



FEDERAL ELECTION COMMISSION
Washington, DC 20463

1 **MEMORANDUM**

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3 **TO:** The Commission

4
5 **FROM:** Lisa Stevenson
6 Acting General Counsel

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8 Charles Kitcher
9 Acting Associate General Counsel for Enforcement

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11 **BY:** Lynn Y. Tran *LYT*
12 Assistant General Counsel

13
14 Camilla Jackson Jones *cjj*
15 Attorney

16
17 **RE:** MUR 7147 (Make America Number 1) – Memorandum to the Commission
18

19
20 On February 23, 2021, in connection with its consideration of MUR 7147, the
21 Commission considered allegations the Kellyanne Conway and Stephen K. Bannon violated 52
22 U.S.C. § 30116(a) by making excessive contributions in the form of services rendered to Donald
23 J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer. The
24 Commission voted to dismiss the allegations, directed OGC to draft corresponding Factual and
25 Legal Analyses and the appropriate letters, and closed the file as to Conway and Bannon.¹ The
26 Factual and Legal Analyses are attached.

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28 **RECOMMENDATION:**

29 Approve the Factual and Legal Analyses.

30 **Attachments:**

- 31 1. Factual and Legal Analysis for Kellyanne Conway.
32 2. Factual and Legal Analysis for Stephen K. Bannon.

¹ See Certification (Mar. 16, 2021).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Kellyanne Conway **MUR 7147**

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8 **I. INTRODUCTION**

9
10 The Complaint in MUR 7147 alleges that, during the 2016 general election, Make
11 America Number 1 and Jacquelyn James in her official capacity as treasurer (“MAN1”), an
12 independent expenditure-only political committee (“IEOPC”) supporting Donald J. Trump for
13 President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”)¹
14 paid for the personal services of senior Trump campaign staffer Kellyanne Conway, which
15 resulted in excessive contributions from Conway to the Trump campaign, in violation of
16 52 U.S.C. § 30116(a).²

17 For the reasons that follow, the Commission dismisses the allegation that Kellyanne
18 Conway violated 52 U.S.C. § 30116(a) by making excessive contributions in the form of services
19 rendered to the Trump campaign and closes the file as to Kellyanne Conway.

20 **II. FACTS**

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

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.at ¶ 6 (Oct. 6, 2016); MUR 7147 First Supp. Compl. at 1 (Dec. 2, 2016); MUR 7147 Second Supp. Compl. at 1 (Apr. 12, 2017). Conway was initially named as a respondent in MUR 7193. MUR 7193 Compl. (Nov. 7, 2016). However, as part of its administrative process, the Commission severed the allegations as to Conway in MUR 7193 and merged them with this matter, where they could more appropriately be addressed.

1 principal campaign committee.³ MAN1 initially registered with the Commission on April 6,
2 2015 as an IEOPC named “Keep the Promise 1” (“KTP1”); on June 22, 2016, it filed an
3 amended Statement of Organization with the “Make America Number 1” name.⁴

4 The Complaint alleges that MAN1 paid compensation to Kellyanne Conway, through
5 companies in which she had ownership interests, for personal services Conway rendered to the
6 Trump campaign. Conway joined the Trump campaign as an independent contractor on July 1,
7 2016, serving first as Senior Advisor and Pollster and then as Campaign Manager.⁵ Prior to
8 joining the Trump campaign, Conway served as president of MAN1 in its former iteration as
9 KTP1.⁶ Conway was also the President and founder of The Polling Company, Inc./Women
10 Trend (“Polling Company”), a “primary research and consulting firm.”⁷

11 Throughout the primary election season, Polling Company provided substantial services
12 to KTP1, including polling, assisting with media strategy and identifying potential donors.⁸ In
13 early June 2016, Conway states that she was contacted by the Trump campaign to assist the
14 campaign with its media strategy. She avers that “from that point forward,” she stopped

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).

⁵ Kellyanne Conway Affidavit (Feb. 14, 2017) (“Conway Aff.”) ¶ 1.

⁶ *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”).

⁷ Conway Aff. ¶¶ 2-3.

⁸ Conway Aff. ¶ 4.

1 performing work for or receiving information regarding KTP1’s plans or strategies.⁹ Though
2 Conway invoiced the Trump campaign for her “consulting services” through Polling Company
3 and maintained her ownership interest in Polling Company, she avers that she was the only
4 individual from Polling Company involved in her “consulting” work for the Trump campaign
5 and that she “ceased involvement with” Polling Company operations when she “began working
6 for the campaign.”¹⁰

7 From July 10, 2016, through the general election, the Trump campaign retained Polling
8 Company to perform polling.¹¹ MAN1 also retained Polling Company for polling work. In
9 August 2016, two months after Conway joined the Trump campaign, MAN1 paid Polling
10 Company approximately \$247,000 and the Trump campaign paid Polling Company \$111,000 for
11 polling.¹² The Complaint cites press reports in which Conway is quoted saying that this payment
12 was for work done by Polling Company for MAN1 in late June and early July, later correcting
13 that statement to assert the work was limited to June 2016.¹³ According to Polling Company’s
14 CEO Brett Loyd, the \$247,000 payment from MAN1 on August 23, 2016, was for services

⁹ *Id.* ¶ 5.

¹⁰ *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. Brett Loyd Aff. (Feb. 13, 2017) (“Loyd Aff.”) ¶¶ 11-12.

¹¹ Loyd Aff. ¶¶ 13-14.

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

¹³ MUR 7147 Compl. ¶ 42 (quoting press report that Conway indicated that she did not know details of 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 MAN1.¹⁴

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.”¹⁵ “Anything of value” includes in-kind contributions.¹⁶ 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.¹⁷ 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.”¹⁸ 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.¹⁹

¹⁴ Loyd Aff. ¶ 9.

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

¹⁶ 11 C.F.R. § 100.52(d)(1).

¹⁷ 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).

¹⁸ 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).

¹⁹ 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

1 The Complaint alleges that MAN1’s payments to Polling Company, a company in which
2 Conway had an ownership interest, was in reality disguised salary payments to Conway for
3 services she rendered to the Trump campaign. Conway resigned her managerial positions in
4 Polling Company upon joining the campaign. However, she did not divest her ownership
5 interests in the company and continued to benefit financially from the company’s business, while
6 purportedly volunteering for the campaign and steering business to her company.

7 Commission regulations provide that, in order for payment to a campaign volunteer to be
8 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
9 must receive compensation for work performed on behalf of that candidate.²⁰ Conway does not
10 deny that she retained her ownership stake in Polling Company even after she resigned as
11 President and CEO to work for the campaign.²¹ In fact, she continued to invoice for her
12 consulting services rendered to the Trump campaign through Polling Company.²² MAN1 paid
13 its final invoice for services rendered by Polling Company on August 23, 2016, and does not
14 appear to have used Polling Company as a vendor thereafter.²³ Polling Company submits sworn
15 affidavits attesting that the August 23rd payment was for services rendered by Polling Company
16 prior to Conway’s joining the Trump campaign. Because there is insufficient information to
17 suggest that Polling Company provided services to MAN1 while Conway was a Trump

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.

²⁰ 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).

²¹ Conway Aff. ¶¶ 6-7.

²² *Id.*

²³ Loyd Aff. ¶ 9.

1 campaign employee, or that Conway was paid less than her usual market rate for her consulting
2 services, there is insufficient information to suggest that the MAN1's payments to Polling
3 Company were actually payments for personal services rendered by Conway to the Trump
4 campaign, resulting in an in-kind contribution from Conway.

5 Accordingly, the Commission dismisses the allegation that Kellyanne Conway violated
6 52 U.S.C. § 30116(a) by making excessive contributions in the form of services rendered to the
7 Trump campaign, and closes the file as to Conway.

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Stephen K. Bannon **MUR 7147**

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7
8 **I. INTRODUCTION**

9
10 The Complaint in MUR 7147 alleges that, during the 2016 general election, Make
11 America Number 1 and Jacquelyn James in her official capacity as treasurer (“MAN1”), an
12 independent expenditure-only political committee (“IEOPC”) supporting Donald J. Trump for
13 President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump campaign”)¹
14 paid for the personal services of senior Trump campaign staffer Stephen K. Bannon, which
15 resulted in excessive contributions from Bannon to the Trump campaign, in violation of
16 52 U.S.C. § 30116(a).²

17 For the reasons that follow, the Commission dismisses the allegation that Stephen K.
18 Bannon violated 52 U.S.C. § 30116(a) by making excessive contributions in the form of services
19 rendered to the Trump campaign and closes the file as to Stephen K. Bannon.

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.at ¶ 6 (Oct. 6, 2016); MUR 7147 First Supp. Compl. at 1 (Dec. 2, 2016); MUR 7147 Second Supp. Compl. at 1 (Apr. 12, 2017). Bannon was also named as a respondent in MUR 7193. MUR 7193 Compl. (Nov. 7, 2016). As part of its administrative process, the Commission severed the allegations as to Bannon in MUR 7193 and merged them with this matter, where they could more appropriately be addressed.

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.³ MAN1 initially registered with the Commission on April 6,
5 2015 as an IEOPC named “Keep the Promise 1” (“KTP1”); on June 22, 2016, it filed an
6 amended Statement of Organization with the “Make America Number 1” name.⁴

7 The Complaint alleges that MAN1 paid compensation to Stephen K. Bannon, through
8 companies in which he had ownership interests, for personal services Bannon rendered to the
9 Trump campaign resulting in excessive contributions from Bannon to the Trump campaign.
10 Bannon joined the Trump campaign in August 2016 as CEO; Bannon asserts that he worked for
11 the campaign as a volunteer.⁵ The only reported payment from the Trump campaign to Bannon
12 was \$7,576 for “travel reimbursement” paid to his wholly owned company, Bannon Strategic
13 Advisors.⁶ Prior to joining the Trump campaign, Bannon was CEO of the Breitbart News
14 Network and held ownership interests in Glittering Steel, LLC (“Glittering Steel”), a television

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 Compl. ¶ 31; Bannon Aff. ¶ 7.

⁶ 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>.

1 and film production company whose business included producing campaign advertisements, and
2 Cambridge Analytica, a data analytics company.⁷

3 MAN1 retained Glittering Steel, paying it a total of \$724,949 for the 2016 election cycle,
4 \$252,500 of which came after Bannon joined the Trump campaign on August 17, 2016.⁸ The
5 Trump campaign has not disclosed any payments directly to Glittering Steel, and Glittering Steel
6 asserts that it was never provided “any non-public, information regarding messaging by the
7 Trump campaign.”⁹

8 Cambridge Analytica provided data analytic services to both the Trump campaign and
9 MAN1 during the general election.¹⁰ After Bannon joined the Trump campaign, the Trump
10 campaign reported payments to Cambridge Analytica in the amounts of \$5 million in September
11 2016 and \$250,000 in October 2016¹¹ and MAN1 reported payments totaling \$4,633,876 to
12 Cambridge Analytica.¹²

⁷ Bannon Aff. ¶ 1.

⁸ See MAN1, Summary of Independent Expenditures, 2016 Election Cycle, Glittering Steel Entries.

⁹ MAN1 Resp., Ex. 4, Daniel Fleurette Aff. (Feb. 13, 2017) ¶ 14 (setting out averments of Glittering Steel’s co-founder/Chief Operating Officer).

¹⁰ 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.*

¹¹ 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).

¹² MUR 7147 First Supp. Compl. ¶ 4 n.14-18 and disclosure reports cited therein.

1 Cambridge Analytica and Glittering Steel paid Bannon a combined total of \$493,836 in
2 “consulting and director fees” through Bannon Strategic Advisors in 2016.¹³

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.”¹⁴ “Anything of value” includes in-kind contributions.¹⁵ 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.¹⁶ 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.”¹⁷ 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.¹⁸

¹³ Bannon Ethics Disclosure Report, <https://www.documentcloud.org/documents/3533897-Bannon-Steve.html>.

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

¹⁵ 11 C.F.R. § 100.52(d)(1).

¹⁶ 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).

¹⁷ 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).

¹⁸ 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

1 The Complaint alleges that MAN1’s payments to companies in which Bannon had an
2 ownership interest — specifically, Cambridge Analytica and Glittering Steel — were in reality
3 disguised salary payments to Bannon for services he rendered to the Trump campaign. Bannon
4 resigned his managerial positions in these companies upon joining the campaign.¹⁹ However, he
5 did not divest his ownership interests in these companies and continued to benefit financially
6 from the companies’ business, while purportedly volunteering for the campaign and steering
7 business to these companies.

8 Bannon admits that he did not sell his ownership interests in Cambridge Analytica until
9 April 12, 2017.²⁰ He had not divested his ownership interest in Glittering Steel as of the time of
10 MAN1’s response.²¹ Bannon makes no claim that his assets were frozen as of the date he joined
11 the campaign, or held in a blind trust. Rather, he simply states that after joining the Trump
12 campaign he took leave from Cambridge Analytica, agreed to sell his interest in Cambridge
13 Analytica and Glittering Steel, and, starting on August 17, 2016, began the process of divesting
14 from Cambridge Analytica, participated in no Cambridge Analytica board decision-making, and
15 received no payments from Cambridge Analytica or Glittering Steel for “the duration of the
16 campaign.”²²

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.

¹⁹ 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.

²⁰ 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.

²¹ Bannon Aff. ¶ 2.

²² *Id.* ¶¶ 4-5.

1 The Complaint argues that while Bannon was purportedly an unpaid volunteer for the
2 campaign, he directly benefitted from his continued financial stake in Cambridge Analytica and
3 Glittering Steel in increasing amounts as MAN1 increased its expenditures for services rendered
4 by Cambridge Analytica and Glittering Steel, which amounted to an in-kind contribution to the
5 Trump Campaign from MAN1.²³ While the Complaint contends that these ownership interests
6 amounted to pass-through compensation because Cambridge Analytica and Glittering Steel
7 received more business from MAN1 once Bannon began to work for the Trump campaign, it
8 does not provide information regarding the companies' actual payments to Bannon, any increase
9 in the value of Bannon's ownership interest, any payments that were unrelated to work
10 performed by Cambridge Analytica and Glittering Steel for its clients, including MAN1, or any
11 payments that were not for the usual and normal charge for such work.

12 Commission regulations provide that, in order for payment to a campaign volunteer to be
13 considered an in-kind contribution from a company for whom the volunteer works, the volunteer
14 must receive compensation for work performed on behalf of that candidate.²⁴ There is no
15 information in the record that Bannon received any compensation from Glittering Steel or
16 Cambridge Analytica for services rendered once he began working for the Trump campaign, and
17 Bannon states under oath that he was not compensated for "the duration of the campaign."²⁵
18 Additionally, there is no public information to support the Complaint's claim that the proceeds

²³ 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").

²⁴ 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).

²⁵ 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.

1 Bannon received when he sold his ownership interest in Cambridge Analytica back to the
2 company were in excess of the actual value of that interest. Therefore there is insufficient
3 information to suggest that MAN1's payments to Cambridge Analytica or Glittering Steel were
4 payments for personal services rendered by Bannon to the Trump campaign, resulting in an in-
5 kind contribution from Bannon.

6 Accordingly, the Commission dismisses the allegation that Stephen K. Bannon violated
7 52 U.S.C. § 30116(a) by making excessive contributions in the form of services rendered to the
8 Trump campaign, and closes the file as to Bannon.