FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 28, 2021

Dan Backer, Esq.
441 North Lee Street, Suite 300
Alexandria, VA 22314
dan@political.law

RE: MURs 7165 & 7196

Dear Mr. Backer:

On June 23, 2021, the Federal Election Commission ("Commission") accepted the signed conciliation agreement submitted on behalf of Great America PAC and you in your official capacity as treasurer ("GAP"), in settlement of a violation of 52 U.S.C. § 30121(a)(2), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's regulation at 11 C.F.R. § 110.20(g). Accordingly, the file has been closed in these matters as they pertain to GAP.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) still apply, and that these matters are still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me at sghosh@fec.gov or (202) 694-1650.

Sincerely,

Saurav Ghosh

Saurav Ghosh
Attorney

Enclosure
Conciliation Agreement

MUR719600165

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Great America PAC and Dan Backer in his official capacity as treasurer	)	MURs 7165 and 7196
	)	
	)	

CONCILIATION AGREEMENT

These matters were initiated by signed, sworn, and notarized complaints submitted by Campaign Legal Center and American Democracy Legal Fund. The Federal Election Commission ("Commission") found reason to believe that Great America PAC and Dan Backer in his official capacity as treasurer ("GAP" or the "Respondents") knowingly and willfully violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by soliciting a contribution from a foreign national.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, agree as follows:

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

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. GAP is a hybrid political committee, or "*Carey* committee," *see Carey v. Federal Election Commission*, 791 F. Supp. 2d 121 (D.D.C. 2011), with a separate,

segregated account used exclusively for independent expenditures that supported Donald J. Trump during the 2016 presidential election. Eric Beach was one of GAP's co-chairs at all relevant times.

2. Jesse Benton was a strategist for GAP until May 2016, when he resigned. He owned and operated an independent political consulting firm, Titan Strategies LLC ("Titan"). Benton remained in contact with Beach after ending his employment with GAP.

3. According to a news article and recorded video published online by the *Telegraph UK*, both of which were cited in the complaints, undercover reporters contacted Beach in the fall of 2016 posing as representatives of a Chinese national — who did not actually exist — who wanted to contribute to GAP. Beach expressed interest but stated that he needed more information about the donor and had concerns about his nationality, and that he would need to know the origins of contributions to GAP. Beach further emphasized, "[A]ny path we recommend is legal."

4. Beach also suggested during this initial phone call that the donation could be directed to a 501(c)(4) organization through which the reporters' purported foreign national client could make a contribution for a specific purpose.

5. Beach referred the reporters to Benton to discuss whether he could potentially help them with their proposed contribution. Benton sent an email introduction to the reporters and later met with them in person. At their meeting, which the reporters recorded, Benton offered to transmit the $2 million contribution through his company, Titan. Benton was recorded meeting with the reporters and recommending to them a specific plan, or "method of making a contribution" without being linked back to their

client. 11 C.F.R. § 300.2(m)(1)(i). Benton was recorded on video telling the reporters that he would "send . . . [the] money from my company to both," referring to two 501(c)(4) organizations, whose names he did not mention at the time, and confirmed that the funds would be passed through Benton's company, Titan, into the 501(c)(4)s. Benton also confirmed that "all of it" — which meant the full $2 million that the reporters' client intended to donate — would then be "pass[ed] on" to "the super PAC" from the 501(c)(4)s. Benton also warned the reporters that they "shouldn't put any of this on paper."

6. The Act and Commission regulations prohibit any "foreign national" from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure, independent expenditure, or disbursement, in connection with a federal, state, or local election. 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A).

7. The Act further prohibits any person from soliciting, accepting, or receiving any such contribution or donation from a foreign national. 52 U.S.C. § 30121(a)(2). The Commission's regulation implementing this provision provides that "[n]o person shall *knowingly* solicit, accept, or receive from a foreign national any contribution or donation." 11 C.F.R. § 110.20(g).

8. Commission regulations define "knowingly," to include "actual knowledge" that the person being solicited is a foreign national, "aware[ness] of facts that would lead a reasonable person to conclude that there is a substantial probability that the

source of the funds" is a foreign national, or "aware[ness] of facts that would lead a reasonable person to inquire whether the source of the funds . . . is a foreign national," but fail to "conduct a reasonable inquiry." 11 C.F.R. § 110.20(a)(4).

9. The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence. 52 U.S.C. § 30121(b)(2).

10. To "solicit" means to "ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value," 11 C.F.R. § 110.20(a)(6) (cross-referencing 11 C.F.R. § 300.2(m)), including by making a communication "that provides a method of making a contribution" or "provides instructions on how or where to send contributions." *Id.* § 300.2(m)(1)(i)-(ii).

11. Benton made a "solicitation" under the Act, and GAP acknowledges that the Commission has found that Benton did so with GAP's knowledge and on its behalf. Benton's recorded statements, which provide a detailed plan for the reporters' client to make a contribution to a political committee that one of the reporters referred to as "the super PAC" without public disclosure of their client's identity, indicate that he asked, requested, or recommended, explicitly or implicitly, that the reporters' client make a contribution. GAP acknowledges that the Commission has found, based on the context of Beach's referral to Benton and the purpose of Benton's meeting with the reporters, that Benton and the reporters understood "the super PAC" to refer to GAP.

12. Benton's statements and proposal to funnel the $2 million contribution to "the super PAC" through two layers of conduits — to obscure the true source of those funds — indicate that Benton knew or was aware of sufficient facts to reasonably

conclude that the person being solicited to provide funds was a foreign national who could not legally make a contribution to a political committee or appear on its disclosure reports. By proceeding to recommend a plan for the undercover reporters' client to make a contribution to "the super PAC," having been informed that the source of the contribution would be a foreign national, Benton solicited a $2 million contribution from someone he knew or reasonably believed to be a foreign national. GAP acknowledges that the Commission has found that Benton solicited that foreign national contribution for GAP's benefit.

13. Benton engaged in an "elaborate scheme for disguising" a foreign national contribution. *See United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). Benton was recorded on video explicitly telling the reporters, "You shouldn't put any of this on paper." The foregoing actions and statements reflect that Benton knew that his plan was illegal and that he took steps to conceal it.

14. GAP contends that Benton was an independent political consultant who was not acting as GAP's agent or for GAP's benefit when he performed the acts at issue in this agreement. GAP further contends that Benton attempted to conceal his actions, including from GAP, as shown by his statements to the reporters that GAP's co-chair, Eric Beach, had to be kept "deliberately ignorant" of the "exact arrangements" for the contribution, and that "you shouldn't put any of this on paper." In addition, GAP contends that neither Benton nor the reporters specifically mentioned GAP, but rather referred only to "the super PAC," in their recorded discussions.

V. Solely for the purpose of settling this matter expeditiously and avoiding the expense of litigation, without admission with respect to any other proceeding:

1. Respondents agree not to further contest the Commission's finding that GAP, through Benton's actions on its behalf, violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g) by knowingly soliciting a contribution from a foreign national.

2. Respondents acknowledge that the Commission found reason to believe that these violations were knowing and willful, but do not admit to the knowing and willful aspect of these violations.

3. Respondents will cease and desist from committing further violations of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).

4. Respondents will pay a civil penalty to the Commission in the amount of twenty five thousand dollars ($25,000), pursuant to 52 U.S.C. § 30109(a)(5)(B).

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

VII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

VIII. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: Charles Kitcher 6/28/21
Charles Kitcher Date
Acting Associate General Counsel
for Enforcement

FOR THE RESPONDENTS:

06/08/2021
Dan Backer Date
Counsel for Respondents

MUR719600172