## UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 0:16-CV-61511-WJZ

CAROL WILDING, et al.,

Plaintiffs,

v.

DNC SERVICES CORP., d/b/a
DEMOCRATIC NATIONAL COMMITTEE,
et al.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS OR, IN THE ALTERNATIVE, EXTEND TIME TO ANSWER OR RESPOND TO COMPLAINT

In support of their motion to dismiss for insufficient service of process or, in the alternative, extend time to answer or respond to Plaintiffs' First Amended Complaint, DNC Services Corp. d/b/a the Democratic National Committee ("DNC") and DNC Chair U.S. Congresswoman Debbie Wasserman Schultz ("DNC Chair") (together, "Defendants") submit as follows:

### I. BACKGROUND

Plaintiffs filed this putative class action on June 28, 2016, against the DNC and the DNC Chair. *See* Compl. (ECF No. 1). At the heart of Plaintiffs' challenge appears to be their contention that Defendants favored former Secretary of State Hillary Clinton in the Democratic primary process over Plaintiffs' preferred candidate Senator Bernie Sanders and, as a result, are allegedly liable for "fraud" (Count I), "negligent misrepresentation" (Count II), violation of the D.C. Consumer Protection Act (Count III), "unjust enrichment" (Count IV), and "breach of fiduciary duty," (Count V). *Id.* at ¶¶ 128-130, 154-186. Plaintiffs also assert a claim for "negligence,"

related to allegations of a data breach by Russian hackers (Count VI). *See id.* at ¶¶ 187-197. Plaintiffs rely on diversity to bring this action in federal court, *see id.* at ¶ 1, and do not assert any federal claims. Yet, with the exception of the allegations for "unlawful trade practices" made under the D.C. Consumer Protection Procedures Act, D.C. Code Ann. § 28-3904, Plaintiffs fail to identify the legal authority for any of their claims, omitting even a simple reference to which state's laws Defendants are alleged to have violated. Plaintiffs also fail to identify any discernable legal theory pursuant to which their allegations, even if proven, would be actionable.

Plaintiffs propose to pursue this matter on behalf of three classes, defined broadly as: (1) "All people or entities who have contributed to the DNC from January 1, 2015 through the date of this action ('DNC Donor Class')," (2) "All people or entities who have contributed to the Bernie Sanders campaign from January 1, 2015 through the date of this action ('Sanders Donor Class')," and (3) "All registered members of the Democratic Party ('Democratic Party Class')." Compl. ¶ 144 (emphases added). The proposed representatives of these classes are described in three different ways:

- The first category consists of individuals who are alleged to have donated to Senator Sanders' presidential campaign at an unspecified date via an organization called ActBlue. The descriptions of these individuals include only their name, city and state of residence, and a statement that they "contributed a total of [a certain amount of money] to Bernie Sanders' presidential campaign via ActBlue." Compl. ¶¶ 2-105.
- The second category consists of seven individuals who are alleged to have donated to the DNC in 2015 or 2016. The descriptions of these individuals include their name, city and state of residence, a statement that they "contributed a total of [a certain amount of money] to [the DNC]," an estimated date or date range during which the contribution was made, and sometimes include a basic description as to how the contribution was made. Compl. ¶¶ 106-112.
- The third category consists of individuals who are simply described using their name, city and state of residence, and a statement that the individual is and has been registered as a Democrat for a certain period of time. Compl. ¶¶ 113-121.

None of the proposed class representatives are alleged to have made any donations or taken any

other action as a result of any action taken by the Defendants in this case.

On July 6, 2016, Plaintiffs filed affidavits of service of process, in which Shawn Lucas and Brandon Yoshimura of One Source Process, Inc. claim to have served Rebecca Christopher (described by the affidavits as a "Creative Strategist") with process for both the DNC and its Chair at 1:30 p.m. on July 1st. See Aff. of Service of Process on DNC (ECF No. 6); Aff. of Service of Process on DNC Chair (ECF No. 7). In fact, the person with whom Mr. Lucas and Mr. Yoshimura interacted was not Ms. Christopher, but a different DNC employee named Rebecca Herries. See Decl. of Rebecca Herries In Support of Mot. to Dismiss ("Herries Decl.") ¶¶ 1, 2. Ms. Herries is not authorized to accept service of process for the DNC, its Chair in any capacity, or the CEO, for whom she works as a special assistant. *Id.* ¶ 2. Ms. Herries came to the lobby to meet Mr. Lucas and Mr. Yoshimura after she was repeatedly advised by security that Mr. Lucas and Mr. Yoshimura were refusing to leave unless they could hand some legal papers to a DNC staffer. *Id.* ¶¶ 3, 4. It was Friday afternoon right before the Fourth of July weekend and, after unsuccessfully attempting to contact the DNC's Chief Operating Officer or anyone in the operations department, Ms. Herries went downstairs to speak with Mr. Lucas and Mr. Yoshimura. Id. ¶ 3. She told them that her name was "Becca" and that she worked for the DNC. Id. ¶ 4. They did not ask her for and she did not give them her last name or her title. *Id*. They similarly did not ask whether she was authorized to accept process for either Defendant, and she did not make any representations to that effect. Id. They handed her the documents and left. Id.

On July 13, 2016, Plaintiffs filed a First Amended Complaint. *See* First Am. Compl. (ECF No. 8). As of the date of this filing, the undersigned is unaware of any attempt to serve the new complaint on Defendants outside of the Court's ECF filing system, despite the fact that Defendants had not yet appeared in the case when it was filed.

### II. ARGUMENT

#### A. This Action Should Be Dismissed For Insufficient Service of Process

A federal court does not have personal jurisdiction over a defendant unless and until it has been properly served in substantial compliance with Federal Rule of Civil Procedure 4, which governs service of process. See, e.g., De Gazelle Grp., Inc. v. Tamaz, Trading Establish., 817 F.3d 747, 748-49 (11th Cir. 2016); Woodbury v. Sears, Roebuck & Co., 152 F.R.D. 229, 236 (M.D. Fla. 1993). This is because "[d]ue process under the United States Constitution requires that 'before a court may exercise personal jurisdiction over a defendant, there must be more than notice to the defendant ... [t]here must also be a basis for the defendant's amenability to service of summons." Prewitt Enter., Inc. v. O.P.E.C., 353 F.3d 916, 924-25 (11th Cir. 2003) (internal quotation marks omitted). Thus, the Eleventh Circuit has been clear: "notice does not confer personal jurisdiction on a defendant when it has not been served in accordance with Rule 4." De Gazelle Grp., 817 F.3d at 750. The relevant provisions of Rule 4 at issue in this case are subsections 4(e) and 4(h), which govern service on individuals and corporations, respectively. Because Plaintiffs have failed to comply with either, this action should be dismissed for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(5) due to insufficient service of process. See, e.g., De Gazelle Grp., 817 F.3d at 748-49; Woodbury, 152 F.R.D. at 236.

## 1. Applicable Rules

### a. Service on individuals

Under Rule 4(e), an individual "may be served in a judicial district of the United States" either by "following state law for serving a summons ... in the state where the district court is located or where service is made," or by:

- (A) delivering a copy of the summons and of the complaint to the individual personally;
- (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each

to an agent authorized by appointment or by law to receive service of process.

Florida law permits service on an individual by:

delivering a copy of [original process] to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.

Fla. Stat. § 48.031. District of Columbia law permits service on individuals by:

delivering a copy of the summons, complaint and initial order to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons, complaint and initial order to an agent authorized by appointment or by law to receive service of process.

D.C. Super. Ct. Civ. R. 4(e). Personal service may also be achieved by mail, provided that certain criteria are met. *See* D.C. Super. Ct. Civ. R. 4(c).

# **b.** Service on corporations

Under Rule 4(h), a corporation must be served either by:

[following state law for serving] a summons ... in the state where the district court is located or where service is made, or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.

Florida law permits service on private domestic corporations either on the agent designated by the corporation under Fla. Stat. § 48.091, or upon specific types of employees, in a certain order, depending on availability, *see id.* at § 48.081 (service may be accomplished by serving "the president or vice president, or other head of the corporation," or in their absence, "the cashier, treasurer, secretary, or general manager," or in their absence, "any director," or in their absence, "any officer or business agent residing in the state"), and requires strict compliance with its statutory requirements for service of process, *Sierra Holding, Inc. v. Inn Keepers Supply Co., a* 

<sup>&</sup>lt;sup>1</sup> Substitute service may also be made, under limited circumstances, on the person's spouse at any place in the county or on an individual doing business as a sole proprietorship. *See id.* 

div. of Holiday Inns, Inc., 464 So. 2d 652, 654 (4th D.C.A. Fla. 1985) (citing cases). District of Columbia law permits service on corporations by:

delivering a copy of the summons, complaint and initial order to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

D.C. Super. Ct. Civ. R. 4(h). District of Columbia law also permits service on corporations by mail, provided that certain criteria are met. *See* D.C. Super. Ct. Civ. R. 4(c).

## 2. Plaintiffs Failed To Effectuate Legal Service of Process

Plaintiffs' delivery of the summons and complaint to Ms. Herries, an assistant at the DNC who is not personally a party to this action, failed to effectuate legal service upon either the DNC or its Chair under any of the above provisions. Indeed, the deficiency of service is evident from the face of the affidavits of service filed with the Court, which state that the summons and complaint were given to an employee described as a "Creative Strategist." There can be no serious argument that a Creative Strategist qualifies as a person upon whom effective service for the DNC or its Chair may be made under the Federal Rules or Florida or District of Columbia law. A Creative Strategist is not "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process," Fed. R. Civ. P. 4(h); see also D.C. Super Ct. Civ. R. 4(h) (same). Nor is a Creative Strategist a "president or vice president, or other head of corporation," "the [DNC's] cashier, treasurer, secretary, or general manager," or even "any director" or "any officer or business agent residing in [Florida]." Fla. Stat. § 48.081. Thus, even if the process servers had in fact handed the papers to Ms. Christopher (which they did not),

<sup>&</sup>lt;sup>2</sup> As noted above, the Florida corporations service statute also requires that service be attempted on these types of employees in a specific order. Thus, service of process is not authorized on "any director," unless it can be established that all of the proceeding types of officers and directors were not present. *See* Fla. Stat. § 48.081.

Plaintiffs' counsel should have known immediately upon receipt of the affidavits that service was ineffective.

That the process servers did not even attempt to serve a person with authority to accept service is evident by the fact that they misidentify the person to whom the documents were given in the affidavits of service filed with the Court. As discussed, and contrary to the affirmations made in those affidavits of service, the documents were not given to Ms. Christopher, but to a different DNC employee, Rebecca Herries, who similarly lacks authority under either the Federal Rules or Florida or District of Columbia law to accept service on behalf of the DNC or its Chair.<sup>3</sup> See Herries Decl. ¶¶ 1-4. Like Ms. Christopher, Ms. Herries is not "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process," Fed. R. Civ. P. 4(h); see also D.C. Super Ct. Civ. R. 4(h) (same), nor is she a "president or vice president, or other head of corporation," "the [DNC's] cashier, treasurer, secretary, or general manager," any other type of director, or "any officer or business agent residing in [Florida]." Fla. Stat. § 48.081. That the process servers listed the wrong person in the affidavits of service is a result of their failure to make any effort whatsoever to ensure that they were complying with the applicable rules for effective legal service of process. They did not ask Ms. Herries for her name or her title or whether she was authorized to accept service on behalf of either the DNC or its Chair, and Ms. Herries did not at any point tell them that she was so authorized. *Id*. at ¶ 4. Instead, they seem to have assumed that any DNC staffer would suffice, and after the fact guessed incorrectly that the "Becca" that they spoke with was Ms. Christopher, as reflected by the affidavits of service. See id.

But the applicable law is clear—service on the DNC and its Chair cannot be legally

<sup>&</sup>lt;sup>3</sup> The affidavits also mistakenly describe the DNC as a "Government Agency." *See* Affs. of Service.

effectuated by handing the papers to just any DNC staffer, including the staffer that the process servers attempted to serve in this case. *See, e.g., Hives v. Bisk Educ., Inc.*, No. 8:15-CV-262-T-23MAP, 2015 WL 3791423, at \*1-2 (M.D. Fla. May 7, 2015) (service on counsel did not conform with requirements of Federal Rules and thus, under Eleventh Circuit precedent, was ineffective to confer personal jurisdiction over the defendant); *Elkins v. Broome*, 213 F.R.D. 273, 274-276 (M.D.N.C. 2003) (service of process of police officer attempted by serving on duty officer at police department not effective because duty officer did not have "capacity to receive service in accordance with the Federal Rules"); *Calder v. Stanly County Bd. of Educ.*, No. 1:00-CV-01249, 2002 WL 31370364, at \*2-3 (M.D.N.C. Sept. 26, 2002) (service of process of Board of Education not effective through school principal and service of process on individual defendant not effective through his secretary); *see also De Gazelle Grp.*, 817 F.3d at 748-49; *Woodbury*, 152 F.R.D. at 236. Because the attempt at service was plainly not in substantial compliance with Rule 4, the matter should be dismissed for failure to effectuate legal service of process.

# B. In The Alternative, There Is Good Cause To Extend Defendants' Time To Answer Or Respond To The First Amended Complaint

In the alternative, Defendants respectfully request that their time to answer or otherwise respond to the First Amended Complaint be extended up to and including September 9, 2016, or two weeks after the Court rules on the instant motion to dismiss, whichever is later. Good cause exists to grant this request.

As an initial matter, it is worth emphasizing that this request for an extension is being made out of an abundance of caution, to ensure that there can be no argument that the time to answer or otherwise respond to the First Amended Complaint has passed. Even putting aside the issue of whether service of process was effective, the current deadline for Defendants to answer or move to dismiss the First Amended Complaint is unclear. Had service of the original complaint been

effective on July 1st, Defendants' deadline to file an answer or respond to that complaint would have been July 22nd. See Fed. R. Civ. P. 12(a)(1)(A)(i). But by filing the First Amended Complaint on July 13th, Plaintiffs mooted the original complaint and triggered a new time period to answer or respond to the Plaintiffs' claims. See, e.g., LeBrew v. Reich, No. 03-CV-1832 (JG) (KAM), 2006 WL 1662595, at \*4 (E.D.N.Y. May 12, 2006) ("[A] defendant's time to answer is renewed upon the filing of each successive amended complaint."); Cf. Montgomery Bank, N.A. v. Alico Rd. Business Park, LP, No. 2:13-CV-802-FtM-29CM, 2014 WL 757994, at \*2 (M.D. Fla. Feb. 26, 2016) ("The filing of an amended complaint ... cures a party's default as to the superseded original complaint."). Moreover, at the time Plaintiffs filed the First Amended Complaint, no counsel for Defendants had entered any appearances in this case. Accordingly, Defendants could not have been effectively served with the First Amended Complaint as a result of the electronic filing. See S.D. Fla CM/ECF Attorney User's Manual, 15 (2015) (stating that a party who is not authorized to use the CM/ECF system, or is not otherwise authorized to electronically receive Notices of Electronic Filing is "entitled to a paper copy of any electronically-filed document" and "it is the responsibility of the filing party to provide the party with the electronically-filed document according to the Federal Rules of Civil Procedure"). As of the time of this filing, the undersigned has no reason to believe that Plaintiffs have served Defendants with the First Amended Complaint by any other means. Thus, even if Defendants had not filed the instant motion to dismiss, which tolls their time to answer until the Court rules on the motion, see Fed. R. Civ. P. 12(a)(4), the earliest that it would seem that Defendants' response to the First Amended Complaint would have been due is August 11, calculating the time to respond from the date that Defendants' counsel appeared for the limited purpose of filing this Motion contesting the adequacy of service or seeking, in the alternative, a motion to extend.<sup>4</sup>

<sup>&</sup>lt;sup>4</sup> This date is based on the 14 day deadline contained in Fed. R. Civ. P. 15(a)(3) and the

Moreover, the extension that Defendants request is modest and may be mooted depending on the nature of and the timing of the Court's ruling on the motion to dismiss for insufficient service. Assuming the request is not mooted, granting the requested extension would enable Defendants sufficient time to comprehensively analyze and address the multiple deficiencies evident from the face of the Complaint, and in turn serve to conserve judicial resources, avoid the need for piecemeal consideration of critical threshold issues, and promote the orderly and efficient resolution of this action.

Among other issues, the requested extension would give Defendants adequate time to explore whether the First Amended Complaint sufficiently states a basis for Article III standing, where the claims appear to be based on the proposed class representatives' donations to the Sanders Campaign or the DNC, yet nowhere do Plaintiffs actually allege that these individuals made those donations in reliance upon or as a result of any actions taken by Defendants. *See generally* First Am. Compl. This omission is not surprising in light of the political reality that Senator Sanders was perceived and positioned as the political party "outsider" candidate and in fact actively (and by all accounts, very successfully) fundraised on allegations similar to the ones

\_

directions for computing time in Fed. R. Civ. P. 6(a)(1) and S.D. Fla. Local Civ. Rule 7.1(c)(1) to exclude the day that triggers the time period and extend the period to the next day that is not a Saturday, Sunday or holiday if the last day of the period lands on a Saturday, Sunday, or legal holiday, and then to add three days for electronic service. For the reasons discussed *infra*, it would be extremely difficult for Defendants to file a comprehensive response to the First Amended Complaint by August 11.

<sup>&</sup>lt;sup>5</sup> Specifically, if the Court grants Defendants' motion to dismiss for insufficient service, the deadline for Defendants' answer or other response to the Complaint will run from effective service of the summons and First Amended Complaint, if Plaintiffs decide to continue to pursue this litigation. If the Court issues an order denying the motion on August 26th or later, Defendants' answer or other response will be due on or after September 9th, mooting Defendants' request for an extension, unless the Court sets a different deadline. *See* Fed. R. Civ. P. 12(a)(4)(A).

that Plaintiffs now make. This reality, furthermore, makes it unlikely that Plaintiffs would be able to truthfully amend their Complaint to address this issue, which goes directly to the traceability prong of the standing inquiry. See, e.g., Lujan v. Defenders of Wildlife, 504 U.S. 555, (1992) (standing requires, among other things, that "there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.") (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976)).

The requested extension would also give Defendants sufficient opportunity to analyze and address other facial deficiencies in the First Amended Complaint, including Plaintiffs' failure to meet the Federal Rules' basic pleading requirements, and failure to state a claim upon which relief may be granted, as well as the serious First Amendment concerns that this action raises. It is well-established that political speech and the internal operations of political parties are entitled to particularly strong First Amendment protection, into which courts are ordinarily extremely wary of inserting themselves. *See, e.g., Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000); *Cousins v. Wigoda*, 419 U.S. 477 (1975); *O'Brien v. Brown*, 409 U.S. 1, 6 (1972).

Indeed, in order to simply identify the members of the proposed classes as defined in the First Amended Complaint, Plaintiffs will almost certainly have to conduct invasive, extensive discovery of the DNC and the Sanders Campaign, as well as each of the fifty states' local Democratic Parties or local Secretary of State's Offices or Boards of Elections, depending on how "members of the Democratic Party" are identified in each state. *See* First Am. Compl. ¶ 175

<sup>&</sup>lt;sup>6</sup> To give just one example, on December 18, 2015, the Sanders Campaign sent an email soliciting contributions that explicitly accused the DNC of "plac[ing] its thumb on the scales in support of Hillary Clinton's campaign," an accusation the Campaign described as "more or less an open secret," which reportedly raised Sanders more than \$1 million in a single day. *See* Dan Merica, *Sanders raised more than \$1M after data breach, aide says* (Dec. 19, 2015), *available at* http://www.cnn.com/2015/12/19/politics/bernie-sanders-dnc-data-fundraising/ (last visited July 20, 2016).

(defining proposed classes as including "[a]ll people or entities who ... contributed to" the DNC or the Sanders Campaign from January 1, 2015 through the date of this action and "[a]ll registered members of the Democratic Party"). It is axiomatic First Amendment law that otherwise not publicly-available membership and donor information, the disclosure of which could have the effect of chilling the exercise of the right of association, cannot be compelled absent a compelling state or federal purpose. *See, e.g., N.A.A.C.P. v. Alabama*, 357 U.S. 449, 466 (1958). And, such discovery will necessarily go beyond mere membership lists, given Plaintiffs' theory that the class members were harmed by the DNC's purported favoritism of one candidate over another, because it will require individual depositions of each class member to determine whether they donated money or took any other actions in reliance of any actions by Defendants—or conversely, if they donated money or took any other action in reliance on the *Sanders' Campaign's* assertions that Senator Sanders was the outsider candidate and was being treated unfairly by Defendants as a result. *See infra*, n.8.

That such inquiries necessarily follow from Plaintiffs' claims brings into serious doubt the viability of this action as a class action. *See, e.g., Wal-mart Stores, Inc. v. Dukes*, 564 U.S. 338, (2011) (the requirement of "commonality" to maintain a class action "requires the plaintiff to demonstrate that class members 'have suffered the same injury" and "[t]hat common contention ... must be of such a nature that it is capable of classwide resolution—which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke"). Here, Plaintiffs purport to bring a class action suing about literally thousands of decisions to make donations to the DNC or the Sanders Campaign—or to associate with the Democratic Party—at once. But, "[w]ithout some glue holding the alleged reasons for all those decisions together, it will be impossible to say that examination of all the class members' claims for relief will produce a common answer to the crucial question" of whether they took these

actions as a result of Defendants' alleged conduct. *Id*.

This is Defendants' first request for an extension in this case, in which no dates have been set for a pre-trial conference, for hearing and deciding class certification issues, or for trial. Plaintiffs have not filed a motion seeking preliminary injunctive relief or otherwise requesting an expedited judgment. Thus, granting the requested extension will not unduly delay the adjudication of this matter, nor will it prejudice Plaintiffs. In comparison, if the extension is not granted, the prejudice to Defendants would be significant. Defendants and their counsel are both heavily involved in the Democratic National Convention, which will take place next week in Philadelphia. The following week, the same litigation team appearing in this case – which has particular expertise in the areas of election and First Amendment law – has a court of appeals argument and an argument on a motion for a preliminary injunction to address highly time sensitive matters in cases brought long before Plaintiffs filed this action.

Given counsel's substantial conflicts, the serious issues evident from the face of the First Amended Complaint, and the fact that granting the requested extension will not prejudice the Plaintiffs or result in undue delay in the administration of this case, Defendants submit that there is good cause to grant the requested extension, which will permit Defendants sufficient time to comprehensively analyze and address the allegations contained in the First Amended Complaint, and ultimately promote the efficient administration of justice.

# III. CONCLUSION

For the reasons discussed herein, this matter should be dismissed for insufficient service of process. In the alternative, and for good cause shown, Defendants respectfully request that the Court extend their time to answer or respond to the First Amended Complaint up to and including September 9, 2016, or two weeks after the Court rules on the instant motion to dismiss, whichever is later.

### CERTIFICATION OF COMPLIANCE WITH MEET AND CONFER REQUIREMENT

Pursuant to the requirements of this Court's Local Rule of Civil Procedure 7.1(a)(3), counsel for Defendants has made reasonable good faith efforts to meet and confer with counsel for Plaintiffs about Defendants' alternative request for an extension of time to file an answer or otherwise respond to the First Amended Complaint. The Local Rule does not require that parties attempt to confer prior to filing a motion to involuntarily dismiss an action, but nonetheless Defendants' counsel's attempts to confer with Plaintiffs' counsel about the request to extend time also included discussion about Plaintiffs' failure to adequately serve process and an offer to accept service of process pursuant to Federal Rule of Civil Procedure 4(d)'s waiver provisions.

The first of these communications was sent via email to Plaintiffs' counsel on July 15, 2016 at 7:17 a.m. In that email, Defendants' counsel advised Plaintiffs' counsel that service was not properly effectuated, but in order to save Plaintiffs' counsel the expense of another attempt at service, offered to accept process pursuant to the provisions set forth in Rule 4(d). In that email, Defendants' counsel also advised Plaintiffs' counsel that if counsel did not respond, Defendants planned to file a motion to dismiss for insufficient service of process the following week, and would be requesting, in the alternative, that the Court extend Defendants' time to answer or respond to the Complaint. Defendants' counsel requested that Plaintiffs' counsel respond with suggested times to discuss the alternative request to extend time and advised that if Plaintiffs' counsel did not respond, Defendants would assume that Plaintiffs intend to oppose that alternative request.

Plaintiffs' counsel responded via a letter attached to an email on July 18, 2016 at 12:56 p.m., requesting more information as to why service was not effective, but did not offer any times to discuss the alternative request to extend the time for Defendants to answer or respond to the complaint.

Defendants' counsel responded via email on July 19, 2016 at 2:56 p.m., voluntarily

offering further information about why service was improper and reiterating Defendants'

willingness to have a telephone conversation to discuss the alternative request to extend time to

answer or respond to the complaint, providing two large time blocks over the following two days

in which counsel would be available for a call. Because the meet and confer requirement can also

be satisfied by conferences in writing, Defendants' counsel advised Plaintiffs' counsel that if

Plaintiffs' position was that Plaintiffs would oppose any request for an extension, the meet and

confer requirement (to the extent that it applies to a request for relief in the alternative to an

involuntary motion to dismiss) could be satisfied in writing. Defendants' counsel also again stated

that she would accept service of process pursuant to Rule 4(d)'s waiver provisions, but advised

that in the absence of such an agreement, Defendants would be moving to dismiss for insufficient

service of process.

The latter of the two time blocks proposed by Defendants' counsel have since passed, with

no further communication from Plaintiffs' counsel. Thus, Defendants' counsel has made

reasonable good faith efforts to confer with Plaintiffs' counsel, but has been unable to engage

Plaintiffs' counsel in a substantive discussion about Defendants' motion, or obtain Plaintiffs'

position on the same.

Dated: July 22, 2016

Respectfully submitted,

s/Gregg Thomas

Gregg D. Thomas

Florida Bar No.: 223913

601 South Boulevard P.O. Box 2602 (33601)

Tampa, FL 33606

Telephone: (813) 984-3060

Facsimile: (813) 984-3070

gthomas@tlolawfirm.com

15

# s/Marc E. Elias

Marc E. Elias (motion for *pro hac vice* to be filed)
Graham Wilson (motion for *pro hac vice* to be filed)
Elisabeth C. Frost (motion for *pro hac vice* to be filed)
Ruthzee Louijeune (motion for *pro hac vice* to be filed)

PERKINS COIE LLP
700 13th Street, N.W., Suite 600
Washington, D.C. 20005
Telephone: (202) 654.6200
Facsimile: (202) 654.9959
melias@perkinscoie.com
gwilson@perkinscoie.com
efrost@perkinscoie.com
rlouijeune@perkinscoie.com

Attorneys for Defendants

# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss For Insufficient Service of Process or In the Alternative To Extend Time to Answer or Respond to Complaint was served by CM/ECF on July 22, 2016 on all counsel or parties of record on the service list.

Gregg D. Thomas Attorney

# UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

### Case No. 0:16-CV-61511-WJZ

CAROL WILDING, et al.,

Plaintiffs,

v.

DNC SERVICES CORP., d/b/a
DEMOCRATIC NATIONAL COMMITTEE,
et al.,

Defendants.

### **SERVICE LIST**

Jared H. Beck Elizabeth Lee Beck

Email: jared@beckandlee.com Email: elizabeth@beckandlee.com BECK & LEE TRIAL LAWYERS 12485 SW 137th Ave., Suite 205

Miami, FL 33186 Tel: 305-234-2060 Fax: 786-664-3334

Antonio Gabriel Hernandez Email: hern8491@bellsouth.net ANTONIO G. HERNANDEZ P.A. 4 SouthEast 1st Street, 2nd Floor Miami, FL 33131

Tel: 305-282-3698 Fax: 786-513-7748

Cullin Avram O'Brien

Email: cullin@cullinobrienlaw.com CULLIN O'BRIEN LAW, P.A. 6541 NE 21st Way

Ft. Lauderdale, FL 33308

Tel: 561-676-6370 Fax: 561-320-0285