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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6740
DATE COMPLAINT FILED: June 13, 2013
COMPLAINT AMENDED: July 29, 2013
April 2, 2015
DATE OF NOTIFICATIONS: June 18, 2013
August 8, 2013
April 28, 2015
DATE OF LAST RESPONSE: June 8, 2015
DATE ACTIVATED: January 21, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:
Earliest: November 1, 2016
Latest: December 31, 2017
ELECTION CYCLE: 2012

COMPLAINANTS:

Fred Karger

RESPONDENTS:

Rick Santorum

Rick Santorum for President and Nadine Maenza in
her official capacity as treasurer

Robert L. Vander Plaats

The Family Leader, Inc., c/o Robert L. Vander
Plaats, President

Leaders for Families and Chuck Hurley in his
official capacity as treasurer.

National Organization for Marriage

Brian Brown, President of the National
Organization for Marriage

Foster Friess

Red White and Blue Fund and Christopher Marston
in his official capacity as treasurer.

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(1)(B)
52 U.S.C. § 30101(9)
52 U.S.C. § 30104(b)
52 U.S.C. § 30114(b)

NON-CONFIDENTIAL

1 52 U.S.C. § 30116(a)(1)
2 52 U.S.C. § 30116(a)(7)(B)(i)
3 52 U.S.C. § 30116(f)
4 52 U.S.C. § 30118(a)
5 52 U.S.C. § 30125(e)
6 11 C.F.R. § 100:111(a)
7 11 C.F.R. § 109.20
8 11 C.F.R. § 109.21
9

10 **INTERNAL REPORTS CHECKED:** Disclosure reports
11

12 **FEDERAL AGENCIES CHECKED:** None

13 **I. INTRODUCTION**

14 The principal allegations in the Complaint, as amended, are that the National
15 Organization for Marriage (“NOM”) and unnamed “officers and major supporters” of NOM may
16 have provided funds to The Family Leader, an Iowa nonprofit corporation, to induce its
17 President, Robert L. Vander Plaats, to endorse 2012 presidential candidate Rick Santorum in
18 advance of the Iowa Republican party’s January 3, 2012, Iowa Caucus. Compl. at 1-2. The
19 Complaint also alleges that NOM did so in coordination with the Rick Santorum for President
20 (the “Santorum Committee”) and, thus, NOM made, and the Santorum Committee received,
21 undisclosed, prohibited corporate, or excessive in-kind contributions. *Id.* at 2. The Complaint
22 further alleges that NOM, its president, Brian Brown, and Vander Plaats coordinated with
23 Santorum and the Santorum Committee to fund an independent-expenditure-only political
24 committee called the Leaders for Families Super PAC¹ to support Santorum’s candidacy. *Id.* at
25 1-2. Lastly, the Complaint questioned whether Vander Plaats’s organization, The Family
26 Leader, contributed its “voter list” to the Santorum Committee, which did not disclose either an

¹ The Complaint misidentifies that entity as Families for Leaders rather than Leaders for Families.

1 expenditure or an in-kind contribution in connection with its alleged receipt of the list. Compl.
2 at 4.²

3 In response, the Respondents criticize the vagueness of the Complaint, contend that the
4 alleged facts, if true, fail to establish violations of the Act, and deny that they made expenditures
5 to secure Vander Plaats's endorsement of Santorum, coordinated the funding of the Leaders for
6 Families Super PAC, or shared any voter lists. They support these representations with several
7 sworn affidavits.³

8 A supplement to the Complaint submitted on April 2, 2015, added allegations that
9 Santorum may have been coordinating expenditures or communications with Red White and
10 Blue Fund and Leaders for Families through Foster Friess, a Santorum supporter and a
11 contributor to those organizations, and thus Santorum allegedly received undisclosed excessive
12 contributions from those entities. Respondents denied the allegations and Red White and Blue
13 Fund submitted a sworn affidavit to support its contentions.

14 Because the allegations are unsupported, appear speculative in nature, and are
15 contradicted by the sworn statements of persons with knowledge of relevant facts, we
16 recommend that the Commission find no reason to believe that Respondents violated the Act as
17 alleged.

² The Complaint asks a series of open-ended questions, *see* Compl. at 4, most of which are resolved through the analysis of the allegations that are addressed directly in this Report. As to those that are not, the Complaint further questions whether (a) NOM and Vander Plaats may have expended federal contributions for personal use and (b) NOM may have "placed Vander Plaats and Mr. Santorum in violation of using funds from unknown sources." *Id.* The Complaint provides no facts related to either of those inquiries, however, and neither suggests any reason to believe that a violation of the Act may have occurred.

³ The Santorum Committee and Santorum filed a joint response, which included affidavits from Santorum and the committee's treasurer, Nadine Maenza. *See* Santorum Resp.; Aff. of Rick Santorum (Sept. 12, 2013) ("Santorum Aff."); Aff. of Nadine Maenza (Sept. 12, 2013) ("Maenza Aff."). NOM and Brown filed a joint response and a supplemental response. *See* NOM Resp.; NOM Supp. Resp. The Family Leaders, Inc. and Vander Plaats provided an affidavit from Vander Plaats as its joint response. *See* Aff. of Robert L. Vander Plaats ¶ 2 (July 31, 2014) ("Vander Plaats Aff."). Leaders for Families Super PAC filed its own response, which included an affidavit from its treasurer, Chuck Hurley. *See* Aff. of Chuck Hurley (July 31, 2013) ("Hurley Aff.").

1 **II. FACTUAL BACKGROUND**

2 **A. Respondents**

3 Rick Santorum is a former Senator and was a presidential candidate in the 2012 election
4 cycle. Rick Santorum for President was his principal campaign committee and Nadine Maenza
5 is its treasurer.

6 NOM is an incorporated 501(c)(4) nonprofit organization, and Brian Brown is NOM's
7 president. Compl. at 1, 3. NOM "advocates the protection of traditional marriage between one
8 man and one woman." NOM Resp. at 3.

9 Vander Plaats, an Iowa-based political activist, is allegedly the principal for two entities,
10 The Family Leader, Inc., and The Family Leader Foundation. See Compl. at 2; Supp. Compl. at
11 2, 4; Shushanna Walshe and Michael Falcone, *Iowa Conservative Leader Mired in Controversy*
12 *After Rick Santorum Endorsement*, ABC NEWS (Dec. 23, 2011) (attached to the Complaint).

13 The Leaders for Families Super PAC, according to its Treasurer, "was formed in Dec.
14 2011 to help maximize Robert L. Vander Plaats' endorsement of Rick Santorum for President
15 two weeks prior to the Iowa Caucus vote, by thoroughly broadcasting it to Iowa Caucus voters."
16 Hurley Aff. ¶ 2.

17 Foster Friess was a Santorum supporter who contributed to the Red White and Blue Fund
18 and Leaders for Families. Compl. at 2.

19 The Red White and Blue Fund registered as a political committee with the Commission
20 on October 7, 2011. Red White and Blue Fund Resp. at 1. The Red White and Blue Fund
21 currently appears to be inactive: according to its most recent report filed with the Commission, it
22 had \$258.31 cash on hand, no receipts, no disbursements, and \$26,691.55 in debts (to its
23 attorneys). Red White and Blue Fund 2015 Mid-Year Report (July 21, 2015).

1 **B. Allegations**

2 The Complaint alleges that before the Iowa Caucus on January 3, 2012, Bob Vander
3 Plaats solicited three Republican presidential candidates — Rick Perry, Michelle Bachmann, and
4 Santorum — to pay him \$1 million to secure his endorsement. Compl. at 2. The Complaint
5 then asserts that, because Vander Plaats subsequently endorsed Santorum and launched Leaders
6 for Families Super PAC to advocate for Santorum's election, Santorum must have paid for
7 Vander Plaats's endorsement, and further, because Santorum did not have \$1 million, those
8 funds "had to come from somewhere" and "likely came from a third party." *Id.* at 3.

9 The Complaint opines that the only "logical suspect" is NOM because Santorum, Vander
10 Plaats, and NOM's leaders had worked together in connection with prior issue advocacy efforts.
11 *Id.* The Complaint contends that NOM "had the resources and the reasons to secure Bob Vander
12 Plaats' endorsement of [Santorum]." *Id.* at 8. The Complaint states that "we believe" this
13 "resulted in . . . [NOM], its leadership and major donors contributing up to \$1 million that
14 [Vander Plaats] sought for his presidential endorsement." *Id.* at 3. The Complaint further opines
15 that "NOM likely helped pay and raise the \$1 million for [Vander Plaats] and Mr. Hurley's
16 endorsements and also helped create" Leaders for Families Super PAC. *Id.*⁴

17 Vander Plaats responded to the Complaint with an affidavit in which he stated that
18 neither The Family Leader nor he "ever solicited or received any money or thing of value from
19 anyone, directly or indirectly, to secure my endorsement of Rick Santorum." Vander Plaats Aff.
20 ¶ 2. Vander Plaats explained the role of money in connection with his endorsement as follows:

⁴ As noted, Hurley is the treasurer of Leaders for Families Super PAC and he has responded to the Complaint in his official capacity as such. The Complaint does not clearly assert that Hurley played any personal role in the alleged coordination scheme, nor does it otherwise address Hurley's own endorsement of Santorum.

1 Any mention of the need for money was simply stating the fact that my
2 endorsement two weeks prior to the Iowa Caucus vote would have little
3 effect unless it was quickly and thoroughly broadcast to the Iowa Caucus
4 voters. Therefore, phone calls, television ads and radio ads needed to be
5 purchased. Realizing the Santorum for President Campaign did not have
6 the resources to maximize the impact of my endorsement, I independently
7 secured the necessary funds via my contacts, post-endorsement, directing
8 their donations to the Leaders for Families Super PAC.

9 *Id.* ¶ 3.⁵ Vander Plaats also averred that “neither The [Family Leader], nor I individually, ever
10 coordinated funding or any other campaign activity, directly or indirectly, with the Santorum for
11 President Campaign, or any other prohibited person or entity” and that they adhered to the
12 “coordination prohibitions.” *Id.* ¶ 5. He further represented that “[a]ll [his] fundraising for
13 Leaders for Families Super PAC was done independently from the Santorum for President
14 Campaign, and no lists were sold, given, or shared in any way with or by the Santorum for
15 President Campaign.” *Id.*⁶

16 Rick Santorum and the Santorum Committee also deny the allegations, and further assert
17 that the Complaint failed to identify any communications that may have been coordinated as
18 defined in 11 C.F.R. § 109.21. Santorum Resp. at 2. These respondents state that neither Vander
19 Plaats nor his organizations ever provided any lists or “things of value” to the Santorum

⁵ The assertions in Vander Plaats' affidavit are consistent with his contemporaneous statements described in press accounts attached to the Complaint. See Shushanna Walshe and Michael Falcone, *supra*; Shannon Travis, *Santorum: Vander Plaats Said 'He Needed Money to Promote the Endorsement,'* CNN (Dec. 22, 2011); Jennifer Jacobs, *Iowa Evangelicals Skeptical They Can Unite Behind One Candidate for Caucuses,* DES MOINES REG. (Dec. 20, 2011).

⁶ Both Vander Plaats and Hurley assert that Vander Plaats made his endorsement “independent of all candidates and campaigns.” Vander Plaats Aff. ¶ 4; Hurley Aff. ¶ 3. Each also contends that Santorum's subsequent public statement that he first learned of Vander Plaats's endorsement through the media on December 20, 2011, is evidence that Santorum did not pay for Vander Plaats's endorsement and did not coordinate expenditures. Vander Plaats Aff. ¶ 4; Hurley Aff. ¶ 3.

1 campaign. *Id.* at 3.⁷ In support of his Response, Santorum submitted a sworn affidavit in which
2 he represents:

- 3 • There were no payments from the Santorum campaign or promises of
4 payment to anyone or any group in exchange for an endorsement for our
5 campaign or my candidacy.
- 6 • I did not solicit contributions for any third party organization sponsored by
7 Bob [Vander Plaats].
- 8 • I neither promised nor paid anything of value to Bob [Vander Plaats] in
9 exchange for his personal endorsement of my candidacy.
- 10 • I did not communicate with third party organizations regarding any public
11 communications they might make or plan to make on behalf of my candidacy
12 or campaign.
- 13 • The allegations, insinuations and inferences in the Complaint are false.

14 Santorum Aff. ¶¶ 3-7. The treasurer of Rick Santorum for President also submitted an affidavit
15 in which she avers that the allegations in the Complaint are false, represents that the Committee
16 staff were trained to avoid coordination, denies receiving “any lists” from Vander Plaats, the
17 Iowa Family Counsel, or the Iowa Family Leader, denies having any discussions with “third
18 party organizations” about “public communications they might make,” and denies making any
19 “payments from the Santorum campaign or promises of payment to anyone or any group in

⁷ The Santorum Respondents further contend that any discussions between Santorum and the other Respondents were protected by the coordination safe harbor at 11 C.F.R. § 109.21(g). Santorum Resp. at 2. By its terms, however, that provision only applies to public communications in which a federal candidate endorses another federal or state candidate. Therefore, it is not applicable to the allegation in this matter, that is, alleged transactions advertising the fact that Vander Plaats, a non-candidate, endorsed Santorum. *See* 11 C.F.R. § 109.21(g)

1 exchange for an endorsement for our campaign or the candidacy of Sen. Santorum.” Maenza
2 Aff. ¶¶ 6-9.⁸

3 In his separate affidavit, Hurley also asserts on behalf of Leaders for Families Super PAC
4 that it funded its communications independently and not in coordination with Santorum’s
5 committee “or any other prohibited person or entity.” Hurley Aff. ¶ 4.

6 Finally, NOM and Brian Brown responded that they “did not pay the Family Leader and
7 Mr. Vander Plaats any money to secure their endorsement of” Santorum and that “[t]here was no
8 coordination between respondents and Mr. Santorum, Santorum’s campaign, or Mr. Vander
9 Plaats for the purpose of funding the Leaders for Families committee.” NOM/Brown Resp. at 1.
10 In their Response to the Supplemental Complaint, NOM and Brown further stated that “[n]o
11 communications took place between The Family Leader, Mr. Vander Plaats, NOM, and Mr.
12 Brown concerning the purchase of an endorsement.” NOM/Brown Supp. Resp. at 2. NOM
13 made “no comment” regarding the Complaint’s allegation that NOM’s donors may have given
14 money to Leaders for Families, other than to say that its donor lists were confidential tax
15 information that could not be published and to say that NOM “did not tell anyone to give to
16 Leaders for Families.” NOM/Brown Resp. at 2-3.

17 The Complainant submitted a Supplemental Complaint on April 2, 2015 (“Second
18 Supplemental Complaint”), making additional allegations and adding two new respondents,
19 Foster Friess and the Red White and Blue Fund. These further allegations are largely based on
20 Big Money, a book written by Kenneth Vogel and published in 2014. The Second Supplemental

⁸ The contentions in Santorum and Maenza’s affidavits also appear consistent with the contemporaneous statements of Santorum and other campaign officials described in press accounts attached to the Complaint. See Shushanna Walshe and Michael Falcone, *supra*; Shannon Travis, *supra*; Jennifer Jacobs, *supra*. In addition, at the time ABC news further reported that “just hours before Vander Plaats endorsed him . . . Santorum [told ABC News that] the issue of money never came up in his conversations with [Vander Plaats].” Shushanna Walshe and Michael Falcone, *supra*.

1 Complaint asserts that, in the weeks before the January 3, 2013 Iowa Caucus, Santorum traveled
2 through Iowa with Foster Friess, who contributed \$2.1 million to the Red White and Blue Fund
3 as well as \$50,000 to the Leaders for Families PAC. Second Supp. Compl. at 2.

4 Allegedly, Friess informed the Santorum campaign and the Super PAC that he wanted his
5 contributions to be spent on "ads focusing on Santorum's work against Islamic extremism," *id.* at
6 3-4, and "told the operatives running the super PAC that 'any money that I'm connected to, I
7 want the ads to be dignified, and I want them to be honest. I'm fine with contrast ads, but I'm
8 very, very adverse to some of the ads that I think are destructive.'" *Id.* at 4. The Second
9 Supplemental Complaint alleges that Mr. Friess thus had "undue influence" over the ads that
10 "the Pro-Santorum Super PAC, Red White and Blue Fund could create and run." *Id.* at 4.

11 Allegedly, Friess's contributions and requests also occurred at the same time as negotiations
12 "between Mr. Santorum, his campaign and Mr. Vander Plaats for Mr. Vander Plaats' coveted
13 endorsement." *Id.* at 2. The Second Supplemental Complaint thus alleges, "It is *highly probable*
14 that Mr. Friess . . . was smack dab in the middle of the negotiations with Mr. Vander Plaats." *Id.*
15 at 3-4 (italics added). Additionally, the Second Supplemental Complaint alleges that as Friess
16 donated to Santorum and the Red White and Blue Fund, he gave advice to Santorum and his
17 campaign and travelled with Mr. Santorum to several other states. *Id.* at 5.

18 III. LEGAL ANALYSIS

19 A. Alleged Payments From NOM in Coordination with Santorum to Secure 20 Vander Plaats's Endorsement of Santorum

21 The Complaint alleges that NOM paid Vander Plaats, possibly through organizations he
22 controlled, to endorse Santorum in advance of the Iowa Republican Caucus, and that Santorum
23 or his committee coordinated with NOM in that effort. Compl. at 1, 3; Supp. Compl. at 2, 4.

1 A payment to secure the endorsement of a presidential candidate to help win a party
2 caucus — an “election” within the meaning of the Act, *see* 52 U.S.C. § 30101(1)(B) — would
3 constitute an expenditure, as it would be a payment “for the purpose of influencing” a federal
4 election. *See id.* § 30101(9) (defining expenditure); 11 C.F.R. § 100.111(a) (same).

5 Moreover, an expenditure that is made in cooperation, consultation, or concert with or at
6 the request or suggestion of a candidate, his authorized political committees, or their agents
7 would constitute an in-kind contribution to the candidate. *See* 52 U.S.C. § 30116(a)(7)(B)(i);
8 11 C.F.R. § 109.20.⁹ And any such contribution must comply with the relevant limits,
9 prohibitions, and disclosure requirements of the Act. *See, e.g.,* 52 U.S.C.
10 §§ 30116(a), (f), 30118, 30104(b).

11 The allegation here turns on two assertions of fact: first, that a payment was made to
12 Vander Plaats to obtain his endorsement of Santorum, and second, that Santorum or his agents
13 acted in concert with others to obtain the payment. As discussed below, given the Complaint’s
14 lack of factual support and the sworn representations of the Respondents, the Complaint fails to
15 give rise to a reasonable inference that a violation has occurred. *See* Statement of Policy
16 Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72
17 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007). Accordingly, we recommend that the Commission
18 find no reason to believe that any Respondent violated the Act in connection with the claimed
19 payment to Vander Plaats for his endorsement.

⁹ The Commission’s coordination regulations distinguish coordinated expenditures generally, *see* 11 C.F.R. § 109.20, from expenditures for coordinated communications specifically, *see* 11 C.F.R. § 109.21. The Complaint did not identify any allegedly coordinated communications, but focused on NOM’s contributions to Vander Plaats or his organizations. Accordingly, the allegedly coordinated expenditures here would be governed by those provisions of the Act and regulations that address coordinated expenditures generally, that is, 52 U.S.C. § 30116(a)(7)(B)(i) and 11 C.F.R. § 109.20, rather than the coordinated communications regulation at 11 C.F.R. § 109.21.

1 1. Alleged Payments to Obtain Vander Plaats's Endorsement of Santorum

2 The threshold question is whether there is a reason here to infer that NOM may have paid
3 Vander Plaats to obtain an endorsement for Santorum. The Complaint provides no support for
4 its conclusion that any such payment occurred. Rather, it draws its conclusion from the fact that
5 NOM directed \$814,817 in payments to organizations associated with Vander Plaats along with
6 Vander Plaats's statement concerning the expenses associated with an effective advertising
7 campaign. But those facts alone do not give rise to a reasonable inference that Vander Plaats or
8 his associated organizations received funds specifically to secure an endorsement of Santorum.¹⁰

9 Indeed, the Supplemental Complaint essentially acknowledges as much:

10 By investigating my complaint against Senator Santorum, [NOM, Inc.]
11 and Mr. Bob Vander Plaats, the FEC could determine exactly where this
12 \$814,817 came from . . . Were there any sizable contributions to The
13 Family Leader, Inc. or the Family Leader Foundation, Inc. in 2012 by any
14 major NOM supporters like John Templeton or Terry Caster? . . . If so, it
15 is very likely that Senator Santorum was privy to such a deal where NOM
16 president Brian Brown would provide money to Mr. Vander Plaats in
17 exchange for Mr. Vander Plaats' endorsement of Rick Santorum for
18 President . . . We need to know exactly when and where the \$814,817
19 came from during the Family Leader's fiscal year 2012[.]

20
21 Supp. Compl. at 2. Similarly, as to \$468,446 of income to Vander Plaats's Family Leader
22 Foundation, Inc., the Supplemental Complaint provides only speculation: "[t]his could well
23 reflect additional money that came into Mr. Vander Plaats as a result of his endorsement of Mr.
24 Santorum." *Id.* at 4. Even if the fortunes of Vander Plaats's organizations increased *as a result*

¹⁰ Specifically, the Complaint cites \$80,000 in payments in 2011 from NOM to The Family Leader and an organization identified as the Iowa Family Policy Council that shares the same address. Compl. at 3. The Complaint then surmises that "[i]t is likely that the \$80,000 paid directly to Mr. Vander Plaats' organizations in 2011 could have easily constituted NOM's down payment toward securing his \$1 million endorsement of [Santorum]." *Id.* A Supplement to the Complaint added that The Family Leader raised \$814,817 during its 2012 fiscal year, compared to \$323,081 in 2011, Supp. Compl. at 2, and that another Vander Plaats organization, the Family Leader Foundation, Inc., received \$468,446. *Id.* at 4. The Supplemental Complaint contends that these facts support the Complaint's allegation "that Mr. Vander Plaats received a vast sum of money in exchange for his endorsement" of Santorum. *Id.* at 2.

1 of his endorsement of Santorum — and there is no information suggesting such a causal link here
2 — that would not necessarily mean that the payments *secured* his endorsement.

3 In addition, Vander Plaats submitted a sworn affidavit directly denying that his
4 organization received funds from NOM to secure his endorsement: “The only money [NOM]
5 transferred to [The Family Leader] in 2011 was \$80,000.00 to help sponsor and cover some of
6 the costs of some of our pro-marriage advocacy efforts like our Thanksgiving Family Forum, and
7 are reported on NOM’s 2011 tax return.” Vander Plaats Resp. at 1. Likewise, NOM and Brian
8 Brown also stated that they “did not pay the Family Leader and Mr. Vander Plaats any money to
9 secure their endorsement of [Santorum].” NOM/Brown Resp. at 1. NOM explained that it
10 donated \$80,000 to the Family Leader and the Iowa Family Policy Counsel (“IFPC”) in 2011,
11 and that the donation to the IFPC was to defray costs associated with a Thanksgiving Forum
12 hosted by that organization. *Id.* at 3.

13 Given the speculative nature of the claim and the significant contrary showing of the
14 Respondents, the Complaint fails to raise a reasonable inference that NOM may have paid
15 Vander Plaats to secure his endorsement of Santorum.

16 2. The Alleged Involvement of Santorum or His Agents in Obtaining
17 Payment to Vander Plaats

18 For the same reason, the Complaint’s contention that Santorum or his agents acted in
19 concert with NOM or Vander Plaats to secure a payment for Vander Plaats’s endorsement of
20 Santorum is equally unavailing. As to this assertion, the Complaint relies solely on reports that
21 Vander Plaats discussed with candidates his desire to advertise his endorsement, including the
22 cost of that advertising, and that Santorum admitted discussing money with Vander Plaats ahead
23 of the press conference at which Vander Plaats announced his endorsement. Compl. at 5. But
24 these statements do not give rise to a reasonable inference that Santorum sought to obtain a third-

1 party's payment to Vander Plaats to endorse Santorum. In addition, as a factual matter the
2 relevant Respondents have denied under oath that they coordinated to obtain any such payment.
3 *See* Vander Plaats Aff. ¶¶ 2-4; Santorum Aff. ¶¶ 3-5.¹¹

4 Thus, the Complaint's speculative allegation that Santorum or his committee or agents
5 worked with the other Respondents to obtain payment for Vander Plaats's endorsement is
6 unsubstantiated and directly contested by sworn statements of individuals with personal
7 knowledge of relevant facts. The Complaint thus fails to give rise to a reasonable inference that
8 a violation has occurred. We therefore recommend that the Commission find no reason to
9 believe either that NOM or Brian Brown violated 52 U.S.C. § 30116(a) or 30118(a) by making
10 prohibited corporate or excessive contributions in connection with an alleged effort to pay
11 Vander Plaats to endorse Santorum, or that Santorum for President and Nadine Maenza in her
12 official capacity as treasurer knowingly received any such excessive or prohibited corporate
13 contributions in violation of 52 U.S.C. § 30116(f) or 30118(a), or failed to disclose them in
14 violation of 52 U.S.C. § 30104(b).

15 **B. Allegedly Coordinated Contributions to Leaders for Families Super PAC**

16 The Complaint also alleges that Santorum may have coordinated with Brown, NOM, and
17 Vander Plaats to fund the Leaders for Families Super PAC so that it, in turn, could support
18 Santorum through "robocalls" and television and radio commercials. Compl. at 1-2. The
19 Complaint draws its inference of coordination from the contentions that NOM's Political

¹¹ Moreover, according to the Response of NOM and Brown, Brown and Vander Plaats "have never had any conversations regarding presidential endorsements or fundraising for federal candidates." NOM Resp. at 1. Moreover, "[t]he allegation that NOM made a \$1 million payment to Mr. Vander Plaats, to the Family Leader, or to anyone to secure their endorsement of Mr. Santorum is entirely spurious." *Id.* at 2. NOM notes that the "Complaint provides no facts or evidence to support this allegation" but rather "asserts that the alleged solicitation must have been fulfilled, that the money had to have come from somewhere, and that NOM must have done it." *Id.* NOM denied helping to "pay or raise any money to pay for an endorsement[.]" *Id.*

1 Director, Frank Schubert, directed the Iowa campaign of Leaders for Families Super PAC; that
2 Leaders for Families Super PAC was incorporated by James Bopp, an attorney retained also by
3 NOM; and that Terry Caster, a NOM donor, also contributed to Leaders for Families Super PAC.
4 *Id.* at 3-4.

5 A payment for a "coordinated communication" is an in-kind contribution from the payor
6 to the candidate with whom it is coordinated. 11 C.F.R. § 109.21(b). A communication is
7 coordinated with a candidate when it: (a) is paid for by a person other than the candidate;
8 (b) satisfies one of the content standards of the Commission's coordination test; and (c) satisfies
9 one of the conduct standards of the Commission's coordination test. *Id.* § 109.21(a). If a
10 communication is coordinated under the Commission's regulation, then the resulting in-kind
11 contribution may constitute an excessive or prohibited corporate contribution in violation of 52
12 U.S.C. § 30116 or 30118, which NOM and Santorum for President may have been required to
13 disclose under 52 U.S.C. § 30104(b).

14 Here, the Complaint did not identify or describe any allegedly coordinated
15 communications. Nor did it identify any payments to the Leaders for Families Super PAC that
16 allegedly were coordinated with Santorum or his committee.¹² In response to the allegation that
17 the Leaders for Families Super PAC may have been funded in coordination with Santorum or his
18 committee, the relevant Respondents submitted sworn statements asserting that the group's

¹² We do not construe the Complaint's coordination claim as an allegation that Santorum improperly solicited contributions from NOM or its donors to the Leaders for Families Super PAC in excess of the Act's limits and prohibitions in violation of 52 U.S.C. § 30125(e), because the Complaint does not identify any potential solicitation by Santorum that may have violated the Act.

1 funding was derived from Vander Plaats's independent activities. Vander Plaats Aff. ¶¶ 3, 5;
2 Hurley Aff. ¶ 2, 4.¹³

3 Further, Hurley, the Treasurer of Leaders for Families Super PAC, represents that "no
4 one with Leaders for Families Super PAC had any discussions with, or coordinated funding or
5 any other campaign activity with, the Santorum for President Campaign, or any other prohibited
6 person or entity." Hurley Aff. ¶ 4. Hurley also contends that "no lists were sold, given or shared
7 in any way with, or by, the Santorum for President Campaign." *Id.*

8 Likewise, according to NOM, "[t]here was no coordination between respondents and Mr.
9 Santorum, Santorum's campaign, or Mr. Vander Plaats for the purpose of funding the Leaders
10 for Families committee." NOM Resp. at 1. It "did not help to create the Leaders for Families
11 committee," and was not involved in that committee's operation. *Id.* at 2.

12 Respondents NOM and Leaders for Families Super PAC further reject the significance of
13 their retention of the same political law counsel and political campaign consultant. *Id.*; Hurley
14 Aff. ¶ 5. Hurley contends that he had "known and used the Bopp Law Firm since 2004, long
15 before NOM existed. I knew the firm's area of expertise, and hired them after agreeing to their
16 fee structure for this matter." Hurley Aff. ¶ 5. Similarly, NOM acknowledges that since 2009 its
17 political director has been Frank Shubert, who also provides public relations services to a variety
18 of entities and who "may have been retained by Leaders for Families," but NOM denies that this
19 suggests any violation of the Act. NOM Resp. at 2.

20 The Complaint fails to recite a basis that would give rise to a reason to believe that the
21 specified Respondents coordinated the funding of Leaders for Families Super PAC and, through

¹³ Vander Plaats also contends that proof that there was no "pay to play" is that Santorum publicly stated that he learned of Vander Plaats's endorsement "via a media report" on Dec. 20, 2011, during a campaign stop in Pella, Iowa, and that Vander Plaats had made his endorsement "independent of all candidates and campaigns" earlier that day in a different city. Vander Plaats Aff. ¶ 4. Hurley echoed this contention. Hurley Aff. ¶ 3.

1 it, its payments for advertisements on behalf of Santorum's candidacy. The Complaint cites no
2 allegedly coordinated communication, and the mere retention of the same legal and consulting
3 personnel and the fact that at least one donor contributed to both organizations does not suggest
4 that Santorum, Brown, NOM, and Vander Plaats coordinated to fund or to direct the
5 expenditures of Leaders for Families Super PAC. Moreover, here the speculative claim that they
6 did so is rebutted by the sworn statements of persons with knowledge of the relevant facts.

7 Accordingly, we recommend that the Commission find no reason to believe that NOM,
8 Brown, and Vander Plaats made, and Rick Santorum or Santorum for President received,
9 excessive or prohibited corporate in-kind contributions in violation of 52 U.S.C. § 30116(a), (f),
10 and 30118(a), or that NOM and Santorum for President failed to disclose NOM's expenditures or
11 contributions to Leaders for Families in violation of 52 U.S.C. § 30104(b).

12 **C. Santorum for President's Allegedly Unreported Receipt of a "Voter List"**
13 **from The Family Leader**

14 The Complaint alleges that The Family Leader provided a "voter list" to Santorum for
15 President, and that Santorum for President neither disclosed it as an in-kind contribution nor
16 identified any expenditure related to its purchase. Compl. at 4. The Complaint recites no facts in
17 support of the claim, and the relevant Respondents have represented under oath that it is factually
18 untrue. *See* Vander Plaats Aff. ¶ 5; Maenza Aff. ¶ 6; *see also* Santorum Resp. at 3. We therefore
19 recommend that the Commission find that there is no reason to believe that Santorum for
20 President and Nadine Maenza in her official capacity as treasurer failed to disclose an in-kind
21 contribution or expenditure in violation of 52 U.S.C. § 30104(b).

1 **D. The Second Supplemental Complaint's Allegations Regarding Santorum,**
2 **Foster Friess, Red White and Blue Fund, and Leaders for Families**

3 Although the specific allegations are not clear, it appears that the April 2, 2015
4 Supplemental Complaint alleges that Friess was a Santorum supporter who traveled with him,
5 gave advice, and who allegedly made suggestions as to how his contributions to Red White and
6 Blue Fund and Leaders for Families should be spent. Santorum thus allegedly coordinated
7 expenditures or communications with Red White and Blue Fund and Leaders for Families
8 through Friess, as intermediary, and those committees therefore made, and the Santorum
9 Committee received, undisclosed and excessive in-kind contributions.

10 A payment for a "coordinated communication" is an in-kind contribution from the payor
11 to the candidate with whom it is coordinated. 11 C.F.R. § 109.21(b). A communication is
12 coordinated with a candidate when it is: (a) paid for by a person other than the candidate;
13 (b) satisfies one of the content standards of the Commission's coordination test; and (c) satisfies
14 one of the conduct standards of the Commission's coordination test. *Id.* § 109.21(a). If a
15 communication is coordinated under the Commission's regulations, then the resulting in-kind
16 contribution may constitute an excessive or prohibited corporate contribution in violation of
17 52 U.S.C. § 30116 or 30118, which Red White and Blue Fund, Leaders for Families, and
18 Santorum for President may have been required to disclose under 52 U.S.C. § 30104(b).

19 In a Supplemental Response, Santorum contends that the Second Supplemental
20 Complaint contains "no factual evidence of any violation of federal law by the Santorum
21 presidential campaign, the Committee or Rick Santorum," Santorum Supp. Resp. at 1, and that the
22 allegations do not include information establishing that any particular communications by
23 independent PACs were coordinated with Santorum's committee. *Id.* at 2-4. Red White and Blue
24 Fund responded that it is not, as alleged, Santorum's "official Super PAC," but rather always

1 operates independently of any candidates. Red White and Blue Fund Resp. at 1-2. Further, Red
2 White and Blue Fund contends that the Supplemental Complaint's allegations of coordination are
3 vague and general, and do not identify an allegedly coordinated communication, "or otherwise
4 explain how any particular activity violated a provision of the Act or Commission regulations."¹⁴ *Id.*
5 at 2.

6 As the Red White and Blue Fund notes in its Response with regard to the types of ads
7 Friess wished his contributions would fund, "[t]here is no evidence that suggests in any way that
8 Mr. Friess' expressed preference was conveyed at the request or behest of the Santorum
9 campaign. To the contrary, all available evidence indicates that Mr. Friess was simply
10 conveying his own advertising preference." Red White and Blue Fund Resp. at 3. Accordingly,
11 Red White and Blue Fund contends that there is no evidence that it "coordinated
12 communications or expenditures with the Santorum campaign, with Mr. Friess somehow serving
13 as a conduit for information" and that the materials attached to the original Complaint include
14 articles in which "Mr. Friess and Mr. Santorum both told reporters, on multiple occasions, that
15 they did not discuss the activities of Red, White and Blue Fund." *Id.* (citing Andrew Rafferty,
16 *Major Super PAC Donor's Public Role with Santorum Campaign*, NBC NEWS (Feb. 9, 2012).
17 Red White and Blue Fund further asserts that the "Executive Director of Red, White and Blue
18 Fund, Nicholas Ryan, did not discuss advertising strategy, or the content of specific
19 advertisements, with Mr. Friess. Decisions regarding the specific content and distribution of
20 Red, White and Blue Fund's advertisements were made by Nicholas Ryan and media vendors
21 retained by Red, White and Blue Fund." *Id.* The Red White and Blue Fund's Response on this
22 point is supported by Ryan's sworn affidavit.

¹⁴ NOM and Brown state that the additional information "adds nothing at all related to NOM or Mr. Brown."
NOM/Brown Second Supp. Resp. at 1. Friess did not respond.

1 Given the lack of any factual basis that reasonably suggests that Santorum and Leaders
2 for Families coordinated any expenditures or communications through Friess and the further
3 express denials of those claims — supported by two sworn representations by persons with
4 personal knowledge of the relevant facts — we recommend that the Commission find that there
5 is no reason to believe that Red White and Blue Fund and Christopher Marston in his official
6 capacity as treasurer or Leaders for Families and Chuck Hurley in his official capacity as
7 treasurer made excessive, corporate in-kind contributions to Rick Santorum for President in
8 violation of 52 U.S.C. § 30116 or 30118, which Red White and Blue Fund, Leaders for Families,
9 and Santorum for President may have been required to disclose under 52 U.S.C. § 30104(b).

10 **VI. RECOMMENDATIONS**

- 11 1. Find no reason to believe that Brian Brown and the National Organization for
12 Marriage made excessive, corporate in-kind contributions to Rick Santorum for
13 President in violation of 52 U.S.C. §§ 30116(a) and 30118(a).
- 14 2. Find no reason to believe that the National Organization for Marriage failed to report
15 independent expenditures in violation of 52 U.S.C. § 30104(b).
- 16 3. Find no reason to believe that Santorum for President and Nadine Maenza in her
17 official capacity as Treasurer accepted excessive, corporate in-kind contributions
18 from the National Organization for Marriage, Leaders for Families, or the Red White
19 and Blue Fund in violation of 52 U.S.C. §§ 30116(f) and 30118(a).
- 20 4. Find no reason to believe that Santorum for President and Nadine Maenza in her
21 official capacity as Treasurer failed to disclose its receipt of in-kind contributions or
22 expenditures in violation of 52 U.S.C. § 30104(b) based on the allegations in the
23 Complaint.
- 24 5. Find no reason to believe that Robert L. Vander Plaats and The Family Leader, Inc.,
25 violated the Act as alleged in the Complaint.
- 26 6. Find no reason to believe that the Leaders for Families Super PAC and Chuck Hurley
27 in his official capacity as Treasurer made excessive, corporate in-kind contributions
28 to Rick Santorum for President in violation of 52 U.S.C. §§ 30116(a) and 30118(a),
29 or failed to disclose a contribution or expenditure in violation of 52 U.S.C. §
30 30104(b).

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7. Find no reason to believe that Red White and Blue Fund and Christopher Marston in his official capacity as treasurer made excessive, corporate in-kind contributions to Rick Santorum for President in violation of 52 U.S.C. §§ 30116(a) and 30118(a).
8. Approve the attached Factual and Legal Analysis;
9. Approve the appropriate letters; and
10. Close the file.

Date: 8/6/15



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Assistant General Counsel



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