownership interest in Polling Company, she avers that she was the only
8 individual from Polling Company involved in her “consulting” work for the Trump campaign
9 and that she “ceased involvement with” Polling Company operations when she “began working
10 for the campaign.”⁴³

11 From July 10, 2016, through the general election, the Trump campaign retained Polling
12 Company to perform polling.⁴⁴ MAN1 also retained Polling Company for polling work. In
13 August 2016, two months after Conway joined the Trump campaign, MAN1 paid Polling
14 Company approximately \$247,000 and the Trump campaign paid Polling Company \$111,000 for
15 polling.⁴⁵ The Complaint cites press reports in which Conway is quoted saying that this payment

⁴¹ Conway Aff. ¶ 4.

⁴² *Id.* ¶ 5.

⁴³ *Id.* ¶¶ 6-7 (not specifying whether commencement of “working for” the campaign was at time she was retained as an independent contractor for “consulting services” in early June 2016 or at time she “join[ed]” campaign on July 1, 2016). Current Polling Company President and CEO, Brett Loyd, avers that Conway billed her political consulting services through Polling Company, but otherwise did not use Polling Company resources to provide any political consulting services to Trump’s campaign. MAN1 Resp., Ex. 2, Brett Loyd Aff. (Feb. 13, 2017) (“Loyd Aff.”) ¶¶ 11-12.

⁴⁴ Loyd Aff. ¶¶ 13-14.

⁴⁵ MUR 7147 Compl. ¶¶ 38, 42; *see also* MAN1 Amended September Monthly Report at 12 (May 22, 2017).

1 was for work done by Polling Company for MAN1 in late June and early July, later correcting
2 that statement to assert the work was limited to June 2016.⁴⁶ According to Polling Company's
3 CEO Brett Loyd, the \$247,000 payment from MAN1 on August 23, 2016, was for services
4 Polling Company provided in late June through July 7, after which Polling Company asserts it
5 did no further work for MAN1.⁴⁷

6 The Complaint alleges that, in addition to MAN1 paying Conway, via Polling Company,
7 for services Conway rendered to the Trump campaign, MAN1 coordinated its communications
8 with the Trump campaign via Polling Company as a common vendor. Loyd asserts that the
9 Polling Company employees staffed on the MAN1 project worked only on their personal
10 computers, and therefore, their work was not accessible by Conway or Polling Company
11 employees staffed on the Trump campaign's project.⁴⁸ Conway asserts that there was a standard
12 firewall policy which precluded her and Polling Company from sharing or exchanging
13 information about the campaign, and states, "[a]t no point did I provide any campaign
14 information to Polling Company staff, except for the Polling Company staff subsequently
15 retained to provide polling for the campaign."⁴⁹ The Complaint, citing press reports, notes that
16 Polling Company listed only five staff members, other than Conway, on its website;⁵⁰ Loyd's

⁴⁶ MUR 7147 Compl. ¶ 42 (quoting press report that Conway indicated that she did not know details of the Polling Company's work for MAN1, but also indicated that it was MAN1's then-president "Bossie's decision to hire" Polling Company); *see also id.* ¶ 27 (citing press report that Conway "recruited Bossie for his role" as her replacement at MAN1).

⁴⁷ Loyd Aff. ¶ 9.

⁴⁸ *Id.* ¶ 10.

⁴⁹ Conway Aff. ¶ 7.

⁵⁰ MUR 7147 Compl. ¶ 42.

1 affidavit names three Polling Company staff members who worked on MAN1 projects but does
2 not name the staff, other than Loyd himself, who worked for Trump campaign projects.⁵¹
3 Conway further contends that she did not provide any “non-public proprietary information from
4 the campaign to [MAN1] or the staff of Polling Company working on [MAN1] matters.”⁵²

5 2. Stephen Bannon

6 Bannon joined the Trump campaign in August 2016 as CEO; Bannon asserts that he
7 worked for the campaign as a volunteer.⁵³ The only reported payment from the Trump campaign
8 to Bannon was \$7,576 for “travel reimbursement” paid to his wholly owned company, Bannon
9 Strategic Advisors.⁵⁴ Prior to joining the Trump campaign, Bannon was CEO of the Breitbart
10 News Network and held ownership interests in Glittering Steel, LLC (“Glittering Steel”), a
11 television and film production company whose business included producing campaign
12 advertisements, and Cambridge Analytica, a data analytics company.⁵⁵

13 MAN1 retained Glittering Steel, paying it a total of \$724,949 for the 2016 election cycle,
14 \$252,500 of which came after Bannon joined the Trump campaign on August 17, 2016.⁵⁶ The
15 Trump campaign has not disclosed any payments directly to Glittering Steel, and Glittering Steel

⁵¹ Loyd Aff. ¶¶ 10, 13-14.

⁵² *Id.* ¶ 9. The Response does not include a copy of Polling Company’s firewall policy.

⁵³ MUR 7147 Compl. ¶ 31; Bannon Aff. ¶ 7.

⁵⁴ Donald J. Trump for President, Inc., First Amended 2016 Post General Disclosure Report at 46,842 (Feb. 14, 2017), <http://docquery.fec.gov/pdf/107/201702149049390107/201702149049390107.pdf>.

⁵⁵ Bannon Aff. ¶ 1.

⁵⁶ *See* MAN1, Summary of Independent Expenditures, 2016 Election Cycle, Glittering Steel Entries.

1 asserts that it was never provided “any non-public, information regarding messaging by the
2 Trump campaign.”⁵⁷

3 Cambridge Analytica provided data analytic services to both the Trump campaign and
4 MAN1 during the general election.⁵⁸ After Bannon joined the Trump campaign, the Trump
5 campaign reported payments to Cambridge Analytica in the amounts of \$5 million in September
6 2016 and \$250,000 in October 2016⁵⁹ and MAN1 reported payments totaling \$4,633,876 to
7 Cambridge Analytica.⁶⁰

8 The Complaint alleges that, in addition to MAN1 paying Bannon, via Glittering Steel and
9 Cambridge Analytica, for services Bannon rendered to the Trump campaign, MAN1 coordinated
10 its communications with the Trump campaign via Cambridge Analytica as a common vendor.
11 Cambridge Analytica contends that it instituted appropriate firewall procedures per Commission
12 regulations and attaches a “sample” of the “firewall [it] established.”⁶¹ Cambridge Analytica
13 asserts that every client was informed of the firewall policy prior to engagement and explains the
14 steps it took to implement the firewall with respect to its work for MAN1 and the Trump

⁵⁷ MAN1 Resp., Ex. 4, Daniel Fleurette Aff. (Feb. 13, 2017) ¶ 14 (setting out averments of Glittering Steel’s co-founder/Chief Operating Officer).

⁵⁸ Wheatland Aff. ¶¶ 7-8. Cambridge Analytica also provided data analytic services to KTP1, MAN1’s predecessor, and Ted Cruz’s campaign. MUR 7147 Second Supp. Compl. at 6 (citing Vicky Ward, *The Blow-It-All-Up Billionaires*, HUFFINGTON POST, (Mar. 17, 2017), <http://highline.huffingtonpost.com/articles/en/merciers/>). Hiring Cambridge Analytica was allegedly an unspoken condition of the Mercers’ and KTP1’s support for Trump. *Id.*

⁵⁹ MUR 7147 First Supp. Compl. at 4, n. 17-18; Donald J. Trump for President, Inc. Amended October Monthly Report at 16,043 (May 12, 2017); Donald J. Trump for President, Inc. 2016 Second Amended Pre General Report at 12,065 (May 12, 2017).

⁶⁰ MUR 7147 First Supp. Compl. ¶ 4 n.14-18 and disclosure reports cited therein.

⁶¹ Wheatland Aff. ¶ 6 and attachments (attaching, as exhibits to affidavit, memo dated July 1, 2016, titled Cambridge Analytica Anti-Coordination Firewall Policy (“Cambridge Analytica Firewall Policy”), and spreadsheet that purports to list staff members who have signed the policy).

1 campaign, which included doing work for the two committees from offices in different states.⁶²
2 Bannon avers that he “was made aware of the existence of an ethics firewall,” but does not
3 appear among the names of Cambridge staff and board members who signed the policy;
4 Cambridge Analytica’s Chief Operating Officer avers that Bannon was “outside of the ethics
5 firewalls.”⁶³ Cambridge Analytica and Glittering Steel paid Bannon a combined total of
6 \$493,836 in “consulting and director fees” through Bannon Strategic Advisors in 2016.⁶⁴

7 **III. LEGAL ANALYSIS**

8 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
9 deposit of money or anything of value made by any person for the purpose of influencing any
10 election for Federal office.”⁶⁵ “Anything of value” includes in-kind contributions.⁶⁶ When a
11 person makes an expenditure in cooperation, consultation, or in concert with, or at the request or
12 suggest of, a candidate or the candidate’s authorized committee or their agents, it is treated as an
13 in-kind contribution.⁶⁷ In-kind contributions also include “any goods or services [provided]
14 without charge or at a charge that is less than the usual and normal charge for such goods or
15 services.”⁶⁸ However, the value of services provided without compensation by any individual

⁶² *Id.* ¶¶ 6, 11.

⁶³ *Id.* ¶ 3 and spreadsheet attachment (including Rebekah Mercer as signatory to firewall policy, but not Bannon); Bannon Aff. ¶ 6.

⁶⁴ Bannon Ethics Disclosure Report, <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>.

⁶⁵ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

⁶⁶ 11 C.F.R. § 100.52(d)(1).

⁶⁷ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also* *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁶⁸ 11 C.F.R. § 100.52(d)(1). Usual and normal charge for “goods” means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; usual and normal

1 who volunteers on behalf of a candidate or political committee is not a contribution so long as
 2 the individual is not compensated by anyone for those services.⁶⁹

3 Under the Commission's regulations, a communication is "coordinated" with a candidate,
 4 an authorized committee, a political party committee, or agent thereof, and, thus treated as an in-
 5 kind contribution, if the communication (1) is paid for, partly or entirely, by a person other than
 6 the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at
 7 least one of the "content standards" at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the
 8 "conduct standards" at 11 C.F.R. § 109.21(d).⁷⁰ A communication must satisfy all three prongs
 9 to be a "coordinated communication" under the Commission's regulations.

10 Commission regulations further treat as a "contribution" the "financing of the
 11 dissemination, distribution, or republication, in whole or in part, of any . . . campaign materials
 12 prepared by the candidate [or] the candidate's authorized committee;" the regulations provide

charge for "services," other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

⁶⁹ 11 C.F.R. § 100.74. Individuals may volunteer for a campaign while employed by another entity; Commission regulations provide that no contribution results where (a) an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period provided that the taken or released time is made up or completed by the employee within a reasonable time; (b) an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his or her own to use as he or she sees fit; and (c) the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. 11 C.F.R. § 100.54.

⁷⁰ 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications). The "content standard" requirement is satisfied if the communication at issue constitutes: (1) an "electioneering communication;" (2) a "public communication" that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see also* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

1 that payments for such communications “shall be considered a contribution for the purposes of
2 contribution limitations and reporting responsibilities of the person making the expenditure.”⁷¹

3 Although the person republishing campaign materials is deemed to make a contribution, the
4 candidate or committee that receives the benefit of the republication is only deemed to have
5 accepted or received that contribution if the dissemination, distribution, or republication of
6 campaign materials is a coordinated communication under 11 C.F.R. § 109.21.⁷²

7 Any person who is otherwise prohibited from making contributions to candidates under
8 the Act or Commission regulations is prohibited from making an in-kind contribution.⁷³ An
9 IEOPC “may not make contributions to candidates or political party committees, including in-
10 kind contributions such as coordinated communications.”⁷⁴

11 **A. RAN**

12 1. The Commission Should Take No Action at this Time with Respect to RAN's 13 Alleged Coordinated Communications

14 The Complaint alleges that the \$1,431,503 RAN spent on communications in the month
15 of June 2016 are contributions to the Trump campaign in the form of coordinated
16 communications and asserts that there may be additional contributions in the form of subsequent

⁷¹ 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii) (providing that “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 authorized agents shall be considered an expenditure.”).

⁷² 11 C.F.R. § 109.23(a).

⁷³ *See* 52 U.S.C. §§ 30116(f), 30118(a); *see also* 11 C.F.R. § 109.22 (noting that any person prohibited from making contributions is prohibited from paying for coordinated communication).

⁷⁴ AO 2017-10 (Citizens Against Plutocracy) at 2 (quoting AO 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 coordinated communications as well. The June 2016 communications include the “America
2 Soaring” ad, which prominently displays the Trump campaign logo, the Trump campaign slogan
3 “Make America Great Again,” and the words “#VoteTrump.”⁷⁵ Because RAN paid for the
4 distribution of this advertisement online and on television, it appears to satisfy the payment
5 prong of the coordination test; because the advertisement is a public communication that
6 expressly advocated the election of Trump, it appears to satisfy the content prong of the
7 coordination test.⁷⁶

8 One of the standards by which the conduct prong for coordination may be met is the
9 “former employee” standard,⁷⁷ which the Complaint urges the Commission to apply to RAN’s
10 communications. The “former employee or independent contractor” conduct standard has two
11 elements that must be satisfied. First, the communication must be paid for by a person, or
12 employer of a person, who was an employee or independent contractor of the candidate who is
13 clearly identified in the communication, or the candidate’s opponent, during the previous 120
14 days.⁷⁸ Second, the former employee or independent contractor must convey to the person
15 paying for the communication (A) information about the campaign’s plans, projects, activities,
16 which was material to the creation, production or distribution of the communication, or (B)
17 information used by the former employee or independent contractor in providing services to the

⁷⁵ MUR 7147 Compl. ¶ 17.

⁷⁶ See 11 C.F.R. § 109.21(a)(1), (c)(3) (payment prong and express advocacy content standard, respectively); *see also* 11 C.F.R. § 100.22 (defining “expressly advocating” to include communications using phrases such as “vote” or campaign slogans); 11 C.F.R. § 109.21(c)(5) (presenting functional equivalent of express advocacy content standard).

⁷⁷ 11 C.F.R. § 109.21(d)(5).

⁷⁸ 11 C.F.R. § 109.21(d)(5)(i).

1 candidate that was material to the creation, production or distribution of the communication.⁷⁹
2 The Complaint alleges that “America Soaring” and other RAN ads satisfy the conduct prong of
3 the coordination test because Gay and McKay qualify as “former employees” for the purposes of
4 the “former employee or independent contractor” conduct standard at 11 C.F.R. § 109.21(d)(5).

5 While it is uncontested that Gay and McKay worked for the Trump campaign less than
6 120 days before they began working for RAN, RAN contests that Gay and McKay were “former
7 employees” of the Trump campaign.⁸⁰ RAN asserts that Gay and McKay were volunteers for
8 the Trump campaign and contends that volunteers do not fall within the former employee
9 conduct standard.⁸¹ While Commission regulations do not specifically define the term
10 “employee” in section 109.21, the Commission has explained, when adopting the former
11 employee regulation, that the term “former employee” does not apply to individuals who are
12 “volunteers” or unpaid individuals working for a campaign.⁸² The Commission noted that even
13 though some volunteers may operate as highly placed consultants privy to information about the
14 plans, projects, activities, or needs of the candidate, the Commission was excluding volunteers
15 from the former employee conduct standard because Congress’s use of the term “employee”
16 indicated its intent to limit the term to those individuals employed by the campaign for pay.⁸³

⁷⁹ 11 C.F.R. § 109.21(d)(5)(ii) (specifying that this aspect of the conduct standard is not satisfied if the information was obtained from a publicly available source).

⁸⁰ MUR 7147 RAN Resp. at 3-5.

⁸¹ *Id.*

⁸² *See* Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 439 (Jan. 3, 2003) (“2003 Coordination E&J”); *see also id.* at 438 (noting that both employees and independent contractors receive payment for services provided).

⁸³ The Commission has also noted that the exclusion of volunteers from the definition of “former employee” does not mean that the conduct of volunteers might not bring them within the purview of a different conduct

1 The Complaint implies that the use of the words “hire” and “job” in announcing McKay’s
2 engagement provide a sufficient basis to infer that Gay and McKay were unpaid campaign
3 employees, rather than volunteers, but does not provide sufficient information to support the
4 conclusion that either Gay or McKay was, in fact, a Trump campaign employee.⁸⁴ Given the
5 sworn affidavits from McKay and Gay, who both attest to their status as volunteers for the
6 Trump campaign,⁸⁵ the available information does not support a conclusion that the former
7 employee conduct standard would apply to RAN’s communications.

8 Moreover, the available information also does not appear to support that an inference that
9 Gay or McKay acted as agents of the Trump campaign.⁸⁶ The Complaint does not allege that
10 Gay or McKay had any express or implied authority to engage in the enumerated
11 communication-related activities that would qualify them as agents acting on the Trump
12 campaign’s behalf for the purposes of the coordinated communication regulations; both the
13 Complaint and the public record, which focus on McKay and Gay’s delegate and convention
14 work for the Trump campaign, do not provide a factual basis to make a finding regarding their
15 authority to make, authorize, or otherwise be involved in communications for the Trump

standard (*e.g.*, paying for a communication at the behest of a candidate, 11 C.F.R. § 109.21(d), or acting as an agent of the campaign, 11 C.F.R. § 109.3). 2003 Coordination E&J, 68 Fed. Reg. at 439.

⁸⁴ See MUR 7147 Compl. ¶¶ 23, 112 n. 128.

⁸⁵ McKay Aff. ¶¶ 1-2; Gay Aff. ¶¶ 1-2.

⁸⁶ The term “agent” is defined, for purposes of the coordination regulations, to be “any person who has actual authority, either express or implied,” to engage in specific activities on behalf of a candidate, including requesting, suggesting, or being materially involved in decisions concerning the creation, production or distribution of a communication, making or authorizing a communication that meets the content standards of 11 C.F.R. § 109.21(c); or providing material or information to assist another person in the creation, production or distribution of any communication. 11 C.F.R. § 109.3(b).

1 campaign. Additionally, Gay and McKay submit sworn statements expressly denying that they
2 served as agents for the Trump campaign.⁸⁷

3 There is insufficient information in the record at this time to conclude that RAN met any
4 of the other conduct standards under § 109.21(d). Although the Complaint also alleges that
5 Gay's and McKay's prior work for the Trump campaign must have provided them with material
6 information to be used in the creation, production or distribution of public communications paid
7 for and disseminated by RAN, it fails to specifically identify any non-public information that
8 was material to the creation, production, or distribution of any particular public communications,
9 including the "America Soaring" ad.⁸⁸ Given the lack of factual support in the current record in
10 support of the conduct standards at section 109.21(d), we do not have sufficient information at
11 this time to conclude that RAN made coordinated communications under section 109.21.

12 Notwithstanding that the available information does not currently support a finding that
13 RAN coordinated its communications with the Trump campaign, we nonetheless recommend
14 taking no action at this time on this allegation. Because, as discussed below, we are
15 recommending an investigation regarding the circumstances surrounding RAN's republication of
16 Trump campaign materials, including whether RAN and the Trump campaign engaged in
17 conduct that would meet the conduct standard for coordination, we recommend that the
18 Commission take no action at this time as to whether Rebuilding America Now and Ryan Call in

⁸⁷ Gay Aff. ¶ 4; McKay Aff. ¶ 4; *but see* 2003 Coordination E&J, 68 Fed. Reg. at 425 (noting that, in the Commission's determination of agency, "whether or not an authorized person is acting on behalf of the principal is an objective, fact-based examination that is not dependent on that person's own characterization").

⁸⁸ Gay and McKay also submit affidavits averring that RAN used no non-public information from the Trump campaign when it created, produced, and distributed its communications. *See* Gay Aff. ¶¶ 6-10; McKay Aff. ¶¶ 9-13.

1 his official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a) by coordinating its
2 communications with the Trump campaign.

3 2. There is Reason to Believe RAN Republished Trump Campaign Materials

4 The Complaint alleges that RAN's "America Soaring" ad republishes Trump campaign
5 materials (the Trump campaign logo) and, therefore, should be deemed a prohibited in-kind
6 contribution.⁸⁹ RAN appears to admit that it used the Trump campaign logo, but contends that
7 the display of the Trump campaign logo as "background footage" does not constitute
8 republication and is permissible because the display was "brief" and the logo was "publicly
9 available."⁹⁰

10 The Commission's regulations for republication of campaign materials do not provide for
11 the time and space limitations on republication in the way that Respondents suggest. RAN's use
12 of the Trump logo in the "America Soaring" ad qualifies as republication of Trump campaign
13 materials under the plain language of the regulations.⁹¹ The logo prominently displayed on
14 screen for the final eight seconds of the ad appears to be a direct copy of the Trump campaign
15 logo.⁹² The logo in RAN's ad appears to use the same colors, in the same configuration as the
16 Trump campaign logo, and the words appear to be in the same typeface, with the same sizing as
17 the Trump logo.⁹³ And none of the exceptions, including the one at 11 C.F.R. § 109.23(b)(4) for

⁸⁹ See 52 U.S.C. § 30118(a); 11 C.F.R. §109.23.

⁹⁰ MUR 7147 RAN Resp. at 10; MUR 7193 RAN Resp. at 1. The Trump campaign argues that if the ad is deemed a republication, then it did not knowingly accept the in-kind contribution. Trump Resp. at 9.

⁹¹ See 11 C.F.R. § 109.23(a).

⁹³ The Complaint includes a link to a Trump campaign website store purportedly showing the relevant logo on a rally sign, *see* MUR 7147 Compl. ¶ 118, n. 134, but that link is no longer functional. An archived version of the Trump campaign's website store on the date the "America Soaring" ad began to be distributed shows the relevant logo on a shirt. *See* <https://web.archive.org/web/20160719080130/http://shop.donaldjtrump.com/> (snapshot of July 19, 2016).

1 a “brief quote of materials that demonstrate a candidate’s position as part of a person’s
2 expression of its owns views,” appears to apply.⁹⁴ The logo RAN republished is not a brief
3 quote of the candidate’s material demonstrating his position on and issue, but, as a logo, a
4 symbol created by the Trump campaign to identify itself. Accordingly, we recommend that the
5 Commission find reason to believe that Rebuilding America Now and Ryan Call in his official
6 capacity as treasurer, violated 52 U.S.C. §§ 30116(a), 30118(a) by making prohibited and
7 excessive contributions in the form of republished campaign materials.

8 The costs of republished campaign materials are deemed to be a contribution accepted by
9 the candidate if the candidate, authorized committee, or agents thereof satisfy one of the three
10 conduct standards at section 109.21(d)(1)-(3). As discussed above, at this time we do not have
11 sufficient information to conclude whether the republication of “America Soaring” was
12 coordinated with the Trump campaign under section 109.21, though investigation of the
13 circumstances surrounding RAN’s republication of Trump campaign materials may provide such
14 information. Accordingly, we recommend the Commission take no action at this time as to
15 whether Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as
16 treasurer violated 52 U.S.C. §§ 30116(f), 30118(a) by accepting prohibited and excessive
17 contributions in connection with RAN’s republication of Trump campaign materials.

⁹⁴ The Commission has also explained that it has not adopted a “publicly available” or “public domain” exception to the republication of campaign materials provisions at section 109.23 “because such an exception could ‘swallow the rule,’ given that virtually all campaign material that could be republished could be considered to be ‘in the public domain.’” 2003 Coordination E&J, 68 Fed. Reg. at 442.

1 3. There is Reason to Believe RAN Misreported Contributions

2 The Act requires political committees and authorized candidate committees to disclose to
3 the Commission all contributions and expenditures.⁹⁵ Committees must itemize all contributions
4 received from contributors that aggregate in excess of \$200 per election cycle and must itemize
5 each reportable disbursement with the date, amount, and purpose of the disbursement.⁹⁶ The Act
6 defines a “contribution” as “any gift, subscription, loan, advance, or deposit of money or
7 anything of value made by any persons for the purpose of influencing any election for Federal
8 Office.”⁹⁷ An “expenditure” is defined as “any purchase, payment, distribution, loan, advance,
9 deposit, or gift of money or anything of value made by any person for the purpose of influencing
10 any election for Federal office.”⁹⁸

11 RAN did not disclose the in-kind contributions that were made to the Trump campaign in
12 the form of the republication of the Trump campaign logo. Accordingly, we recommend that the
13 Commission find reason to believe that Rebuilding America Now and Ryan Call in his official
14 capacity as treasurer violated 52 U.S.C. § 30104(b). We recommend that the Commission take
15 no action at this time as to Donald J. Trump for President, Inc. and Bradley T. Crate in his
16 official capacity as treasurer regarding whether it violated 52 U.S.C. § 30104(b) while we
17 investigate whether the campaign knowingly accepted the contributions.

⁹⁵ 52 U.S.C. § 30104(b).

⁹⁶ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a)(4), (b)(3).

⁹⁷ 52 U.S.C. § 30101(8)(A)(i).

⁹⁸ 52 U.S.C. § 30101(9)(A)(i), 11 C.F.R. § 100.111.

1 **B. MAN1**

2 1. The Commission Should Dismiss Allegations that MAN1 Made In-kind
3 Contributions in the Form of Payments to Conway and Bannon for Services
4 Rendered to Trump Campaign

5 The Complaint alleges that MAN1's payments to companies in which Bannon and
6 Conway had an ownership interest — specifically, Cambridge Analytica, Glittering Steel, and
7 Polling Company — were in reality disguised salary payments to Bannon and Conway for
8 services they rendered to the Trump campaign. Both Bannon and Conway resigned their
9 managerial positions in these companies upon joining the campaign.⁹⁹ However, neither
10 divested their ownership interests in these companies and they continued to benefit financially
11 from the companies' business, while purportedly volunteering for the campaign and steering
12 business to their respective companies.

13 Bannon admits that he did not sell his ownership interests in Cambridge Analytica until
14 April 12, 2017.¹⁰⁰ He had not divested his ownership interest in Glittering Steel as of the time of
15 MAN1's response.¹⁰¹ Bannon makes no claim that his assets were frozen as of the date he joined
16 the campaign, or held in a blind trust. Rather, he simply states that after joining the Trump
17 campaign he took leave from Cambridge Analytica, agreed to sell his interest in Cambridge
18 Analytica and Glittering Steel, and, starting on August 17, 2016, began the process of divesting

⁹⁹ There is conflicting information as to whether Bannon resigned from Breitbart in November instead of August 2016. Bannon contends he resigned in August, while a news report cites the current CEO of Breitbart stating that Bannon's resignation was effective in November. The Complaint does not, however, allege that MAN1's disguised salary payments included such payments to Breitbart.

¹⁰⁰ While Bannon asserts that he was awaiting OGE approval to sell his interest in Cambridge Analytica, he cites no statutory requirement for him to wait to divest his corporate interests after he agreed to join the campaign.

¹⁰¹ Bannon Aff. ¶ 2.

1 from Cambridge Analytica, participated in no Cambridge Analytica board decision-making, and
2 received no payments from Cambridge Analytica or Glittering Steel for “the duration of the
3 campaign.”¹⁰²

4 The Complaint argues that while Bannon was purportedly an unpaid volunteer for the
5 campaign, he directly benefitted from his continued financial stake in Cambridge Analytica and
6 Glittering Steel in increasing amounts as MAN1 increased its expenditures for services rendered
7 by Cambridge Analytica and Glittering Steel, which amounted to an in-kind contribution to the
8 Trump Campaign from MAN1.¹⁰³ While the Complaint contends that these ownership interests
9 amounted to pass-through compensation because Cambridge Analytica and Glittering Steel
10 received more business from MAN1 once Bannon began to work for the Trump campaign, it
11 does not provide information regarding the companies’ actual payments to Bannon, any increase
12 in the value of Bannon’s ownership interest, any payments that were unrelated to work
13 performed by Cambridge Analytica and Glittering Steel for its clients, including MAN1, or any
14 payments that were not for the usual and normal charge for such work.

15 Commission regulations provide that, in order for payment to a campaign volunteer to be
16 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
17 must receive compensation for work performed on behalf of that candidate.¹⁰⁴ There is no
18 information in the record that Bannon received any compensation from Glittering Steel or

¹⁰² *Id.* ¶¶ 4-5.

¹⁰³ MUR 7147 Compl. ¶¶ 37-38; MUR 7193 Compl. at 4-5; *see also* MUR 7147 First Supp. Compl. at 3-4 (citing press report for assertion that “Bannon has long been indirectly compensated by Mercer-backed entities”).

¹⁰⁴ 11 C.F.R. § 100.74. *See* MURs 6566 and 6604 (Lisa Wilson-Foley for Congress); MUR 6494 (Schmidt for Congress); *cf.* 11 C.F.R. §§ 100.54, 114.9 (compensation for personal services as contributions, use of corporate resources by stockholder volunteers, respectively).

1 Cambridge Analytica for services rendered once he began working for the Trump campaign, and
2 Bannon states under oath that he was not compensated for “the duration of the campaign.”¹⁰⁵
3 Additionally, there is no public information to support the Complaint’s claim that the proceeds
4 Bannon received when he sold his ownership interest in Cambridge Analytica back to the
5 company were in excess of the actual value of that interest. Accordingly, there is an insufficient
6 factual basis for finding that MAN1 made an in-kind contribution to the Trump campaign in the
7 form of compensation to Bannon when it paid for services rendered by Cambridge Analytica or
8 Glittering Steel.

9 Conway does not deny that she retained her ownership stake in Polling Company even
10 after she resigned as President and CEO to work for the campaign.¹⁰⁶ In fact, she continued to
11 invoice for her consulting services rendered to the Trump campaign through Polling
12 Company.¹⁰⁷ MAN1 paid its final invoice for services rendered by Polling Company on
13 August 23, 2016, and does not appear to have used Polling Company as a vendor thereafter.¹⁰⁸
14 Polling Company submits sworn affidavits attesting that the August 23rd payment was for
15 services rendered by Polling Company prior to Conway’s joining the Trump campaign. Because
16 there is insufficient information to suggest that Polling Company provided services to MAN1
17 while Conway was a Trump campaign employee, or that Conway was paid less than her usual
18 market rate for her consulting services, there is insufficient information to suggest that the

¹⁰⁵ Bannon Aff. ¶ 5. Bannon’s affidavit does not address whether Bannon received any compensation from either company after the election for work performed during the campaign.

¹⁰⁶ Conway Aff. ¶¶ 6-7.

¹⁰⁷ *Id.*

¹⁰⁸ Loyd Aff. ¶ 9.

1 MAN1 payment to Polling Company was actually payment for personal services rendered by
2 Conway to the Trump campaign, resulting in an in-kind contribution.

3 Accordingly, we recommend that the Commission dismiss the allegations that Make
4 America Number 1 and Jacquelyn James in her official capacity as treasurer violated 52 U.S.C.
5 §§ 30116(a), 30118(a) by making and failing to report excessive and prohibited in-kind
6 contributions to the Trump campaign in the form of payments to vendors that were actually
7 compensation for the services Bannon and Conway provided to the Trump campaign. We
8 further recommend that the Commission dismiss the allegations that Donald J. Trump for
9 President, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C.
10 §§ 30116(f), 30118(a) by accepting an excessive and prohibited in-kind contribution from
11 MAN1 in the form of payments to vendors that were actually compensation for services provided
12 to the Trump campaign by Bannon and Conway. And, we recommend that the Commission
13 dismiss the allegations that Kellyanne Conway and Stephen K. Bannon violated 52 U.S.C.
14 § 30116(a) by making excessive contributions in the form of services rendered to the Trump
15 campaign without compensation from the Trump campaign.

16 2. The Commission Should Dismiss the Allegations that MAN1 Made Coordinated
17 Communications through the Use of Common Vendors

18 The Complaint alleges that MAN1 made coordinated communications resulting in an in-
19 kind contribution to the Trump campaign, but fails to identify any specific communication that
20 was coordinated.¹⁰⁹ The first and second prongs of the coordination test under the Commission's

¹⁰⁹ Through the quotation of a newspaper article, the Complaint alleges that MAN1 aired one ad, "Clinton Fatigue," which apparently first aired in the primaries, but the Complaint does not allege that it was created with material information from the Trump campaign. *See* MUR 7147 Compl. ¶ 36; *see also* "Clinton Fatigue," YOUTUBE, <https://www.youtube.com/watch?v=Lt2QVtWtdjQ> (published Sept. 13, 2016).

1 regulations are satisfied because MAN1 spent \$1,470,549 for public communications that
2 expressly advocated against Trump's opponent and were disseminated via television
3 broadcast.¹¹⁰ The Complaint alleges that the third element, the conduct standard, was satisfied
4 because both the Trump campaign and MAN1 utilized the services of "common vendors"
5 Cambridge Analytica and Polling Company.¹¹¹

6 The "common vendor" standard is another standard by which the conduct prong for
7 coordination may be met.¹¹² Here, the Complaint urges the Commission to apply this standard to
8 MAN1's communications. The "common vendor" standard has three elements: (i) the person
9 paying for the communication uses a "commercial vendor" to create, produce, or distribute the
10 communication, (ii) the vendor, including any owner, officer, or employee, previously provided
11 certain enumerated services — including, *inter alia*, "development of media strategy," polling,
12 fundraising, "developing the content of a public communication," "identifying voters," or
13 "consulting or otherwise providing political or media advice"¹¹³ — to the candidate identified in
14 the communication (or that candidate's opponent) during the previous 120 days, and (iii) the
15 commercial vendor uses or conveys to the person paying for the communication:

16 (A) Information about the campaign plans, projects, activities, or needs of the
17 clearly identified candidate, the candidate's opponent, or a political party
18 committee, and that information is material to the creation, production, or
19 distribution of the communication; or
20 (B) Information used previously by the commercial vendor in providing services
21 to the candidate who is clearly identified in the communication, or the candidate's
22 authorized committee, the candidate's opponent, the opponent's authorized

¹¹⁰ See 11C.F.R. § 109.21(a)(1), (c)(3), (c)(4)(ii), (c)(5).

¹¹¹ See 11 C.F.R. § 109.21(d)(4).

¹¹² 11 C.F.R. § 109.21(d)(4).

¹¹³ 11 C.F.R. § 109.21(d)(4)(ii).

1 committee, or a political party committee, and that information is material to the
2 creation, production, or distribution of the communication.¹¹⁴

3 The common vendor conduct standard is not satisfied if a commercial vendor has established and
4 implemented a written firewall policy that meets certain requirements, so long as material
5 information is not shared.¹¹⁵

6 The payor of a communication that is coordinated through the use of a common vendor
7 or a former employee makes a contribution to the candidate, but the candidate or authorized
8 committee “does not receive or accept an in-kind contribution” resulting from coordination
9 through a common vendor or former employee unless the communication was made at the
10 request or suggestion of, with the material involvement of, or after substantial discussions with,
11 the candidate or authorized committee.¹¹⁶

12 MAN1 does not dispute that it contracted with Cambridge Analytica and Polling
13 Company, which specialize in the development of data and polling information that are used in
14 the production of political advertisements.¹¹⁷ However, the last date upon which Polling
15 Company provided MAN1 with polling services was July 7, 2016, which is *prior* to the time

¹¹⁴ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

¹¹⁵ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit 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 who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities, or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

¹¹⁶ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

¹¹⁷ *See* 11 C.F.R. § 109.21(d)(4)(ii)(C); Wheatland Aff. ¶ 9, Ex. 2, Loyd Aff. ¶¶ 8-10, 14.

1 when the Trump campaign retained Polling Company on July 10, 2016.¹¹⁸ Because the record
2 indicates that Polling Company provided services first to MAN1, and subsequently to the Trump
3 campaign, the available information concerning Polling Company does not satisfy the timing
4 requirement of the common vendor standard.¹¹⁹

5 The Complaint contends that there was sufficient overlap of personnel between the
6 Trump campaign and Cambridge Analytica to raise an inference that campaign information
7 might have been shared between MAN1 and the Trump campaign.¹²⁰ In response, Cambridge
8 Analytica provides a copy of its written firewall policy, states that the policy segregated client
9 information so that the campaign and PAC teams could not communicate regarding their
10 respective accounts or have access to each other's files, and notes that the Trump campaign team
11 worked out of Cambridge Analytica's San Antonio, TX office while the MAN1 team worked
12 from offices in Washington, DC.¹²¹ Cambridge Analytica states that at no point did it provide
13 services jointly to the Trump campaign and MAN1, or share strategies or information with these
14 clients.¹²² In fact, Cambridge Analytica states that when the two teams required the same data

¹¹⁸ Loyd Aff. ¶¶ 9, 13.

¹¹⁹ See 11 C.F.R. § 109.21(d)(4) (setting scope of "common vendor" coordination conduct for third party's use of common vendor within 120 days *after* candidate's use of that vendor). Respondents also assert that Polling Company maintained a robust written firewall policy for preventing the commingling of information between employees working for candidates and PACs. MAN1 Resp. at 19-20. This firewall policy included data segregation and separate storage of information on different computers accessible only to the employees working for a given client. *Id.* The MAN1 Response includes sworn statements from the employees working for MAN1 and the Trump campaign attesting that they followed the firewall policy at all times, but does not include any copies of the firewall policy signed by those employees. *Id.* However, because MAN1 and Polling Company did not meet the common vendor standard, we need not reach the issue of the adequacy of Polling Company's firewall here.

¹²⁰ See MUR 7147 Second Supp. Compl. at 5-6 (noting, among other overlap, Bannon's position as an officer of Cambridge Analytica).

¹²¹ Wheatland Aff. ¶ 3, Cambridge Analytica Firewall Policy; Julian Wheatland Supplemental Aff. (Feb. 27, 2017) ("Wheatland Supp. Aff.") ¶ 11.

¹²² Wheatland Aff. ¶ 3.

1 each team would purchase the data for their own use in order to ensure that the teams were not
2 communicating with the other about their work.¹²³

3 Bannon attests that he was made aware of the policy while at Cambridge Analytica, was
4 not permitted access to any information in Cambridge Analytica's possession, and did not
5 provide information about the Trump campaign to Cambridge Analytica nor did he receive any
6 non-public, proprietary information regarding the messaging, plans, projects, activities, or needs
7 of Cambridge Analytica's clients, including MAN1.¹²⁴ Bannon did not, however, appear to have
8 been included among Cambridge employees, officers, or board members who signed the firewall
9 policy.¹²⁵

10 While there is some publicly available information that raises questions about the
11 strength of the Cambridge Analytica firewall, as discussed in more detail below, we cannot link
12 those concerns to any specific communications from MAN1 so as to conclude that Cambridge
13 Analytica used or conveyed to MAN1 information material to the creation, production, or
14 distribution, of a communication. Accordingly, we recommend that the Commission dismiss the
15 allegation that Make America Number 1 and Jacquelyn James in her official capacity as treasurer
16 violated 52 U.S.C. §§ 30116(a), 30118(a) by making excessive and prohibited in-kind
17 contributions to the Trump campaign in the form of coordinated communications using a
18 common vendor. We further recommend that the Commission dismiss the allegation that Donald
19 J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer violated 52

¹²³ *Id.* ¶ 12.

¹²⁴ Bannon Aff. ¶ 6.

¹²⁵ *Cf.* 11 C.F.R. § 109.21(h)(2) (requiring, as condition of firewall safe harbor, that policy be distributed to "all relevant employees, consultants, and clients affected by the policy").

1 U.S.C. §§ 30116(f), 30118(a) by coordinating communications with MAN1 through the use of a
2 common vendor.

3 3. The Commission Should Dismiss the Allegations that MAN1 Made Coordinated
4 Expenditures

5 Along with the allegation that MAN1 made coordinated communications, the Complaint
6 also alleges that MAN1 and the Trump campaign were “inextricably intertwined” and functioned
7 effectively as “joint ventures” resulting in MAN1 making, and the Trump campaign accepting,
8 prohibited in-kind contributions.¹²⁶ In addition to the close relationship between the Mercers,
9 Trump, and Trump campaign officials such as Bannon, Conway, and Bossie that were cited in
10 the Complaint, publicly available information about Cambridge Analytica also raises concerns
11 that MAN1 and the Trump campaign were coordinating their activities.

12 After the 2016 election, Alexander Nix and Mark Turnbull, two Cambridge Analytica
13 executives, met with a journalist posing as a potential client and were recorded telling the
14 journalist that Cambridge Analytica “did all the research, all the data, all the analytics, all the
15 targeting, we ran all the digital campaign, the television campaign and our data informed all the
16 strategy” for the Trump campaign.¹²⁷ In another recorded meeting, Cambridge Analytica
17 executives more particularly described their strategy of distributing “positive” messages through
18 the Trump campaign while “negative material was pushed out through outside organizations”;
19 Turnbull provided an example of its work for MAN1, in which Cambridge “created the ‘Defeat

¹²⁶ MUR 7147 Compl. ¶ 78.

¹²⁷ “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, (Mar. 20, 2018),
<https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica>
 (“Channel 4 Report”).

1 Crooked Hilary' brand of attack ads . . . funded by the Make America Number 1 super-PAC and
2 watched more than 30 million times during the campaign.”¹²⁸

3 These public statements and the news reports highlighted in the Complaint of the
4 Mercers' role in Cambridge Analytica, MAN1, and in advising the Trump campaign suggest the
5 possibility that there was a systemic effort to coordinate the activities of the groups through
6 either Cambridge Analytica or the Mercers. Nonetheless, specific information of coordinating
7 activity in support of a coordination conclusion is notably lacking. The Complaint relies
8 primarily on an inference that there must be coordination given the multiple connections between
9 the groups, but provides no evidence, for example, of public statements by Bannon, the Mercers,
10 MAN1, or the Trump campaign regarding coordinated efforts generally or specifically.

11 A review of the Complaint, responses, and publicly available information does not
12 provide a sufficient basis to conclude that MAN1 systemically coordinated with the Trump
13 Campaign on its activities. While Cambridge executives were secretly recorded making public
14 statements suggesting they created and distributed research, data, and analytics all designed to
15 target voters to increase Trump's favorability and decrease that of his opponent,¹²⁹ which was
16 later used by MAN1 and other organizations in their advertising or online campaigns, the
17 statements fall short of admitting the kind of nexus between MAN1 and the Trump campaign or
18 its agents that would satisfy either the conduct prong for coordination under section 109.21 or
19 provide evidence to support a conclusion that all (or a particular subset of) expenditures by
20 MAN1 were coordinated with the Trump campaign under section 109.21. Because we do not

¹²⁸ *Id.*

¹²⁹ *See* Channel 4 Report. Those statements were later disavowed by Cambridge Analytic in its public response to the Channel 4 Report. “Cambridge Analytica Ran ‘All’ Of Trump Campaign’s Digital Campaign,” INTERNATIONAL BUSINESS TIMES NEWS, 2018 WLNR 8639954 (Mar. 20, 2018).

1 have sufficient information to support a finding of widespread and systemic coordination
2 between the Trump campaign and MAN1, as alleged in the Complaint, we recommend that the
3 Commission dismiss the allegation that Make America Number 1 and Jacquelyn James in her
4 official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making and
5 failing to report excessive and prohibited in-kind contributions through coordinated expenditures
6 with Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as
7 treasurer.¹³⁰ We further recommend that the Commission dismiss the allegations that Donald J.
8 Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer violated
9 52 U.S.C. §§ 30116(f), 30118(a), 30104(b) by receiving and failing to report excessive and
10 prohibited in-kind contributions through coordinated expenditures with Make America Number 1
11 and Jacquelyn James in her official capacity as treasurer.

12 **IV. INVESTIGATION**

13 The investigation would seek to establish (a) the circumstances surrounding the
14 republication of the Trump campaign logo in the “America Soaring” television advertisement
15 produced and disseminated by RAN; (b) the actual amount spent by RAN on the television ad
16 that republished the Trump campaign logo; and (c) whether the Trump campaign knowingly
17 accepted and failed to report the in-kind contributions from RAN in connection with the

¹³⁰ The known facts concerning MAN1’s alleged systemic coordination with the Trump campaign are distinguishable from the facts on which this office has recommended reason to believe systemic coordination occurred between Correct the Record (“CTR”) and Hillary for America, in violation of 52 U.S.C. §§ 30116(a), (f), 30118(a), 30104(b). *See* First Gen. Counsel’s Rpt., MURs 6940, 7097, 7146, 7160, and 7193 (Correct the record *et al.*) The record in the CTR matter included multiple public statements from CTR and its founder and chairman that CTR’s work would be for the purpose of benefiting and in coordination with the Clinton campaign. *See id.*, *e.g.*, at 16-18. The record further included internal documents corroborating specific actions made in coordination between CTR and the Clinton campaign (that were themselves confirmed in part by later public statements from CTR’s chairman).

1 republication of campaign materials. We will seek to conduct the investigation by voluntary
2 means, but we recommend that the Commission authorize compulsory process, as necessary.

3 **V. RECOMMENDATIONS**

- 4 1. Find reason to believe that Rebuilding America Now and Ryan Call in his official
5 capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making
6 and failing to report an excessive and prohibited in-kind contribution in the form of
7 republishing the Trump campaign logo in a digital and television advertisement.
8
- 9 2. Take no action at this time as to whether Rebuilding America Now and Ryan Call in
10 his official capacity as treasurer made and failed to report excessive and prohibited
11 in-kind contributions in the form of coordinated communications with Donald J.
12 Trump for President, Inc. in violation of 52 U.S.C. §§ 30116(a), 30118(a), 30104(b).
13
- 14 3. Take no action at this time as to whether Donald J. Trump for President, Inc. and
15 Bradley T. Crate in his official capacity as treasurer received excessive and prohibited
16 in-kind contribution in the form of coordinated communications or knowingly
17 accepted and failed to report in-kind contributions from Rebuilding America Now
18 and Ryan Call in his official capacity as treasurer, in violation of 52 U.S.C.
19 §§ 30116(f), 30118(a), 30104(b).
20
- 21 4. Dismiss the allegations that Make America Number 1 and Jacquelyn James in her
22 official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by
23 making and failing to report excessive and prohibited in-kind contributions in the
24 form of payments to vendors to Donald J. Trump for President, Inc. and Bradley T.
25 Crate in his official capacity as treasurer that were actually compensation for services
26 rendered by Kellyanne Conway and Stephen K. Bannon to the Trump campaign.
27
- 28 5. Dismiss the allegations that Donald J. Trump for President, Inc. and Bradley T. Crate
29 in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30118(a),
30 30104(b) by accepting and failing to report an excessive and prohibited in-kind
31 contribution from Make America Number 1 and Jacquelyn James in her official
32 capacity as treasurer, in the form of payments to vendors that were actually
33 compensation for services provided by Kellyanne Conway and Stephen K. Bannon.
34
- 35 6. Dismiss the allegations that Kellyanne Conway and Stephen K. Bannon violated
36 52 U.S.C. § 30116(a) by making excessive contributions in the form of services
37 rendered to the Trump campaign.
38

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Rebuilding America Now and Ryan Call **MUR 7147**
in his official capacity as treasurer

I. INTRODUCTION

The Complaint in MUR 7147 alleges that, during the 2016 general election, Rebuilding America Now and Ryan Call in his official capacity as treasurer, (“RAN”), an independent expenditure-only political committee (“IEOPC”) supporting Presidential candidate Donald Trump, made prohibited contributions to Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”) and that RAN failed to report these contributions.¹ More specifically, the Complaint alleges that RAN (1) coordinated communications with the Trump campaign, and (2) republished the Trump campaign logo in an advertisement that was disseminated on television and online.

For the reasons that follow, the Commission finds reason to believe that RAN violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making and failing to report an in-kind contribution in the form of republishing the Trump campaign logo in a digital and television advertisement.

II. FACTS

On June 22, 2015, Donald Trump filed a Statement of Candidacy with the Commission for the 2016 presidential election, designating Donald J. Trump for President, Inc., as his

¹ See MUR 7147 Compl. (Oct. 6, 2016); MUR 7147 First Supp. Compl. (Dec. 2, 2016); MUR 7147 Second Supp. Compl. (Apr. 12, 2017).

1 principal campaign committee.² RAN registered with the Commission on June 2, 2016 as an
2 IEOPC.³ The Complaint alleges that RAN republished Trump campaign materials in RAN
3 advertisements.

4 On July 19, 2016, RAN began airing a 60 second digital and television ad supporting
5 Trump entitled “America Soaring,” in which the Trump campaign logo fills nearly the entire
6 screen for the final eight seconds of the ad.⁴ RAN reported disbursements of \$30,000 and
7 \$44,000 for digital advertising disseminated between July 19 and July 25, 2016, and \$1,666,666
8 for “national cable and broadcast advertising” disseminated on July 25, 2016, in support of
9 Trump.⁵

10 The Complaint alleges that RAN republished campaign material when it displayed the
11 Trump campaign logo in the “America Soaring” ad in online and television advertisements and
12 on the homepage of RAN’s own website.⁶ The Complaint contends that RAN spent “at least”

² Donald J. Trump Statement of Candidacy (June 22, 2015).

³ Rebuilding America Now Statement of Organization (June 2, 2016).

⁴ MUR 7147 Compl. ¶¶ 16-17; *see also Rebuilding America Now: America Soaring*, YOUTUBE (Aug. 1, 2016), <https://www.youtube.com/watch?v=NMNZTcGSHLg>.

⁵ RAN 24/48 Hour Report of Independent Expenditures at 1 (July 21, 2016); Amended RAN 24/48 Hour Report of Independent Expenditures at 3 (Aug. 3, 2016). Although the Complaint cites a July 18 press report about RAN’s upcoming media buy for the “America Soaring” ad and these particular RAN 24/48 Hour Reports of Independent Expenditures, it is unclear whether these disbursements were all for the “America Soaring” ad or whether there were additional disbursements for these ads on other RAN 24/48 Hour Reports. *See* MUR 7147 Compl. ¶ 16. In total, RAN reported spending \$19,806,796.85 on independent expenditures for the 2016 general presidential election. *See* RAN 24/48 Hour Report of Independent Expenditures at 2 (Nov. 6, 2016).

⁶ MUR 7147 Compl. ¶¶ 118-119.

1 \$1,864,586 on the ad, and claims the logo was displayed for 13% of the ad’s time.⁷ Therefore,
2 the Complaint calculates that 13% of the expenditures on the ad dissemination — approximately
3 \$242,396 — in addition to production costs and the costs of placing the video on RAN’s website,
4 should be deemed a prohibited in-kind contribution to the Trump campaign.⁸

5 RAN argues against a republication finding because the display of the Trump campaign
6 logo, which RAN asserts was obtained from a publicly available source, was “brief” and used
7 only as “background footage” to RAN’s own message.⁹ RAN also contends that “simple”
8 republication of the logo is not a contribution because RAN did not coordinate or consult with
9 the Trump campaign in making the ad.¹⁰

10 **III. LEGAL ANALYSIS**

11 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
12 deposit of money or anything of value made by any person for the purpose of influencing any
13 election for Federal office.”¹¹ “Anything of value” includes in-kind contributions.¹² When a
14 person makes an expenditure in cooperation, consultation, or in concert with, or at the request or
15 suggest of, a candidate or the candidate’s authorized committee or their agents, it is treated as an

⁷ *Id.*

⁸ *Id.*

⁹ MUR 7147 RAN Resp. at 9-10; MUR 7193 RAN Resp. at 1.

¹⁰ MUR 7147 RAN Resp. at 10-11; MUR 7193 RAN Resp. at 1.

¹¹ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

¹² 11 C.F.R. § 100.52(d)(1).

1 in-kind contribution.¹³ In-kind contributions also include “any goods or services [provided]
2 without charge or at a charge that is less than the usual and normal charge for such goods or
3 services.”¹⁴ However, the value of services provided without compensation by any individual
4 who volunteers on behalf of a candidate or political committee is not a contribution so long as
5 the individual is not compensated by anyone for those services.¹⁵

6 Under the Commission’s regulations, a communication is “coordinated” with a candidate,
7 an authorized committee, a political party committee, or agent thereof, and, thus treated as an in-
8 kind contribution, if the communication (1) is paid for, partly or entirely, by a person other than
9 the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at
10 least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the
11 “conduct standards” at 11 C.F.R. § 109.21(d).¹⁶ A communication must satisfy all three prongs

¹³ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

¹⁴ 11 C.F.R. § 100.52(d)(1). Usual and normal charge for “goods” means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; usual and normal charge for “services,” other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

¹⁵ 11 C.F.R. § 100.74. Individuals may volunteer for a campaign while employed by another entity; Commission regulations provide that no contribution results where (a) an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period provided that the taken or released time is made up or completed by the employee within a reasonable time; (b) an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is considered his or her own to use as he or she sees fit; and (c) the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. 11 C.F.R. § 100.54.

¹⁶ 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see also*

1 to be a “coordinated communication” under the Commission’s regulations.

2 Commission regulations further treat as a “contribution” the “financing of the
3 dissemination, distribution, or republication, in whole or in part, of any . . . campaign materials
4 prepared by the candidate [or] the candidate’s authorized committee;” the regulations provide
5 that payments for such communications “shall be considered a contribution for the purposes of
6 contribution limitations and reporting responsibilities of the person making the expenditure.”¹⁷
7 Although the person republishing campaign materials is deemed to make a contribution, the
8 candidate or committee that receives the benefit of the republication is only deemed to have
9 accepted or received that contribution if the dissemination, distribution, or republication of
10 campaign materials is a coordinated communication under 11 C.F.R. § 109.21.¹⁸

11 Any person who is otherwise prohibited from making contributions to candidates under
12 the Act or Commission regulations is prohibited from making an in-kind contribution.¹⁹ An
13 IEOPC “may not make contributions to candidates or political party committees, including in-
14 kind contributions such as coordinated communications.”²⁰

11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

¹⁷ 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii) (providing that “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 authorized agents shall be considered an expenditure”).

¹⁸ 11 C.F.R. § 109.23(a).

¹⁹ *See* 52 U.S.C. §§ 30116(f), 30118(a); *see also* 11 C.F.R. § 109.22 (noting that any person prohibited from making contributions is prohibited from paying for coordinated communication).

²⁰ AO 2017-10 (Citizens Against Plutocracy) at 2 (quoting AO 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 **A. RAN Republished Trump Campaign Materials**

2 The Complaint alleges that RAN’s “America Soaring” ad republishes Trump campaign
3 materials (the Trump campaign logo) and, therefore, should be deemed a prohibited in-kind
4 contribution.²¹ RAN appears to admit that it used the Trump campaign logo, but contends that
5 the display of the Trump campaign logo as “background footage” does not constitute
6 republication and is permissible because the display was “brief” and the logo was “publicly
7 available.”²²

8 The Commission’s regulations for republication of campaign materials do not provide for
9 the time and space limitations on republication in the way that Respondents suggest. RAN’s use
10 of the Trump logo in the “America Soaring” ad qualifies as republication of Trump campaign
11 materials under the plain language of the regulations.²³ The logo prominently displayed on
12 screen for the final eight seconds of the ad appears to be a direct copy of the Trump campaign
13 logo. The logo in RAN’s ad appears to use the same colors, in the same configuration as the
14 Trump campaign logo, and the words appear to be in the same typeface, with the same sizing as
15 the Trump logo.²⁴ And none of the exceptions, including the one at 11 C.F.R. § 109.23(b)(4) for
16 a “brief quote of materials that demonstrate a candidate’s position as part of a person’s

²¹ See 52 U.S.C. § 30118(a); 11 C.F.R. § 109.23.

²² MUR 7147 RAN Resp. at 10; MUR 7193 RAN Resp. at 1.

²³ See 11 C.F.R. § 109.23(a).

²⁴ The Complaint includes a link to a Trump campaign website store purportedly showing the relevant logo on a rally sign, see MUR 7147 Compl. ¶ 118, n. 134, but that link is no longer functional. An archived version of the Trump campaign’s website store on the date the “America Soaring” ad began to be distributed shows the relevant logo on a shirt. See <https://web.archive.org/web/20160719080130/http://shop.donaldjtrump.com/> (snapshot of July 19, 2016).

1 expression of its own views,” appears to apply.²⁵ The logo RAN republished is not a brief
2 quote of the candidate’s material demonstrating his position on and issue, but, as a logo, a
3 symbol created by the Trump campaign to identify itself. Accordingly, the Commission finds
4 reason to believe that Rebuilding America Now and Ryan Call in his official capacity as
5 treasurer, violated 52 U.S.C. §§ 30116(a), 30118(a), by making prohibited and excessive
6 contributions in the form of republished campaign materials.

7 **B. RAN Misreported Contributions**

8 The Act requires political committees and authorized candidate committees to disclose to
9 the Commission all contributions and expenditures.²⁶ Committees must itemize all contributions
10 received from contributors that aggregate in excess of \$200 per election cycle and must itemize
11 each reportable disbursement with the date, amount, and purpose of the disbursement.²⁷ The Act
12 defines a “contribution” as “any gift, subscription, loan, advance, or deposit of money or
13 anything of value made by any persons for the purpose of influencing any election for Federal
14 Office.”²⁸ An “expenditure” is defined as “any purchase, payment, distribution, loan, advance,
15 deposit, or gift of money or anything of value made by any person for the purpose of influencing
16 any election for Federal office.”²⁹

²⁵ The Commission has also explained that it has not adopted a “publicly available” or “public domain” exception to the republication of campaign materials provisions at section 109.23 “because such an exception could ‘swallow the rule,’ given that virtually all campaign material that could be republished could be considered to be ‘in the public domain.’” 2003 Coordination E&J, 68 Fed. Reg. at 442.

²⁶ 52 U.S.C. § 30104(b).

²⁷ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a)(4), (b)(3).

²⁸ 52 U.S.C. § 30101(8)(A)(i).

²⁹ 52 U.S.C. § 30101(9)(A)(i), 11 C.F.R. § 100.111.

MUR 7147 (Rebuilding America Now)
Factual and Legal Analysis
Page 8 of 8

1 RAN did not disclose the in-kind contributions that were made to the Trump campaign in
2 the form of the republication of the Trump campaign logo. Accordingly, the Commission finds
3 reason to believe that Rebuilding America Now and Ryan Call in his official capacity as
4 treasurer, violated 52 U.S.C. § 30104(b).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Make America Number 1 and Jacquelyn James **MUR 7147**
in her official capacity as treasurer
Kellyanne Conway
Stephen K. Bannon

I. INTRODUCTION

The Complaint in MUR 7147 alleges that, during the 2016 general election, Make America Number 1 and Jacquelyn James in her official capacity as treasurer (“MAN1”), an independent expenditure-only political committee (“IEOPC”) supporting Presidential candidate Donald Trump, made prohibited contributions to Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”) and that MAN1 failed to report these contributions.¹ The Complaint further alleges that MAN1 was so “inextricably intertwined” with the Trump campaign that many of MAN1’s expenditures should be deemed to be coordinated with the Trump campaign and, therefore, prohibited in-kind contributions.² More specifically, the Complaint alleges that MAN1 paid for the personal services of two senior Trump campaign staffers rendered to the Trump campaign through payments to its vendors.

For the reasons that follow, the Commission: (1) dismisses the allegation that MAN1 violated 52 U.S.C. §§ 30116(a), 30118(a) by making in-kind contributions in the form of payments to vendors to the Trump campaign that were actually compensation for services

¹ See MUR 7147 Compl. (Oct. 6, 2016); MUR 7147 First Supp. Compl. (Dec. 2, 2016); MUR 7147 Second Supp. Compl. (Apr. 12, 2017).

² MUR 7147 Compl. ¶ 6; MUR 7147 First Supp. Compl. at 1; MUR 7147 Second Supp. Compl. at 1.

1 rendered by senior staff members Kellyanne Conway and Stephen K. Bannon; (2) dismisses the
2 allegation that Kellyanne Conway and Stephen K. Bannon violated 52 U.S.C. § 30116(a) by
3 making excessive contributions in the form of services rendered to the Trump campaign;
4 (3) dismisses the allegation that MAN1 violated 52 U.S.C. §§ 30116(a), 30118(a) by
5 coordinating communications or expenditures with the Trump campaign; (4) dismisses the
6 allegation that MAN1 violated 52 U.S.C. § 30104(b) by failing to report those in-kind
7 contributions; and (5) closes the file as to MAN1, Kellyanne Conway, and Stephen K. Bannon.

8 **II. FACTS**

9 On June 22, 2015, Donald Trump filed a Statement of Candidacy with the Commission
10 for the 2016 presidential election, designating Donald J. Trump for President, Inc., as his
11 principal campaign committee.³ MAN1 initially registered with the Commission on April 6,
12 2015 as an IEOPC named “Keep the Promise 1” (“KTP1”); on June 22, 2016, it filed an
13 amended Statement of Organization with the “Make America Number 1” name.⁴

14 The Complaint alleges that MAN1 was so “inextricably intertwined with the Trump
15 Campaign” that many of MAN1’s expenditures were coordinated with the campaign such that
16 they should be deemed in-kind contributions to the campaign.⁵ The Complaint alleges that the
17 Mercer family, specifically Robert Mercer, the founder and primary contributor to MAN1, and
18 his daughter, Rebekah Mercer, who was chair of MAN1, were heavily involved in the running

³ Donald J. Trump Statement of Candidacy (June 22, 2015).

⁴ MAN1 Statement of Organization (Apr. 6, 2015); MAN1 Amended Statement of Organization (June 22, 2016); *see also* MURs 7147 and 7193 Consolidated MAN1 Response (“MAN1 Resp.”) at 1-2 (Feb. 22, 2017) (noting that KTP1 initially supported the candidacy of Ted Cruz for president but “reformed under its current name to support the Trump candidacy” after Cruz’s primary defeat).

⁵ MUR 7147 Second Supp. Compl. at 1.

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 3 of 22

1 the IEOPC⁶ while also “meeting and conferring about strategy” with the Trump campaign “on a
2 regular basis.”⁷ During the 2016 election cycle, Robert Mercer made \$15.5 million of the \$20.7
3 million in contributions that MAN1 reported receiving.⁸ The Complaint cites multiple press
4 reports detailing the influence of the Mercers and MAN1 on the Trump campaign and the
5 overlapping relationships between the Mercers, their associates and companies, and the Trump
6 campaign.⁹

7 According to media reports, the Mercers met with Trump in early August 2016, and
8 recommended that he fire Manafort and bring in Bannon and Conway for Trump campaign
9 leadership positions (campaign chair and chief executive, respectively). Both Conway and
10 Bannon were reportedly longstanding allies of the Mercers, with Conway described as a
11 “sounding board” for Rebekah Mercer and Bannon serving on the board of Cambridge
12 Analytica, LLC alongside Rebekah Mercer, and working on other projects funded by the

⁶ MUR 7147 Compl. ¶¶ 27, 29 (quoting press report that Mercers “maintained close control over [KTP1 and MAN1’s] purse strings”); *see also* Zachary Mider, *Mega-Donor Mercer’s Daughter Takes Charge of Pro-Trump Group*, BLOOMBERG, (Sept. 7, 2016), <https://www.bloomberg.com/news/articles/2016-09-07/mega-donor-mercero-daughter-takes-charge-of-pro-trump-group> (stating that Rebekah Mercer “took charge of the day-to-day operations of the group” according to a spokesman for MAN1).

⁷ MUR 7147 Compl. ¶ 73; *see also* Matea Gold, *Anti-Clinton Super PAC Kicks Off Ad Blitz With Relaunched ‘Clinton Fatigue’ Spot*, WASH.POST, (Sept. 13, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/09/13/anti-clinton-super-pac-kicks-off-ad-blitz-with-new-clinton-fatigue-spot/?utm_term=.30cf776fa126 (cited at MUR 7147 Compl. ¶ 36 n.42).

⁸ MAN1 Receipts, Jan.1, 2015 – Dec. 31, 2016, https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00575373&contributor_name=mercero&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016. Mercer contributed almost 75% of this money (\$11 million) as seed money for KTP1.

⁹ MUR 7147 Compl. ¶¶ 27-37 (detailing, among other things, a May 2016 meeting between Rebekah Mercer, Conway, Ivanka Trump, and Jared Kushner after Cruz dropped out of the race and before KTP1 relaunched as MAN1; Mercer ownership of Cambridge Analytica; Mercer funding of various Bannon projects, including Breitbart News Network, LLC; and connections between the committees, Mercers, and Cambridge Analytica).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 4 of 22

1 Mercers.¹⁰ Soon thereafter, Trump fired Manafort, hired Bannon as CEO, and promoted
2 Conway to Campaign Manager.¹¹ According to press reports, Trump also hired David Bossie,
3 who briefly succeeded Conway at MAN1, as Deputy Campaign Manager in September 2016,
4 after Rebekah Mercer “privately urged Trump to retool his campaign leadership.”¹² The
5 Complaint also cites news accounts suggesting that the Mercers urged the Trump campaign to
6 hire Cambridge Analytica to provide services to the campaign while Bannon sat on the
7 Cambridge Analytica Board of Directors and the Mercers and Bannon had ownership stakes in
8 Cambridge Analytica.¹³ The Complaint contends that “[g]iven the Mercers have *de facto* control
9 over the campaign and *de jure* control over the political committee, it is clear that Make America
10 Number 1’s expenditures are not independent” and characterizes the Trump campaign and
11 MAN1 as “essentially joint ventures.”¹⁴

¹⁰ MUR 7147 Compl. ¶¶ 33, 35, 37, 73; MUR 7147 Second Supp. Compl. at 5-7; *see also* Rebecca Ballhaus, *Rebekah Mercer Takes Helm of Pro-Trump PAC, Extending Family’s Influence in Campaign*, WALL ST. J. (Sept. 7, 2016), <https://blogs.wsj.com/washwire/2016/09/07/rebekah-mercero-takes-helm-of-pro-trump-pac-extending-family-influence-in-campaign> (cited at MUR 7147 Compl. ¶ 35 n.41); MAN1 Resp., Ex. 5, Stephen K. Bannon Affidavit (Feb. 13, 2017) (“Bannon Aff.”) ¶ 4.

¹¹ MUR 7147 Compl. ¶ 31.

¹² MUR 7147 Compl. ¶ 37; *see also* Matea Gold, *The Rise of GOP Mega Donor Rebekah Mercer*, WASH.POST, (Sept. 14, 2016), https://www.washingtonpost.com/politics/the-rise-gop-mega-donor-rebekah-mercero/2016/09/13/85ae3c32-79bf-11e6-beac-57-a4a412e93a_story.html (cited at MUR 7147 Compl. ¶ 37 n.43). Bossie was also reportedly a volunteer for the Trump campaign. Compl. ¶¶ 35, 73. Disclosure reports reveal one \$15,000 payment to Bossie on December 9, 2016 for “communications consulting.” Donald J. Trump for President, Inc., 2016 Second Amended Year End Disclosure Report at 24,212 (May 12, 2017), <http://docquery.fec.gov/pdf/207/201705129053689207/201705129053689207.pdf>.

¹³ MUR 7147 Compl. ¶ 39; MAN1 Resp., Ex. 6, Julian Wheatland Aff. (Feb. 13, 2017) (“Wheatland Aff.”) ¶ 4. Prior to joining the Trump campaign, Bannon also served as Cambridge Analytica’s Vice President and Secretary. MUR 7147 Second Supp. Compl. at 6 (citing Bannon Ethics Disclosure Report (Mar. 30, 2016), attached as an exhibit and available at <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>, and Jane Mayer, *The Reclusive Hedge-Fund Tycoon Behind the Trump Presidency*, THE NEW YORKER, at 36-37 (Mar. 27, 2016), <http://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency>).

¹⁴ MUR 7147 Compl. ¶ 77.

1 In addition to the general coordination allegations, the Complaint highlights two specific
2 categories of coordinated expenditures: compensation paid by MAN1 to Kellyanne Conway and
3 Stephen K. Bannon, through companies in which they had ownership interests, for personal
4 services rendered to the Trump campaign; and compensation paid by MAN1 to Conway and
5 Bannon through payments made to Conway and Bannon's companies, as common vendors to
6 both MAN1 and the Trump campaign, for coordinated communications.

7 **A. Kellyanne Conway**

8 Conway joined the Trump campaign as an independent contractor on July 1, 2016,
9 serving first as Senior Advisor and Pollster and then as Campaign Manager.¹⁵ Prior to joining
10 the Trump campaign, Conway served as president of MAN1 in its former iteration as KTP1.¹⁶
11 Conway was also the President and founder of The Polling Company, Inc./Women Trend
12 ("Polling Company"), a "primary research and consulting firm."¹⁷

13 Throughout the primary election season, Polling Company provided substantial services
14 to KTP1, including polling, assisting with media strategy and identifying potential donors.¹⁸ In
15 early June 2016, Conway states that she was contacted by the Trump campaign to assist the
16 campaign with its media strategy. She avers that "from that point forward," she stopped
17 performing work for or receiving information regarding KTP1's plans or strategies.¹⁹ Though

¹⁵ MAN1 Resp., Ex. 1, Kellyanne Conway Affidavit (Feb. 14, 2017) ("Conway Aff.") ¶ 1.

¹⁶ *Id.* ¶ 2. MUR 7147 Compl. ¶ 27 (citing media report, published the day before MAN1 filed its amended Statement of Organization, that Kellyanne Conway was "president of Keep the Promise PAC").

¹⁷ Conway Aff. ¶¶ 2-3.

¹⁸ Conway Aff. ¶ 4.

¹⁹ *Id.* ¶ 5.

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 6 of 22

1 Conway invoiced the Trump campaign for her “consulting services” through Polling Company
2 and maintained her ownership interest in Polling Company, she avers that she was the only
3 individual from Polling Company involved in her “consulting” work for the Trump campaign
4 and that she “ceased involvement with” Polling Company operations when she “began working
5 for the campaign.”²⁰

6 From July 10, 2016, through the general election, the Trump campaign retained Polling
7 Company to perform polling.²¹ MAN1 also retained Polling Company for polling work. In
8 August 2016, two months after Conway joined the Trump campaign, MAN1 paid Polling
9 Company approximately \$247,000 and the Trump campaign paid Polling Company \$111,000 for
10 polling.²² The Complaint cites press reports in which Conway is quoted saying that this payment
11 was for work done by Polling Company for MAN1 in late June and early July, later correcting
12 that statement to assert the work was limited to June 2016.²³ According to Polling Company’s
13 CEO Brett Loyd, the \$247,000 payment from MAN1 on August 23, 2016, was for services

²⁰ *Id.* ¶¶ 6-7 (not specifying whether commencement of “working for” the campaign was at time she was retained as an independent contractor for “consulting services” in early June 2016 or at time she “join[ed]” campaign on July 1, 2016). Current Polling Company President and CEO, Brett Loyd, avers that Conway billed her political consulting services through Polling Company, but otherwise did not use Polling Company resources to provide any political consulting services to Trump’s campaign. MAN1 Resp., Ex. 2, Brett Loyd Aff. (Feb. 13, 2017) (“Loyd Aff.”) ¶¶ 11-12.

²¹ Loyd Aff. ¶¶ 13-14.

²² MUR 7147 Compl. ¶¶ 38, 42; *see also* MAN1 Amended September Monthly Report at 12 (May 22, 2017).

²³ MUR 7147 Compl. ¶ 42 (quoting press report that Conway indicated that she did not know details of the Polling Company’s work for MAN1, but also indicated that it was MAN1’s then-president “Bossie’s decision to hire” Polling Company); *see also id.* ¶ 27 (citing press report that Conway “recruited Bossie for his role” as her replacement at MAN1).

1 Polling Company provided in late June through July 7, after which Polling Company asserts it
2 did no further work for MAN1.²⁴

3 The Complaint alleges that, in addition to MAN1 paying Conway, via Polling Company,
4 for services Conway rendered to the Trump campaign, MAN1 coordinated its communications
5 with the Trump campaign via Polling Company as a common vendor. Loyd asserts that the
6 Polling Company employees staffed on the MAN1 project worked only on their personal
7 computers, and therefore, their work was not accessible by Conway or Polling Company
8 employees staffed on the Trump campaign's project.²⁵ Conway asserts that there was a standard
9 firewall policy which precluded her and Polling Company from sharing or exchanging
10 information about the campaign, and states, "[a]t no point did I provide any campaign
11 information to Polling Company staff, except for the Polling Company staff subsequently
12 retained to provide polling for the campaign."²⁶ The Complaint, citing press reports, notes that
13 Polling Company listed only five staff members, other than Conway, on its website;²⁷ Loyd's
14 affidavit names three Polling Company staff members who worked on MAN1 projects but does
15 not name the staff, other than Loyd himself, who worked for Trump campaign projects.²⁸
16 Conway further contends that she did not provide any "non-public proprietary information from
17 the campaign to [MAN1] or the staff of Polling Company working on [MAN1] matters."²⁹

²⁴ Loyd Aff. ¶ 9.

²⁵ *Id.* ¶ 10.

²⁶ Conway Aff. ¶ 7.

²⁷ MUR 7147 Compl. ¶ 42.

²⁸ Loyd Aff. ¶¶ 10, 13-14.

²⁹ *Id.* ¶ 9. The Response does not include a copy of Polling Company's firewall policy.

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 8 of 22

1 **B. Stephen K. Bannon**

2 Bannon joined the Trump campaign in August 2016 as CEO; Bannon asserts that he
3 worked for the campaign as a volunteer.³⁰ The only reported payment from the Trump campaign
4 to Bannon was \$7,576 for “travel reimbursement” paid to his wholly owned company, Bannon
5 Strategic Advisors.³¹ Prior to joining the Trump campaign, Bannon was CEO of the Breitbart
6 News Network and held ownership interests in Glittering Steel, LLC (“Glittering Steel”), a
7 television and film production company whose business included producing campaign
8 advertisements, and Cambridge Analytica, a data analytics company.³²

9 MAN1 retained Glittering Steel, paying it a total of \$724,949 for the 2016 election cycle,
10 \$252,500 of which came after Bannon joined the Trump campaign on August 17, 2016.³³ The
11 Trump campaign has not disclosed any payments directly to Glittering Steel, and Glittering Steel
12 asserts that it was never provided “any non-public, information regarding messaging by the
13 Trump campaign.”³⁴

14 Cambridge Analytica provided data analytic services to both the Trump campaign and
15 MAN1 during the general election.³⁵ After Bannon joined the Trump campaign, the Trump

³⁰ MUR 7147 Compl. ¶ 31; Bannon Aff. ¶ 7.

³¹ Donald J. Trump for President, Inc., First Amended 2016 Post General Disclosure Report at 46,842 (Feb. 14, 2017), <http://docquery.fec.gov/pdf/107/201702149049390107/201702149049390107.pdf>.

³² Bannon Aff. ¶ 1.

³³ See MAN1, Summary of Independent Expenditures, 2016 Election Cycle, Glittering Steel Entries.

³⁴ MAN1 Resp., Ex. 4, Daniel Fleurette Aff. (Feb. 13, 2017) ¶ 14 (setting out averments of Glittering Steel’s co-founder/Chief Operating Officer).

³⁵ Wheatland Aff. ¶¶ 7-8. Cambridge Analytica also provided data analytic services to KTP1, MAN1’s predecessor, and Ted Cruz’s campaign. MUR 7147 Second Supp. Compl. at 6 (citing Vicky Ward, *The Blow-It-All-Up Billionaires*, HUFFINGTON POST, (Mar. 17, 2017), <http://highline.huffingtonpost.com/articles/en/merciers/>).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 9 of 22

1 campaign reported payments to Cambridge Analytica in the amounts of \$5 million in September
2 2016 and \$250,000 in October 2016³⁶ and MAN1 reported payments totaling \$4,633,876 to
3 Cambridge Analytica.³⁷

4 The Complaint alleges that, in addition to MAN1 paying Bannon, via Glittering Steel and
5 Cambridge Analytica, for services Bannon rendered to the Trump campaign, MAN1 coordinated
6 its communications with the Trump campaign via Cambridge Analytica as a common vendor.
7 Cambridge Analytica contends that it instituted appropriate firewall procedures per Commission
8 regulations and attaches a “sample” of the “firewall [it] established.”³⁸ Cambridge Analytica
9 asserts that every client was informed of the firewall policy prior to engagement and explains the
10 steps it took to implement the firewall with respect to its work for MAN1 and the Trump
11 campaign, which included doing work for the two committees from offices in different states.³⁹
12 Bannon avers that he “was made aware of the existence of an ethics firewall,” but does not
13 appear among the names of Cambridge staff and board members who signed the policy;
14 Cambridge Analytica’s Chief Operating Officer avers that Bannon was “outside of the ethics

Hiring Cambridge Analytica was allegedly an unspoken condition of the Mercers’ and KTP1’s support for Trump.
Id.

³⁶ MUR 7147 First Supp. Compl. at 4, n. 17-18; Donald J. Trump for President, Inc. Amended October Monthly Report at 16,043 (May 12, 2017); Donald J. Trump for President, Inc. 2016 Second Amended Pre General Report at 12,065 (May 12, 2017).

³⁷ MUR 7147 First Supp. Compl. ¶ 4 n.14-18 and disclosure reports cited therein.

³⁸ Wheatland Aff. ¶ 6 and attachments (attaching, as exhibits to affidavit, memo dated July 1, 2016, titled Cambridge Analytica Anti-Coordination Firewall Policy (“Cambridge Analytica Firewall Policy”), and spreadsheet that purports to list staff members who have signed the policy).

³⁹ *Id.* ¶¶ 6, 11.

1 firewalls.”⁴⁰ Cambridge Analytica and Glittering Steel paid Bannon a combined total of
2 \$493,836 in “consulting and director fees” through Bannon Strategic Advisors in 2016.⁴¹

3 **III. LEGAL ANALYSIS**

4 Under the Act, a “contribution” is defined as “any gift, subscription, loan, advance, or
5 deposit of money or anything of value made by any person for the purpose of influencing any
6 election for Federal office.”⁴² “Anything of value” includes in-kind contributions.⁴³ When a
7 person makes an expenditure in cooperation, consultation, or in concert with, or at the request or
8 suggest of, a candidate or the candidate’s authorized committee or their agents, it is treated as an
9 in-kind contribution.⁴⁴ In-kind contributions also include “any goods or services [provided]
10 without charge or at a charge that is less than the usual and normal charge for such goods or
11 services.”⁴⁵ However, the value of services provided without compensation by any individual
12 who volunteers on behalf of a candidate or political committee is not a contribution so long as
13 the individual is not compensated by anyone for those services.⁴⁶

⁴⁰ *Id.* ¶ 3 and spreadsheet attachment (including Rebekah Mercer as signatory to firewall policy, but not Bannon); Bannon Aff. ¶ 6.

⁴¹ Bannon Ethics Disclosure Report, <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>.

⁴² 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining “expenditure”).

⁴³ 11 C.F.R. § 100.52(d)(1).

⁴⁴ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁴⁵ 11 C.F.R. § 100.52(d)(1). Usual and normal charge for “goods” means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; usual and normal charge for “services,” other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

⁴⁶ 11 C.F.R. § 100.74. Individuals may volunteer for a campaign while employed by another entity; Commission regulations provide that no contribution results where (a) an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period provided that the taken or

1 Under the Commission’s regulations, a communication is “coordinated” with a candidate,
2 an authorized committee, a political party committee, or agent thereof, and, thus treated as an in-
3 kind contribution, if the communication (1) is paid for, partly or entirely, by a person other than
4 the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at
5 least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the
6 “conduct standards” at 11 C.F.R. § 109.21(d).⁴⁷ A communication must satisfy all three prongs
7 to be a “coordinated communication” under the Commission’s regulations.

8 Commission regulations further treat as a “contribution” the “financing of the
9 dissemination, distribution, or republication, in whole or in part, of any . . . campaign materials
10 prepared by the candidate [or] the candidate’s authorized committee;” the regulations provide
11 that payments for such communications “shall be considered a contribution for the purposes of
12 contribution limitations and reporting responsibilities of the person making the expenditure.”⁴⁸
13 Although the person disseminating, distributing, or republishing campaign materials is deemed

released time is made up or completed by the employee within a reasonable time; (b) an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is considered his or her own to use as he or she sees fit; and (c) the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. 11 C.F.R. § 100.54.

⁴⁷ 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see also* 11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

⁴⁸ 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii) (providing that “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 authorized agents shall be considered an expenditure”).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 12 of 22

1 to make a contribution, the candidate or committee that receives the benefit of the dissemination,
2 distribution, or republication is only deemed to have accepted or received that contribution if it is
3 a coordinated communication under 11 C.F.R. § 109.21.⁴⁹

4 Any person who is otherwise prohibited from making contributions to candidates under
5 the Act or Commission regulations is prohibited from making an in-kind contribution.⁵⁰ An
6 IEOPC “may not make contributions to candidates or political party committees, including in-
7 kind contributions such as coordinated communications.”⁵¹

8 **A. MAN1’s Alleged In-kind Contributions in the Form of Payments to Conway and**
9 **Bannon for Services Rendered to Trump Campaign**

10 The Complaint alleges that MAN1’s payments to companies in which Bannon and
11 Conway had an ownership interest — specifically, Cambridge Analytica, Glittering Steel, and
12 Polling Company — were in reality disguised salary payments to Bannon and Conway for
13 services they rendered to the Trump campaign. Both Bannon and Conway resigned their
14 managerial positions in these companies upon joining the campaign.⁵² However, neither
15 divested their ownership interests in these companies and they continued to benefit financially

⁴⁹ 11 C.F.R. § 109.23(a).

⁵⁰ See 52 U.S.C. §§ 30116(f), 30118(a); see also 11 C.F.R. § 109.22 (noting that any person prohibited from making contributions is prohibited from paying for coordinated communication).

⁵¹ AO 2017-10 (Citizens Against Plutocracy) at 2 (quoting AO 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011)); see also Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

⁵² There is conflicting information as to whether Bannon resigned from Breitbart in November instead of August 2016. Bannon contends he resigned in August, while a news report cites the current CEO of Breitbart stating that Bannon’s resignation was effective in November. The Complaint does not, however, allege that MAN1’s disguised salary payments included such payments to Breitbart.

1 from the companies' business, while purportedly volunteering for the campaign and steering
2 business to their respective companies.

3 Bannon admits that he did not sell his ownership interests in Cambridge Analytica until
4 April 12, 2017.⁵³ He had not divested his ownership interest in Glittering Steel as of the time of
5 MAN1's response.⁵⁴ Bannon makes no claim that his assets were frozen as of the date he joined
6 the campaign, or held in a blind trust. Rather, he simply states that after joining the Trump
7 campaign he took leave from Cambridge Analytica, agreed to sell his interest in Cambridge
8 Analytica and Glittering Steel, and, starting on August 17, 2016, began the process of divesting
9 from Cambridge Analytica, participated in no Cambridge Analytica board decision-making, and
10 received no payments from Cambridge Analytica or Glittering Steel for "the duration of the
11 campaign."⁵⁵

12 The Complaint argues that while Bannon was purportedly an unpaid volunteer for the
13 campaign, he directly benefitted from his continued financial stake in Cambridge Analytica and
14 Glittering Steel in increasing amounts as MAN1 increased its expenditures for services rendered
15 by Cambridge Analytica and Glittering Steel, which amounted to an in-kind contribution to the
16 Trump Campaign from MAN1.⁵⁶ While the Complaint contends that these ownership interests
17 amounted to pass-through compensation because Cambridge Analytica and Glittering Steel
18 received more business from MAN1 once Bannon began to work for the Trump campaign, it

⁵³ While Bannon asserts that he was awaiting OGE approval to sell his interest in Cambridge Analytica, he cites no statutory requirement for him to wait to divest his corporate interests after he agreed to join the campaign.

⁵⁴ Bannon Aff. ¶ 2.

⁵⁵ *Id.* ¶¶ 4-5.

⁵⁶ MUR 7147 Compl. ¶¶ 37-38; MUR 7193 Compl. at 4-5; *see also* MUR 7147 First Supp. Compl. at 3-4 (citing press report for assertion that "Bannon has long been indirectly compensated by Mercer-backed entities").

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 14 of 22

1 does not provide information regarding the companies' actual payments to Bannon, any increase
2 in the value of Bannon's ownership interest, any payments that were unrelated to work
3 performed by Cambridge Analytica and Glittering Steel for its clients, including MAN1, or any
4 payments that were not for the usual and normal charge for such work.

5 Commission regulations provide that, in order for payment to a campaign volunteer to be
6 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
7 must receive compensation for work performed on behalf of that candidate.⁵⁷ There is no
8 information in the record that Bannon received any compensation from Glittering Steel or
9 Cambridge Analytica for services rendered once he began working for the Trump campaign, and
10 Bannon states under oath that he was not compensated for "the duration of the campaign."⁵⁸
11 Additionally, there is no public information to support the Complaint's claim that the proceeds
12 Bannon received when he sold his ownership interest in Cambridge Analytica back to the
13 company were in excess of the actual value of that interest. Accordingly, there is an insufficient
14 factual basis for finding that MAN1 made an in-kind contribution to the Trump campaign in the
15 form of compensation to Bannon when it paid for services rendered by Cambridge Analytica or
16 Glittering Steel.

17 Conway does not deny that she retained her ownership stake in Polling Company even
18 after she resigned as President and CEO to work for the campaign.⁵⁹ In fact, she continued to

⁵⁷ 11 C.F.R. § 100.74. *See* MURs 6566 and 6604 (Lisa Wilson-Foley for Congress); MUR 6494 (Schmidt for Congress); *cf.* 11 C.F.R. §§ 100.54, 114.9 (compensation for personal services as contributions, use of corporate resources by stockholder volunteers, respectively).

⁵⁸ Bannon Aff. ¶ 5. Bannon's affidavit does not address whether Bannon received any compensation from either company after the election for work performed during the campaign.

⁵⁹ Conway Aff. ¶¶ 6-7.

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 15 of 22

1 invoice for her consulting services rendered to the Trump campaign through Polling Company.⁶⁰
2 MAN1 paid its final invoice for services rendered by Polling Company on August 23, 2016, and
3 does not appear to have used Polling Company as a vendor thereafter.⁶¹ Polling Company
4 submits sworn affidavits attesting that the August 23rd payment was for services rendered by
5 Polling Company prior to Conway's joining the Trump campaign. Because there is insufficient
6 information to suggest that Polling Company provided services to MAN1 while Conway was a
7 Trump campaign employee, or that Conway was paid less than her usual market rate for her
8 consulting services, there is insufficient information to suggest that the MAN1 payment to
9 Polling Company was actually payment for personal services rendered by Conway to the Trump
10 campaign, resulting in an in-kind contribution.

11 Accordingly, the Commission dismisses the allegation that Make America Number 1 and
12 Jacquelyn James in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a),
13 30104(b) by making and failing to report excessive and prohibited in-kind contributions to the
14 Trump campaign in the form of payments to vendors that were actually compensation for the
15 services Bannon and Conway provided to the Trump campaign. The Commission also dismisses
16 the allegation that Kellyanne Conway and Stephen K. Bannon violated 52 U.S.C. § 30116(a) by
17 making excessive contributions in the form of services rendered to the Trump campaign, and
18 closes the file as to Conway and Bannon.

⁶⁰ *Id.*

⁶¹ Loyd Aff. ¶ 9.

1 **B. MAN1’s Alleged Coordinated Communications through the Use of Common**
2 **Vendors**

3 The Complaint alleges that MAN1 made coordinated communications resulting in an in-
4 kind contribution to the Trump campaign, but fails to identify any specific communication that
5 was coordinated.⁶² The first and second prongs of the coordination test under the Commission’s
6 regulations are satisfied because MAN1 spent \$1,470,549 for public communications that
7 expressly advocated against Trump’s opponent and were disseminated via television broadcast.⁶³
8 The Complaint alleges that the third element, the conduct standard, was satisfied because both
9 the Trump campaign and MAN1 utilized the services of “common vendors” Cambridge
10 Analytica and Polling Company.⁶⁴

11 The “common vendor” standard is another standard by which the conduct prong for
12 coordination may be met.⁶⁵ Here, the Complaint urges the Commission to apply this standard to
13 MAN1’s communications. The “common vendor” standard has three elements: (i) the person
14 paying for the communication uses a “commercial vendor” to create, produce, or distribute the
15 communication, (ii) the vendor, including any owner, officer, or employee, previously provided
16 certain enumerated services — including, *inter alia*, “development of media strategy,” polling,
17 fundraising, “developing the content of a public communication,” “identifying voters,” or

⁶² Through the quotation of a newspaper article, the Complaint alleges that MAN1 aired one ad, “Clinton Fatigue,” which apparently first aired in the primaries, but the Complaint does not allege that it was created with material information from the Trump campaign. *See* MUR 7147 Compl. ¶ 36; *see also* “Clinton Fatigue,” YOUTUBE, <https://www.youtube.com/watch?v=Lt2QVtWtdjQ> (published Sept. 13, 2016).

⁶³ *See* 11 C.F.R. § 109.21(a)(1), (c)(3), (c)(4)(ii), (c)(5).

⁶⁴ *See* 11 C.F.R. § 109.21(d)(4).

⁶⁵ 11 C.F.R. § 109.21(d)(4).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 17 of 22

1 “consulting or otherwise providing political or media advice”⁶⁶ — to the candidate identified in
2 the communication (or that candidate’s opponent) during the previous 120 days, and (iii) the
3 commercial vendor uses or conveys to the person paying for the communication:

4 (A) Information about the campaign plans, projects, activities, or needs of the
5 clearly identified candidate, the candidate’s opponent, or a political party
6 committee, and that information is material to the creation, production, or
7 distribution of the communication; or
8 (B) Information used previously by the commercial vendor in providing services
9 to the candidate who is clearly identified in the communication, or the candidate’s
10 authorized committee, the candidate’s opponent, the opponent’s authorized
11 committee, or a political party committee, and that information is material to the
12 creation, production, or distribution of the communication.⁶⁷

13 The common vendor conduct standard is not satisfied if a commercial vendor has established and
14 implemented a written firewall policy that meets certain requirements, so long as material
15 information is not shared.⁶⁸

16 The payor of a communication that is coordinated through the use of a common vendor
17 or a former employee makes a contribution to the candidate, but the candidate or authorized
18 committee “does not receive or accept an in-kind contribution” resulting from coordination
19 through a common vendor or former employee unless the communication was made at the

⁶⁶ 11 C.F.R. § 109.21(d)(4)(ii).

⁶⁷ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

⁶⁸ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit 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 who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities, or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

1 request or suggestion of, with the material involvement of, or after substantial discussions with,
2 the candidate or authorized committee.⁶⁹

3 MAN1 does not dispute that it contracted with Cambridge Analytica and Polling
4 Company, which specialize in the development of data and polling information that are used in
5 the production of political advertisements.⁷⁰ However, the last date upon which Polling
6 Company provided MAN1 with polling services was July 7, 2016, which is *prior* to the time
7 when the Trump campaign retained Polling Company on July 10, 2016.⁷¹ Because the record
8 indicates that Polling Company provided services first to MAN1, and subsequently to the Trump
9 campaign, the available information concerning Polling Company does not satisfy the timing
10 requirement of the common vendor standard.⁷²

11 The Complaint contends that there was sufficient overlap of personnel between the
12 Trump campaign and Cambridge Analytica to raise an inference that campaign information
13 might have been shared between MAN1 and the Trump campaign.⁷³ In response, Cambridge
14 Analytica provides a copy of its written firewall policy, states that the policy segregated client

⁶⁹ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

⁷⁰ *See* 11 C.F.R. § 109.21(d)(4)(ii)(C); Wheatland Aff. ¶ 9, Ex. 2, Loyd Aff. ¶¶ 8-10, 14.

⁷¹ Loyd Aff. ¶¶ 9, 13.

⁷² *See* 11 C.F.R. § 109.21(d)(4) (setting scope of “common vendor” coordination conduct for third party’s use of common vendor within 120 days *after* candidate’s use of that vendor). Respondents also assert that Polling Company maintained a robust written firewall policy for preventing the commingling of information between employees working for candidates and PACs. MAN1 Resp. at 19-20. This firewall policy included data segregation and separate storage of information on different computers accessible only to the employees working for a given client. *Id.* The MAN1 Response includes sworn statements from the employees working for MAN1 and the Trump campaign attesting that they followed the firewall policy at all times, but does not include any copies of the firewall policy signed by those employees. *Id.* However, because MAN1 and Polling Company did not meet the common vendor standard, we need not reach the issue of the adequacy of Polling Company’s firewall here.

⁷³ *See* MUR 7147 Second Supp. Compl. at 5-6 (noting, among other overlap, Bannon’s position as an officer of Cambridge Analytica).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 19 of 22

1 information so that the campaign and PAC teams could not communicate regarding their
2 respective accounts or have access to each other's files, and notes that the Trump campaign team
3 worked out of Cambridge Analytica's San Antonio, TX office while the MAN1 team worked
4 from offices in Washington, DC.⁷⁴ Cambridge Analytica states that at no point did it provide
5 services jointly to the Trump campaign and MAN1, or share strategies or information with these
6 clients.⁷⁵ In fact, Cambridge Analytica states that when the two teams required the same data
7 each team would purchase the data for their own use in order to ensure that the teams were not
8 communicating with the other about their work.⁷⁶

9 Bannon attests that he was made aware of the policy while at Cambridge Analytica, was
10 not permitted access to any information in Cambridge Analytica's possession, and did not
11 provide information about the Trump campaign to Cambridge Analytica nor did he receive any
12 non-public, proprietary information regarding the messaging, plans, projects, activities, or needs
13 of Cambridge Analytica's clients, including MAN1.⁷⁷ Bannon did not, however, appear to have
14 been included among Cambridge employees, officers, or board members who signed the firewall
15 policy.⁷⁸

16 While there is some publicly available information that raises questions about the
17 strength of the Cambridge Analytica firewall, as discussed in more detail below, we cannot link

⁷⁴ Wheatland Aff. ¶ 3, Cambridge Analytica Firewall Policy; Julian Wheatland Supplemental Aff. (Feb. 27, 2017) ("Wheatland Supp. Aff.") ¶ 11.

⁷⁵ Wheatland Aff. ¶ 3.

⁷⁶ *Id.* ¶ 12.

⁷⁷ Bannon Aff. ¶ 6.

⁷⁸ *Cf.* 11 C.F.R. § 109.21(h)(2) (requiring, as condition of firewall safe harbor, that policy be distributed to "all relevant employees, consultants, and clients affected by the policy").

1 those concerns to any specific communications from MAN1 so as to conclude that Cambridge
2 Analytica used or conveyed to MAN1 information material to the creation, production, or
3 distribution, of a communication. Accordingly, the Commission dismisses the allegation that
4 Make America Number 1 and Jacquelyn James in her official capacity as treasurer violated
5 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making and failing to report excessive and
6 prohibited in-kind contributions to the Trump campaign in the form of coordinated
7 communications using a common vendor.

8 **C. MAN1’s Alleged Coordinated Expenditures**

9 Along with the allegation that MAN1 made coordinated communications, the Complaint
10 also alleges that MAN1 and the Trump campaign were “inextricably intertwined” and functioned
11 effectively as “joint ventures” resulting in MAN1 making, and the Trump campaign accepting,
12 prohibited in-kind contributions.⁷⁹ In addition to the close relationship between the Mercers,
13 Trump, and Trump campaign officials such as Bannon, Conway, and Bossie that were cited in
14 the Complaint, publicly available information about Cambridge Analytica also raises concerns
15 that MAN1 and the Trump campaign were coordinating their activities.

16 After the 2016 election, Alexander Nix and Mark Turnbull, two Cambridge Analytica
17 executives, met with a journalist posing as a potential client and were recorded telling the
18 journalist that Cambridge Analytica “did all the research, all the data, all the analytics, all the
19 targeting, we ran all the digital campaign, the television campaign and our data informed all the
20 strategy” for the Trump campaign.⁸⁰ In another recorded meeting, Cambridge Analytica

⁷⁹ MUR 7147 Compl. ¶ 78.

⁸⁰ “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, (Mar. 20, 2018),
<https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica>
 (“Channel 4 Report”).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 21 of 22

1 executives more particularly described their strategy of distributing “positive” messages through
2 the Trump campaign while “negative material was pushed out through outside organizations”;
3 Turnbull provided an example of its work for MAN1, in which Cambridge “created the ‘Defeat
4 Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-PAC and
5 watched more than 30 million times during the campaign.”⁸¹

6 These public statements and the news reports highlighted in the Complaint of the
7 Mercers’ role in Cambridge Analytica, MAN1, and in advising the Trump campaign suggest the
8 possibility that there was a systemic effort to coordinate the activities of the groups through
9 either Cambridge Analytica or the Mercers. Nonetheless, specific information of coordinating
10 activity in support of a coordination conclusion is notably lacking. The Complaint relies
11 primarily on an inference that there must be coordination given the multiple connections between
12 the groups, but provides no evidence, for example, of public statements by Bannon, the Mercers,
13 MAN1, or the Trump campaign regarding coordinated efforts generally or specifically.

14 A review of the Complaint, responses, and publicly available information does not
15 provide a sufficient basis to conclude that MAN1 systemically coordinated with the Trump
16 Campaign on its activities. While Cambridge executives were secretly recorded making public
17 statements suggesting they created and distributed research, data, and analytics all designed to
18 target voters to increase Trump’s favorability and decrease that of his opponent,⁸² which was
19 later used by MAN1 and other organizations in their advertising or online campaigns, the
20 statements fall short of admitting the kind of nexus between MAN1 and the Trump campaign or

⁸¹ *Id.*

⁸² *See* Channel 4 Report. Those statements were later disavowed by Cambridge Analytic in its public response to the Channel 4 Report. “Cambridge Analytica Ran ‘All’ Of Trump Campaign’s Digital Campaign,” INTERNATIONAL BUSINESS TIMES NEWS, 2018 WLNR 8639954 (Mar. 20, 2018).

MUR 7147 (Make America Number 1)
Factual and Legal Analysis
Page 22 of 22

1 its agents that would satisfy either the conduct prong for coordination under section 109.21 or
2 provide evidence to support a conclusion that all (or a particular subset of) expenditures by
3 MAN1 were coordinated with the Trump campaign under section 109.21. Because there is
4 insufficient information to support a finding of widespread and systemic coordination between
5 the Trump campaign and MAN1, as alleged in the Complaint, the Commission dismisses the
6 allegation that Make America Number 1 and Jacquelyn James in her official capacity as treasurer
7 violated 52 U.S.C. §§ 30116(a), 30118(a), 30104(b) by making and failing to report excessive
8 and prohibited in-kind contributions through coordinated expenditures with the Trump
9 campaign, and closes the file as to MAN1.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Donald J. Trump for President, Inc. **MUR 7147**
and Bradley T. Crate in his official
capacity as treasurer

I. INTRODUCTION

The Complaint in MUR 7147 alleges that, during the 2016 general election Make America Number 1 (“MAN1”), an independent expenditure-only political committee (“IEOPC”) supporting Presidential candidate Donald Trump, made prohibited contributions to Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”)¹ and that the Trump campaign failed to report these contributions.² The Complaint further alleges that MAN1 was so “inextricably intertwined” with the Trump campaign that many of MAN1’s expenditures should be deemed to be coordinated with the Trump campaign and, therefore, impermissible in-kind contributions.³ More specifically, the Complaint alleges the Trump campaign coordinated communications with MAN1 resulting in prohibited contributions, and the Trump campaign received an in-kind contribution when MAN1 paid for the personal services of two senior Trump campaign staffers, Kellyanne Conway and Stephen K. Bannon, for services rendered to the Trump campaign.

¹ Bradley T. Crate became treasurer for Donald J. Trump for President, Inc. on January 20, 2017. Timothy Jost was the treasurer at the time the Committee was notified of the allegations raised in the Complaint.

² See MUR 7147 Compl. (Oct. 6, 2016); MUR 7147 First Supp. Compl. (Dec. 2, 2016); MUR 7147 Second Supp. Compl. (Apr. 12, 2017). The Trump-related aspects of the Complaint in MUR 7193 overlap with the first two of the MUR 7147 Complaint’s allegations. See MUR 7193 Compl. ¶¶ 14-17 (Nov. 7, 2016). Unless otherwise designated, all references and citations to the “Complaint” in this refer to the Complaint in MUR 7147.

³ MUR 7147 Compl. ¶ 6; MUR 7147 First Supp. Compl. at 1; MUR 7147 Second Supp. Compl. at 1.

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 2 of 20

1 For the reasons that follow, the Commission dismisses the allegation that the Trump
2 campaign violated 52 U.S.C. §§ 30116(f), 30118(a) by receiving in-kind contributions from, and
3 coordinating communications or expenditures with, MAN1, and dismisses the allegation that the
4 Trump campaign violated 52 U.S.C. § 30104(b) by failing to report these in-kind contributions.

5 **II. FACTS**

6 On June 22, 2015, Donald Trump filed a Statement of Candidacy with the Commission
7 for the 2016 presidential election, designating Donald J. Trump for President, Inc., as his
8 principal campaign committee.⁴ MAN1 initially registered with the Commission on April 6,
9 2015 as an IEOPC named “Keep the Promise 1” (“KTP1”); on June 22, 2016, it filed an
10 amended Statement of Organization with the “Make America Number 1” name.⁵

11 The Complaint alleges that MAN1 was so “inextricably intertwined with the Trump
12 Campaign” that many of MAN1’s expenditures were coordinated with the campaign such that
13 they should be deemed in-kind contributions to the campaign.⁶ Specifically, the Complaint
14 alleges that the Mercer family, specifically Robert Mercer, the founder and primary contributor
15 to MAN1, and his daughter, Rebekah Mercer, who was chair of MAN1, were heavily involved in
16 running the IEOPC⁷ while also “meeting and conferring about strategy” with the Trump

⁴ Donald J. Trump Statement of Candidacy (June 22, 2015).

⁵ MAN1 Statement of Organization (Apr. 6, 2015); MAN1 Amended Statement of Organization (June 22, 2016).

⁶ MUR 7147 Second Supp. Compl. at 1.

⁷ MUR 7147 Compl. ¶¶ 27, 29 (quoting press report that Mercers “maintained close control over [KTP1 and MAN1’s] purse strings”); *see also* Zachary Mider, *Mega-Donor Mercer’s Daughter Takes Charge of Pro-Trump Group*, BLOOMBERG, (Sept. 7, 2016), <https://www.bloomberg.com/news/articles/2016-09-07/mega-donor-mercero-daughter-takes-charge-of-pro-trump-group> (stating that Rebekah Mercer “took charge of the day-to-day operations of the group” according to a spokesman for MAN1).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 3 of 20

1 campaign “on a regular basis.”⁸ During the 2016 election cycle, Robert Mercer made \$15.5
2 million of the \$20.7 million in contributions that MAN1 reported receiving.⁹ The Complaint
3 cites multiple press reports detailing the influence of the Mercers and MAN1 on the Trump
4 campaign and the overlapping relationships between the Mercers, their associates and
5 companies, and the Trump campaign.¹⁰

6 According to media reports, the Mercers met with Trump in early August 2016, and
7 recommended that he fire Manafort and bring in Bannon and Conway for Trump campaign
8 leadership positions (campaign chair and chief executive, respectively). Both Conway and
9 Bannon were reportedly longstanding allies of the Mercers, with Conway described as a
10 “sounding board” for Rebekah Mercer and Bannon serving on the board of Cambridge
11 Analytica, LLC alongside Rebekah Mercer, and working on other projects funded by the
12 Mercers.¹¹ Soon thereafter, Trump fired Manafort, hired Bannon as CEO, and promoted

⁸ MUR 7147 Compl. ¶ 73; *see also* Matea Gold, *Anti-Clinton Super PAC Kicks Off Ad Blitz With Relunched ‘Clinton Fatigue’ Spot*, WASH.POST, (Sept. 13, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/09/13/anti-clinton-super-pac-kicks-off-ad-blitz-with-new-clinton-fatigue-spot/?utm_term=.30cf776fa126 (cited at MUR 7147 Compl. ¶ 36 n.42).

⁹ MAN1 Receipts, Jan.1, 2015 – Dec. 31, 2016, https://www.fec.gov/data/receipts/?two_year_transaction_period=2016&data_type=processed&committee_id=C00575373&contributor_name=mercero&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016. Mercer contributed almost 75% of this money (\$11 million) as seed money for KTP1.

¹⁰ MUR 7147 Compl. ¶¶ 27-37 (detailing, among other things, a May 2016 meeting between Rebekah Mercer, Conway, Ivanka Trump, and Jared Kushner after Cruz dropped out of the race and before KTP1 relaunched as MAN1; Mercer ownership of Cambridge Analytica; Mercer funding of various Bannon projects, including Breitbart News Network, LLC; and connections between the committees, Mercers, and Cambridge Analytica).

¹¹ MUR 7147 Compl. ¶¶ 33, 35, 37, 73; MUR 7147 Second Supp. Compl. at 5-7; *see also* Rebecca Ballhaus, *Rebekah Mercer Takes Helm of Pro-Trump PAC, Extending Family’s Influence in Campaign*, WALL ST. J. (Sept. 7, 2016), <https://blogs.wsj.com/washwire/2016/09/07/rebekah-mercero-takes-helm-of-pro-trump-pac-extending-familys-influence-in-campaign> (cited at MUR 7147 Compl. ¶ 35 n.41).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 4 of 20

1 Conway to Campaign Manager.¹² According to press reports, Trump also hired David Bossie,
2 who briefly succeeded Conway at MAN1, as Deputy Campaign Manager in September 2016,
3 after Rebekah Mercer “privately urged Trump to retool his campaign leadership.”¹³ The
4 Complaint also cites news accounts suggesting that the Mercers urged the Trump campaign to
5 hire Cambridge Analytica to provide services to the campaign while Bannon sat on the
6 Cambridge Analytica Board of Directors and the Mercers and Bannon had ownership stakes in
7 Cambridge Analytica.¹⁴ The Complaint contends that “[g]iven the Mercers have *de facto* control
8 over the campaign and *de jure* control over the political committee, it is clear that Make America
9 Number 1’s expenditures are not independent” and characterizes the Trump campaign and
10 MAN1 as “essentially joint ventures.”¹⁵

11 In addition to the general coordination allegations, the Complaint highlights two specific
12 categories of coordinated expenditures: compensation paid by MAN1 to Kellyanne Conway and
13 Stephen K. Bannon, through companies in which they had ownership interests, for personal services

¹² MUR 7147 Compl. ¶ 31.

¹³ MUR 7147 Compl. ¶ 37; *see also* Matea Gold, *The Rise of GOP Mega Donor Rebekah Mercer*, WASH.POST, (Sept. 14, 2016), https://www.washingtonpost.com/politics/the-rise-gop-mega-donor-rebekah-mercere/2016/09/13/85ae3c32-79bf-11e6-beac-57-a4a412e93a_story.html (cited at MUR 7147 Compl. ¶ 37 n.43). Bossie was also reportedly a volunteer for the Trump campaign. Compl. ¶¶ 35, 73. Disclosure reports reveal one \$15,000 payment to Bossie on December 9, 2016 for “communications consulting.” Donald J. Trump for President, Inc., 2016 Second Amended Year End Disclosure Report at 24,212 (May 12, 2017), <http://docquery.fec.gov/pdf/207/201705129053689207/201705129053689207.pdf>.

¹⁴ MUR 7147 Compl. ¶ 39. Prior to joining the Trump campaign, Bannon also served as Cambridge Analytica’s Vice President and Secretary. MUR 7147 Second Supp. Compl. at 6 (citing Bannon Ethics Disclosure Report (Mar. 30, 2016), attached as an exhibit and available at <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>, and Jane Mayer, *The Reclusive Hedge-Fund Tycoon Behind the Trump Presidency*, THE NEW YORKER, at 36-37 (Mar. 27, 2016), <http://www.newyorker.com/magazine/2017/03/27/the-reclusive-hedge-fund-tycoon-behind-the-trump-presidency>).

¹⁵ MUR 7147 Compl. ¶ 77.

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 5 of 20

1 rendered to the Trump campaign, and compensation paid by MAN1 to Conway and Bannon
2 through payments made to Conway and Bannon's companies, as common vendors to both
3 MAN1 and the Trump campaign, for coordinated communications.

4 **A. Kellyanne Conway**

5 Conway joined the Trump campaign as an independent contractor on July 1, 2016,
6 serving first as Senior Advisor and Pollster and then as Campaign Manager. Prior to joining the
7 Trump campaign, Conway served as president of MAN1 in its former iteration as KTP1.¹⁶
8 Conway was also the President and founder of The Polling Company, Inc./Women Trend
9 ("Polling Company"), a "primary research and consulting firm."

10 Throughout the primary election season, Polling Company provided substantial services
11 to KTP1, including polling, assisting with media strategy and identifying potential donors.
12 Information available to the Commission indicates that in early June 2016, Conway was
13 contacted by the Trump campaign to assist the campaign with its media strategy, and from that
14 point forward, she stopped performing work for or receiving information regarding KTP1's plans
15 or strategies. Moreover, though Conway invoiced the Trump campaign for her consulting
16 services through Polling Company and maintained her ownership interest in Polling Company,
17 the available information suggests that she was the only individual from Polling Company
18 involved in consulting for the Trump campaign and that she ceased involvement with Polling
19 Company operations when she began working for the campaign.

20 From July 10, 2016, through the general election, the Trump campaign retained Polling
21 Company to perform polling. MAN1 also retained Polling Company for polling work. In

¹⁶ MUR 7147 Compl. ¶ 27 (citing media report, published the day before MAN1 filed its amended Statement of Organization, that Kellyanne Conway was "president of Keep the Promise PAC").

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 6 of 20

1 August 2016, two months after Conway joined the Trump campaign, MAN1 paid Polling
2 Company approximately \$247,000 and the Trump campaign paid Polling Company \$111,000 for
3 polling.¹⁷ The Complaint cites press reports in which Conway is quoted saying that this payment
4 was for work done by Polling Company for MAN1 in late June and early July, later correcting
5 that statement to assert the work was limited to June 2016.¹⁸ Information available to the
6 Commission indicates that the \$247,000 payment from MAN1 on August 23, 2016, was for
7 services Polling Company provided in late June through July 7, after which Polling Company did
8 no further work for MAN1.

9 The Complaint alleges that, in addition to MAN1 paying Conway, via Polling Company,
10 for services Conway rendered to the Trump campaign, MAN1 coordinated its communications
11 with the Trump campaign via Polling Company as a common vendor. Information available to
12 the Commission indicates that Polling Company employees staffed on the MAN1 project worked
13 only on their personal computers, and therefore, their work was not accessible by Conway or
14 Polling Company employees staffed on the Trump campaign's project. Additionally, there was a
15 standard firewall policy which precluded Conway and Polling Company staff from sharing or
16 exchanging information about the campaign, to which, the available information suggests, the
17 parties complied. The Complaint, citing press reports, notes that Polling Company listed only
18 five staff members, other than Conway, on its website.¹⁹ Information available to the

¹⁷ MUR 7147 Compl. ¶¶ 38, 42; *see also* MAN1 Amended September Monthly Report at 12 (May 22, 2017).

¹⁸ MUR 7147 Compl. ¶ 42 (quoting press report that Conway indicated that she did not know details of the Polling Company's work for MAN1, but also indicated that it was MAN1's then-president "Bossie's decision to hire" Polling Company); *see also id.* ¶ 27 (citing press report that Conway "recruited Bossie for his role" as her replacement at MAN1).

¹⁹ MUR 7147 Compl. ¶ 42.

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 7 of 20

1 Commission indicates that Conway did not provide any non-public proprietary information from
2 the campaign to MAN1 or to Polling Company staff working on MAN1 matters.

3 **B. Stephen K. Bannon**

4 Bannon joined the Trump campaign in August 2016 as CEO; Bannon asserts that he
5 worked for the campaign as a volunteer.²⁰ The only reported payment from the Trump campaign
6 to Bannon was \$7,576 for “travel reimbursement” paid to his wholly owned company, Bannon
7 Strategic Advisors.²¹ Prior to joining the Trump campaign, Bannon was CEO of the Breitbart
8 News Network and held ownership interests in Glittering Steel, LLC (“Glittering Steel”), a
9 television and film production company whose business included producing campaign
10 advertisements, and Cambridge Analytica, a data analytics company.

11 MAN1 retained Glittering Steel, paying it a total of \$724,949 for the 2016 election cycle,
12 \$252,500 of which came after Bannon joined the Trump campaign on August 17, 2016.²² The
13 Trump campaign has not disclosed any payments directly to Glittering Steel, and the information
14 available to the Commission suggests that Glittering Steel never provided any non-public,
15 information regarding messaging by the Trump campaign.

16 Cambridge Analytica provided data analytic services to both the Trump campaign and
17 MAN1 during the general election.²³ After Bannon joined the Trump campaign, the Trump

²⁰ MUR 7147 Compl. ¶ 31.

²¹ Donald J. Trump for President, Inc., First Amended 2016 Post General Disclosure Report at 46,842 (Feb. 14, 2017), <http://docquery.fec.gov/pdf/107/201702149049390107/201702149049390107.pdf>.

²² See MAN1, Summary of Independent Expenditures, 2016 Election Cycle, Glittering Steel Entries.

²³ Cambridge Analytica also provided data analytic services to KTP1, MAN1’s predecessor, and Ted Cruz’s campaign. MUR 7147 Second Supp. Compl. at 6 (citing Vicky Ward, *The Blow-It-All-Up Billionaires*,

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 8 of 20

1 campaign reported payments to Cambridge Analytica in the amounts of \$5 million in September
2 2016 and \$250,000 in October 2016²⁴ and MAN1 reported payments totaling \$4,633,876 to
3 Cambridge Analytica.²⁵

4 The Complaint alleges that, in addition to MAN1 paying Bannon, via Glittering Steel and
5 Cambridge Analytica, for services Bannon rendered to the Trump campaign, MAN1 coordinated
6 its communications with the Trump campaign via Cambridge Analytica as a common vendor.
7 Information available to the Commission indicates that Cambridge Analytica instituted firewall
8 procedures per Commission regulations, and the Trump campaign, Bannon and MAN1 were
9 informed of the firewall policy prior to the Trump campaign's engagement.

10 **III. LEGAL ANALYSIS**

11 Under the Act, a "contribution" is defined as "any gift, subscription, loan, advance, or
12 deposit of money or anything of value made by any person for the purpose of influencing any
13 election for Federal office."²⁶ "Anything of value" includes in-kind contributions.²⁷ When a
14 person makes an expenditure in cooperation, consultation, or in concert with, or at the request or
15 suggest of, a candidate or the candidate's authorized committee or their agents, it is treated as an

HUFFINGTON POST, (Mar. 17, 2017), <http://highline.huffingtonpost.com/articles/en/mercercs/>). Hiring Cambridge Analytica was allegedly an unspoken condition of the Mercers' and KTP1's support for Trump. *Id.*

²⁴ MUR 7147 First Supp. Compl. at 4, n. 17-18; Donald J. Trump for President, Inc. Amended October Monthly Report at 16,043 (May 12, 2017); Donald J. Trump for President, Inc. 2016 Second Amended Pre General Report at 12,065 (May 12, 2017).

²⁵ MUR 7147 First Supp. Compl. ¶ 4 n.14-18 and disclosure reports cited therein.

²⁶ 52 U.S.C. § 30101(8)(A)(i); *see also* 52 U.S.C § 30101(9)(A)(i) (similarly defining "expenditure").

²⁷ 11 C.F.R. § 100.52(d)(1).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 9 of 20

1 in-kind contribution.²⁸ In-kind contributions also include “any goods or services [provided]
2 without charge or at a charge that is less than the usual and normal charge for such goods or
3 services.”²⁹ However, the value of services provided without compensation by any individual
4 who volunteers on behalf of a candidate or political committee is not a contribution so long as
5 the individual is not compensated by anyone for those services.³⁰

6 Under the Commission’s regulations, a communication is “coordinated” with a candidate,
7 an authorized committee, a political party committee, or agent thereof, and, thus treated as an in-
8 kind contribution, if the communication (1) is paid for, partly or entirely, by a person other than
9 the candidate, authorized committee, political party committee, or agent thereof; (2) satisfies at
10 least one of the “content standards” at 11 C.F.R. § 109.21(c); and (3) satisfies at least one of the
11 “conduct standards” at 11 C.F.R. § 109.21(d).³¹ A communication must satisfy all three prongs

²⁸ 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

²⁹ 11 C.F.R. § 100.52(d)(1). Usual and normal charge for “goods” means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; usual and normal charge for “services,” other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.52(d)(2).

³⁰ 11 C.F.R. § 100.74. Individuals may volunteer for a campaign while employed by another entity; Commission regulations provide that no contribution results where (a) an employee paid on an hourly or salaried basis engages in political activity during what would otherwise be a regular work period provided that the taken or released time is made up or completed by the employee within a reasonable time; (b) an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is considered his or her own to use as he or she sees fit; and (c) the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time. 11 C.F.R. § 100.54.

³¹ 11 C.F.R. § 109.21(a); *see also* 11 C.F.R. § 109.21(b) (describing in-kind treatment and reporting of coordinated communications). The “content standard” requirement is satisfied if the communication at issue constitutes: (1) an “electioneering communication;” (2) a “public communication” that disseminates campaign materials prepared by a candidate or authorized committee; (3) a public communication that “expressly advocates” the election or defeat of a clearly identified federal candidate; (4) certain public communications distributed 120 days or fewer before an election, which refer to a clearly identified federal candidate (or political party); or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c); *see also*

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 10 of 20

1 to be a “coordinated communication” under the Commission’s regulations.

2 Commission regulations further treat as a “contribution” the “financing of the
3 dissemination, distribution, or republication, in whole or in part, of any . . . campaign materials
4 prepared by the candidate [or] the candidate’s authorized committee;” the regulations provide
5 that payments for such communications “shall be considered a contribution for the purposes of
6 contribution limitations and reporting responsibilities of the person making the expenditure.”³²
7 Although the person disseminating, distributing, or republishing campaign materials is deemed
8 to make a contribution, the candidate or committee that receives the benefit of the dissemination,
9 distribution, or republication is only deemed to have accepted or received that contribution if it is
10 a coordinated communication under 11 C.F.R. § 109.21.³³

11 Any person who is otherwise prohibited from making contributions to candidates under
12 the Act or Commission regulations is prohibited from making an in-kind contribution.³⁴ An
13 IEOPC “may not make contributions to candidates or political party committees, including in-
14 kind contributions such as coordinated communications.”³⁵

11 C.F.R. § 100.22 (defining express advocacy); 11 C.F.R. § 100.26 (defining public communication); 11 C.F.R. § 100.29 (defining electioneering communication).

³² 11 C.F.R. § 109.23(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(iii) (providing that “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 authorized agents shall be considered an expenditure”).

³³ 11 C.F.R. § 109.23(a).

³⁴ *See* 52 U.S.C. §§ 30116(f), 30118(a); *see also* 11 C.F.R. § 109.22 (noting that any person prohibited from making contributions is prohibited from paying for coordinated communication).

³⁵ AO 2017-10 (Citizens Against Plutocracy) at 2 (quoting AO 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011))); *see also* Advisory Op. at 2010-11 (Commonsense Ten) at 2-3.

1 **A. Alleged In-kind Contributions in the Form of Payments to Conway and Bannon**
2 **for Services Rendered to Trump Campaign**

3 The Complaint alleges that MAN1's payments to companies in which Bannon and
4 Conway had an ownership interest — specifically, Cambridge Analytica, Glittering Steel, and
5 Polling Company — were in reality disguised salary payments to Bannon and Conway for
6 services they rendered to the Trump campaign. Information available to the Commission
7 suggests that while Bannon and Conway resigned their managerial positions in these companies
8 upon joining the campaign, neither divested their ownership interests in these companies and
9 they continued to benefit financially from the companies' business, while purportedly
10 volunteering for the campaign and steering business to their respective companies.

11 Information available to the Commission indicates that Bannon did not sell his ownership
12 interests in Cambridge Analytica until April 12, 2017. After joining the Trump campaign,
13 Bannon took leave from Cambridge Analytica, agreed to sell his interest in Cambridge Analytica
14 and Glittering Steel, and, starting on August 17, 2016, began the process of divesting from
15 Cambridge Analytica, participated in no Cambridge Analytica board decision-making, and
16 received no payments from Cambridge Analytica or Glittering Steel for “the duration of the
17 campaign.

18 The Complaint argues that while Bannon was purportedly an unpaid volunteer for the
19 campaign, he directly benefitted from his continued financial stake in Cambridge Analytica and
20 Glittering Steel in increasing amounts as MAN1 increased its expenditures for services rendered
21 by Cambridge Analytica and Glittering Steel, which amounted to an in-kind contribution to the

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 12 of 20

1 Trump Campaign from MAN1.³⁶ While the Complaint contends that these ownership interests
2 amounted to pass-through compensation because Cambridge Analytica and Glittering Steel
3 received more business from MAN1 once Bannon began to work for the Trump campaign, it
4 does not provide information regarding the companies' actual payments to Bannon, any increase
5 in the value of Bannon's ownership interest, any payments that were unrelated to work
6 performed by Cambridge Analytica and Glittering Steel for its clients, including MAN1, or any
7 payments that were not for the usual and normal charge for such work.

8 Commission regulations provide that, in order for payment to a campaign volunteer to be
9 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
10 must receive compensation for work performed on behalf of that candidate.³⁷ There is no
11 information in the record that Bannon received any compensation from Glittering Steel or
12 Cambridge Analytica for services rendered once he began working for the Trump campaign.
13 Additionally, there is no public information to support the Complaint's claim that the proceeds
14 Bannon received when he sold his ownership interest in Cambridge Analytica back to the
15 company were in excess of the actual value of that interest. Accordingly, there is an insufficient
16 factual basis for finding that MAN1 made an in-kind contribution to the Trump campaign in the
17 form of compensation to Bannon when it paid for services rendered by Cambridge Analytica or
18 Glittering Steel.

³⁶ MUR 7147 Compl. ¶¶ 37-38; MUR 7193 Compl. at 4-5; *see also* MUR 7147 First Supp. Compl. at 3-4 (citing press report for assertion that "Bannon has long been indirectly compensated by Mercer-backed entities").

³⁷ 11 C.F.R. § 100.74. *See* MURs 6566 and 6604 (Lisa Wilson-Foley for Congress); MUR 6494 (Schmidt for Congress); *cf.* 11 C.F.R. §§ 100.54, 114.9 (compensation for personal services as contributions, use of corporate resources by stockholder volunteers, respectively).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 13 of 20

1 Information available to the Commission indicates Conway retained her ownership stake
2 in Polling Company even after she resigned as President and CEO to work for the campaign. In
3 fact, she continued to invoice for her consulting services rendered to the Trump campaign
4 through Polling Company. MAN1 paid its final invoice for services rendered by Polling
5 Company on August 23, 2016, and does not appear to have used Polling Company as a vendor
6 thereafter. The August 23rd payment was for services rendered by Polling Company prior to
7 Conway's joining the Trump campaign. Because there is insufficient information to suggest that
8 Polling Company provided services to MAN1 while Conway was a Trump campaign employee,
9 or that Conway was paid less than her usual market rate for her consulting services, there is
10 insufficient information to suggest that the MAN1 payment to Polling Company was actually
11 payment for personal services rendered by Conway to the Trump campaign, resulting in an in-
12 kind contribution.

13 The Commission dismisses the allegation that Donald J. Trump for President, Inc. and
14 Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30118(a) by
15 accepting an excessive and prohibited in-kind contribution from Make America Number 1 and
16 Jacquelyn James in her official capacity as treasurer, in the form of payments to vendors that
17 were actually compensation for services provided to the Trump campaign by Bannon and
18 Conway. Further, the Commission dismisses the allegation that Donald J. Trump for President,
19 Inc. and Bradley T. Crate in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) by
20 accepting excessive contributions from Kellyanne Conway and Stephen K. Bannon, and that
21 Kellyanne Conway and Stephen K. Bannon violated 52 U.S.C. § 30116(a) by making excessive
22 contributions, in the form of services rendered to the Trump campaign without compensation
23 from the Trump campaign.

B. Alleged Coordinated Communications through the Use of Common Vendors

The Complaint alleges that MAN1 made coordinated communications resulting in an in-kind contribution to the Trump campaign, but fails to identify any specific communication that was coordinated.³⁸ The first and second prongs of the coordination test under the Commission's regulations are satisfied because MAN1 spent \$1,470,549 for public communications that expressly advocated against Trump's opponent and were disseminated via television broadcast.³⁹ The Complaint alleges that the third element, the conduct standard, was satisfied because both the Trump campaign and MAN1 utilized the services of "common vendors" Cambridge Analytica and Polling Company.⁴⁰

The "common vendor" standard is another standard by which the conduct prong for coordination may be met.⁴¹ Here, the Complaint urges the Commission to apply this standard to MAN1's communications. The "common vendor" standard has three elements: (i) the person paying for the communication uses a "commercial vendor" to create, produce, or distribute the communication, (ii) the vendor, including any owner, officer, or employee, previously provided certain enumerated services — including, *inter alia*, "development of media strategy," polling, fundraising, "developing the content of a public communication," "identifying voters," or "consulting or otherwise providing political or media advice"⁴² — to the candidate identified in

³⁸ Through the quotation of a newspaper article, the Complaint alleges that MAN1 aired one ad, "Clinton Fatigue," which apparently first aired in the primaries, but the Complaint does not allege that it was created with material information from the Trump campaign. *See* MUR 7147 Compl. ¶ 36; *see also* "Clinton Fatigue," YOUTUBE, <https://www.youtube.com/watch?v=Lt2QVtWtdjQ> (published Sept. 13, 2016).

³⁹ *See* 11 C.F.R. § 109.21(a)(1), (c)(3), (c)(4)(ii), (c)(5).

⁴⁰ *See* 11 C.F.R. § 109.21(d)(4).

⁴¹ 11 C.F.R. § 109.21(d)(4).

⁴² 11 C.F.R. § 109.21(d)(4)(ii).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 15 of 20

1 the communication (or that candidate’s opponent) during the previous 120 days, and (iii) the
2 commercial vendor uses or conveys to the person paying for the communication:

3 (A) Information about the campaign plans, projects, activities, or needs of the
4 clearly identified candidate, the candidate’s opponent, or a political party
5 committee, and that information is material to the creation, production, or
6 distribution of the communication; or
7 (B) Information used previously by the commercial vendor in providing services
8 to the candidate who is clearly identified in the communication, or the candidate's
9 authorized committee, the candidate’s opponent, the opponent’s authorized
10 committee, or a political party committee, and that information is material to the
11 creation, production, or distribution of the communication.⁴³

12 The common vendor conduct standard is not satisfied if a commercial vendor has established and
13 implemented a written firewall policy that meets certain requirements, so long as material
14 information is not shared.⁴⁴

15 The payor of a communication that is coordinated through the use of a common vendor
16 or a former employee makes a contribution to the candidate, but the candidate or authorized
17 committee “does not receive or accept an in-kind contribution” resulting from coordination
18 through a common vendor or former employee unless the communication was made at the

⁴³ 11 C.F.R. § 109.21(d)(4)(iii); *see* 11 C.F.R. § 116.1(c) (defining commercial vendor). The common vendor conduct standard is not satisfied if the information used was obtained from a publicly available source. 11 C.F.R. § 109.21(d)(4)(iii).

⁴⁴ 11 C.F.R. § 109.21(h). A firewall policy satisfies this “safe harbor” if it (1) is designed and implemented to prohibit 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 who is clearly identified in the communication, or that candidate’s authorized committee, the candidate’s opponent, the opponent’s authorized committee or a political party committee; and (2) is described in a written policy distributed to all relevant employees, consultants, and clients. *Id.* § 109.21(h)(1)-(2). This safe harbor does not apply if specific information indicates that, despite the firewall, material information about the candidate’s campaign plans, projects, activities, or needs was used or conveyed to the person paying for the communication. *Id.* § 109.21(h).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 16 of 20

1 request or suggestion of, with the material involvement of, or after substantial discussions with,
2 the candidate or authorized committee.⁴⁵

3 The available information indicates that MAN1 contracted with Cambridge Analytica and
4 Polling Company, which specialize in the development of data and polling information that are
5 used in the production of political advertisements.⁴⁶ However, the information also indicates
6 that the last date upon which Polling Company provided MAN1 with polling services was July 7,
7 2016, which is *prior* to the time when the Trump campaign retained Polling Company on
8 July 10, 2016. Because the record indicates that Polling Company provided services first to
9 MAN1, and subsequently to the Trump campaign, the available information concerning Polling
10 Company does not satisfy the timing requirement of the common vendor standard.⁴⁷

11 The Complaint contends that there was sufficient overlap of personnel between the
12 Trump campaign and Cambridge Analytica to raise an inference that campaign information
13 might have been shared between MAN1 and the Trump campaign.⁴⁸ The information available
14 to the Commission indicates that Cambridge Analytica had a written firewall policy that
15 purportedly segregated client information so that the campaign and PAC teams could not
16 communicate regarding their respective accounts or have access to each other's files, and that the
17 Trump campaign team worked out of Cambridge Analytica's San Antonio, TX office while the
18 MAN1 team worked from offices in Washington, DC. The information does not include any

⁴⁵ 11 C.F.R. § 109.21(b)(2); *see also* 11 C.F.R. § 109.21(d)(1)-(3) (defining the relevant conduct standards).

⁴⁶ *See* 11 C.F.R. § 109.21(d)(4)(ii)(C).

⁴⁷ *See* 11 C.F.R. § 109.21(d)(4) (setting scope of "common vendor" coordination conduct for third party's use of common vendor within 120 days *after* candidate's use of that vendor).

⁴⁸ *See* MUR 7147 Second Supp. Compl. at 5-6 (noting, among other overlap, Bannon's position as an officer of Cambridge Analytica).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 17 of 20

1 evidence that Cambridge Analytica provided services jointly to the Trump campaign and MAN1,
2 or share strategies or information with these clients. In fact, the information suggests that when
3 the two teams required the same data each team would purchase the data for their own use in
4 order to ensure that the teams were not communicating with the other about their work.

5 The available information suggests that Bannon was made aware of the policy while at
6 Cambridge Analytica, was not permitted access to any information in Cambridge Analytica's
7 possession, and did not provide information about the Trump campaign to Cambridge Analytica
8 nor did he receive any non-public, proprietary information regarding the messaging, plans,
9 projects, activities, or needs of Cambridge Analytica's clients, including MAN1. The
10 information does not include a copy of the firewall policy executed by Bannon.⁴⁹

11 While there is some publicly available information that raises questions about the
12 strength of the Cambridge Analytica firewall, as discussed in more detail below, we cannot link
13 those concerns to any specific communications from MAN1 so as to conclude that Cambridge
14 Analytica used or conveyed to MAN1 information material to the creation, production, or
15 distribution, of a communication. Accordingly, the Commission dismisses the allegation that
16 Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer
17 violated 52 U.S.C. §§ 30116(f), 30118(a) by coordinating communications with MAN1 through
18 the use of a common vendor.

⁴⁹ Cf. 11 C.F.R. § 109.21(h)(2) (requiring, as condition of firewall safe harbor, that policy be distributed to "all relevant employees, consultants, and clients affected by the policy").

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 18 of 20

1 **C. Alleged Coordinated Expenditures**

2 Along with the allegation that MAN1 made coordinated communications, the Complaint
3 also alleges that MAN1 and the Trump campaign were “inextricably intertwined” and functioned
4 effectively as “joint ventures” resulting in MAN1 making, and the Trump campaign accepting,
5 impermissible in-kind contributions.⁵⁰ In addition to the close relationship between the Mercers,
6 Trump, and Trump campaign officials such as Bannon, Conway, and Bossie that were cited in
7 the Complaint, publicly available information about Cambridge Analytica also raises concerns
8 that MAN1 and the Trump campaign were coordinating their activities.

9 After the 2016 election, Alexander Nix and Mark Turnbull, two Cambridge Analytica
10 executives, met with a journalist posing as a potential client and were recorded telling the
11 journalist that Cambridge Analytica “did all the research, all the data, all the analytics, all the
12 targeting, we ran all the digital campaign, the television campaign and our data informed all the
13 strategy” for the Trump campaign.⁵¹ In another recorded meeting, Cambridge Analytica
14 executives more particularly described their strategy of distributing “positive” messages through
15 the Trump campaign while “negative material was pushed out through outside organizations”;
16 Turnbull provided an example of its work for MAN1, in which Cambridge “created the ‘Defeat
17 Crooked Hilary’ brand of attack ads . . . funded by the Make America Number 1 super-PAC and
18 watched more than 30 million times during the campaign.”⁵²

⁵⁰ MUR 7147 Compl. ¶ 78.

⁵¹ “Exposed: Undercover Secrets of Trump’s Data Firm,” CHANNEL 4 NEWS, (Mar. 20, 2018),
<https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica>
 (“Channel 4 Report”).

⁵² *Id.*

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 19 of 20

1 These public statements and the news reports highlighted in the Complaint of the
2 Mercers' role in Cambridge Analytica, MAN1, and in advising the Trump campaign suggest the
3 possibility that there was a systemic effort to coordinate the activities of the groups through
4 either Cambridge Analytica or the Mercers. Nonetheless, specific information of coordinating
5 activity in support of a coordination conclusion is notably lacking. The Complaint relies
6 primarily on an inference that there must be coordination given the multiple connections between
7 the groups, but provides no evidence, for example, of public statements by Bannon, the Mercers,
8 MAN1, or the Trump campaign regarding coordinated efforts generally or specifically.

9 A review of the Complaint, responses, and publicly available information does not
10 provide a sufficient basis to conclude that MAN1 systemically coordinated with the Trump
11 Campaign on its activities. While Cambridge executives were secretly recorded making public
12 statements suggesting they created and distributed research, data, and analytics all designed to
13 target voters to increase Trump's favorability and decrease that of his opponent,⁵³ which was
14 later used by MAN1 and other organizations in their advertising or online campaigns, the
15 statements fall short of admitting the kind of nexus between MAN1 and the Trump campaign or
16 its agents that would satisfy either the conduct prong for coordination under section 109.21 or
17 provide evidence to support a conclusion that all (or a particular subset of) expenditures by
18 MAN1 were coordinated with the Trump campaign under section 109.21. Because there is
19 insufficient information to support a finding of widespread and systemic coordination between
20 the Trump campaign and MAN1, as alleged in the Complaint, the Commission dismisses the

⁵³ See Channel 4 Report. Those statements were later disavowed by Cambridge Analytic in its public response to the Channel 4 Report. "Cambridge Analytica Ran 'All' Of Trump Campaign's Digital Campaign," INTERNATIONAL BUSINESS TIMES NEWS, 2018 WLNR 8639954 (Mar. 20, 2018).

MUR 7147 (Trump for President, Inc.)
Factual and Legal Analysis
Page 20 of 20

- 1 allegations that Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity
- 2 as treasurer violated 52 U.S.C. §§ 30116(f), 30118(a), 30104(b) by receiving and failing to report
- 3 excessive and prohibited in-kind contributions through coordinated expenditures with Make
- 4 America Number 1 and Jacquelyn James in her official capacity as treasurer.