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VIA E-MAIL

June 9, 2019

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Re: Double Time Capital and China – The Fight for North Carolina’s Future

Dear Buddy:

We are First Amendment and litigation counsel to the Congressional Leadership Fund (“CLF”), which has forwarded to us your June 5, 2019 letter, to which we now respond.

As we understand you have now already heard from others, including most notably the National Republican Congressional Committee. We believe that CLF’s statements regarding Congressional Candidate Dan McCready, the controversial co-founder and managing partner of Double Time Capital (“Double Time”), are entirely accurate and supported by the public record.

Double Time’s desperate strategy of attempting to rehabilitate McCready’s campaign by lobbing contrived threats at CLF will not cause our client to abandon its goal of revealing McCready’s true colors. CLF will remain strong in the face of these attacks, will continue to engage directly in robust political debate over McCready’s two-faced approach to China, and rejects your client’s demand that it publish a retraction. Frankly, your client’s threats are an affront to the First Amendment principles on which this country is built and insulting to the voters of North Carolina. It is disappointing that McCready would allow Double Time to employ such tactics at a moment when both he and his company should be focused on distancing themselves from those who seek to do harm to North Carolina.

CLF’s statements were true and based on reasonable interpretations of the public record. Your attempt to recharacterize them as actionable merely because you take issue with them strains credibility. *First*, we do not believe there can be much debate over the fact that McCready “has outsourced jobs to China.” His company, Double Time, has publicized its significant investments in dozens of projects undertaken by Strata Solar, which has itself brazenly admitted purchasing solar panels and components from multiple Chinese companies. Indeed, the *Charlotte Business Journal* reported that Double Time “has invested about \$80 million in 36 utility-scale solar projects across North Carolina since 2014” and “[m]uch of that has been invested in projects by Strata Solar, the state’s largest solar company.”¹ Your cleverly worded assertion that Double Time has not invested in and owns no part of Strata is of no

¹ John Downey, “Charlotte partners tap N.C. investors for \$80M worth of solar projects in the state,” *Charlotte Business Journal*, Jan. 10, 2017.

moment; it is a matter of clear public record that Double Time has heavily invested in Strata projects, and Strata clearly buys from China.

In fact, Candidate McCready has made his ties to Strata and North Carolina's solar industry central to his congressional campaign. And when it suits him, he has claimed credit for the jobs created in the solar industry. In September 2018, McCready's campaign aired a television advertisement that prominently featured Strata's Glenn Hardee, a utilities construction manager,² praising McCready's work in solar.³ The ad goes on to claim that the candidate "helped create hundreds of jobs that can't be outsourced."

Yet when Strata, the same company that McCready took credit for, was caught purchasing panels and components for its solar projects from multiple Chinese manufacturers, instead of domestic producers, McCready disclaimed responsibility. In 2014, Strata's Senior Vice President John Morrison testified at an International Trade Commission hearing *against* two domestic solar manufacturers who alleged that their businesses were injured by low-priced, foreign competition.⁴ And numerous public records report that Strata has purchased panels and components from a number of Chinese companies, including Shanghai BYD Co., Ltd.; ReneSola Jiangsu Ltd; Shanghai OG Enterprises Co., Ltd.; and Seatrade International.⁵ More recently, Strata entered into an agreement to "exclusively use Huawei string inverters" for its projects.⁶ Tellingly, you do not deny that the solar projects funded by Double Time investments use parts from these Chinese companies. Moreover, McCready and Double Time cannot dispute that they have provided millions of dollars to projects run by a company that has publicly embraced Huawei as a key vendor. Indeed, it seems that McCready and Double Time have doubled-down -- we can find no record of either cutting ties with Strata in light of the Huawei revelation and the Hardee ad still appears in the McCready campaign's social media.

Second, CLF's statements that McCready's and Double Time's support of Strata endangers U.S. interests also appear to be well-supported by the record. In a 2017 article, Strata's Chief Operating Officer Mike Belikoff raved about Strata's new agreement to

² See LinkedIn Profile Glen Hardee available here: <https://www.linkedin.com/in/glenn-hardee-80b53b117/>.

³ <https://www.youtube.com/watch?v=CusruUtdtQA>.

⁴ Testimony of John Morrison before the U.S. International Trade Commission In the Matter of Certain Crystalline Silicon Photovoltaic Products from China and Taiwan, Investigation Nos: 701-TA-511 & 731-TA-1246-1247, Dec. 8, 2014 available here: <https://edis.usitc.gov/external/attachment/547578-975616.pdf>.

⁵ See "Manufacturers Of Strata Solar LLC," Panjiva, Accessed 5/21/19 and News Release, "ReneSola And Strata Solar Celebrate A Year Of Over 50MW In Projects," ReneSola, 1/9/14.

⁶ See "Smart Solar: Convergence Powers PV," Huawei Special, PV Magazine Special, 2017.

“exclusively use Huawei string inverters” for its projects.⁷ He praised Huawei’s product, stating that the relationship with Huawei “gave us a warm, fuzzy feeling,” and that the agreement represented a “value alignment” and a “level of trust.”⁸

McCready’s chosen business partner may feel that way about Huawei, but the United States Government does not. It views Huawei as a potential threat to U.S. national security and foreign policy interests. Accordingly, the U.S. Commerce Department recently added Huawei to its “Entity List,” which prohibits the company from buying parts and components from U.S. companies without U.S. government approval. Commerce Secretary Wilbur Ross explained that the decision “prevent[s] American technology from being used by foreign owned entities in ways that potentially undermine U.S. national security or foreign policy interests.”⁹ President Trump also issued an executive order widely seen as aimed at Huawei that declared a national emergency and authorizes the Secretary of Commerce to “block transactions involving communications technologies built by firms controlled by a foreign adversary that put U.S. security at ‘unacceptable risk,’” further noting that “foreign adversaries are exploiting vulnerabilities in U.S. telecom technology and services.”¹⁰ And, a bipartisan group of eleven U.S. Senators sent a letter to the Trump Administration in February calling for the ban of the use of Huawei’s solar inverters due to “concerns with the company’s links to China’s intelligence services.”¹¹ Indeed, there is no shortage of public statements from senior-most U.S. Government officials substantiating CLF’s claim that Huawei – the company with whom Double Time’s key partner has signed an exclusive agreement – presents a serious threat to U.S. interests. Thus, it is entirely defensible for CLF to assert that McCready – through Double Time’s support of Strata – endangered North Carolina’s power grid.

Although you speculate that CLF’s assertions appear to be based on a May 28, 2019, Fox News story, it should be obvious based on the above discussion that the factual basis for CLF’s statements is much greater than a single news source. Nevertheless, the Fox News story you cite

⁷ See “Building It Right the First Time,” Huawei Special, PV Magazine Special, 2017, 78538 available here: https://16iwyl195vfvgoqu3136p2ly-wpengine.netdna-ssl.com/wp-content/uploads/2017/05/pvi_HuaweiEdition_170512.pdf.

⁸ *Id.*

⁹ See David Shepardson and Karen Freifeld, “China’s Huawei, 70 affiliates placed on U.S. trade black list, Reuters, May 15, 2019, available here: <https://www.reuters.com/article/us-usa-china-huaweitech/chinas-huawei-70-affiliates-placed-on-u-s-trade-blacklist-idUSKCN1SL2W4?feedType=RSS&feedName=topNews>

¹⁰ Ellen Nakashima and Josh Dawsey, “Trump signs order to protect U.S. networks from foreign espionage, a move that appears to target China,” *Washington Post*, May 15, 2019, available here: https://www.washingtonpost.com/world/national-security/trump-signs-order-to-protect-us-networks-from-foreign-espionage-a-move-that-appears-to-target-china/2019/05/15/d982ec50-7727-11e9-bd25-c989555e7766_story.html.

¹¹ Jacqueline Thomsen, “Key senators say administration should ban Huawei tech in US electric grid,” *The Hill*, Feb. 5, 2019 and available here: <https://thehill.com/policy/cybersecurity/431427-senators-request-trump-admin-consider-ban-on-huawei-tech-in-us-electric>.

also substantiates CLF's statements, as it concludes that "McCready has been involved in financing the state's largest solar company [Strata], which has outsourced the production to China."¹² The bare fact that you claim to have provided written notice to Fox News of "multiple inaccuracies" that you believe are included in its story is not evidence of inaccuracy. In fact, as of this writing, Fox News has chosen in the face of your complaints to stand by its story, and that appears to us to be stronger evidence of the truth of the report than your complaints are of its falsity.

Third, CLF's statements constitute core political speech about an issue of public concern that is entitled to the broadest First Amendment protections. McCready's qualifications for public office, his claims regarding job creation and North Carolina's solar industry, and his views on trade policy are critical campaign issues. He has inserted Double Time into the center of his campaign, including its investments in Strata,¹³ and CLF is entitled to broad protection when it engages him in the debate over how to judge his conduct. Indeed, it is precisely in this context that the United States Supreme Court held that the First Amendment "has its fullest and most urgent application." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971).

Legally speaking, Double Time would have to demonstrate that CLF made its statements with actual malice, which the broad supporting public record would clearly deny.¹⁴ See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1971) (establishing actual malice standard); *Time, Inc. v. Pape*, 401 U.S. 279, 290 (1971) (adoption of rational interpretation of ambiguous documents not actionable); *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 519 (1991) (speakers entitled to "interpretive license"). There is no question that the statements by CLF are based on a reasonable interpretation of events and sources available. They relate to an important issue that Mr. McCready has made central to his congressional campaign. There can be no doubt, therefore, that CLF's statements are fully protected by the First Amendment.

Finally, we do not understand your reference to N.C. Gen. Stat. § 99-1, and your insistence on a retraction. Section 99-1 appears, on its face, to apply to newspapers, periodicals, television and radio stations. We are not aware of any case law applying this statute to websites and social media of political committees such as CLF.

¹² Lukas Mikelionis, "North Carolina Dem candidate vows to 'get tough' with China --- despite investing in company that outsourced to China," Fox News, May 28, 2019 and available here: <https://www.foxnews.com/politics/north-carolina-democrat-dan-mccready-china-outsourced>.

¹³ See www.danmccready.com/issues

¹⁴ Double Time would further have to provide identifiability and direct business harm, which you do not even attempt to address.

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We trust that this letter ends the side legal discussion on these issues, and that your client's co-founder will now opt to engage CLF as he should have initially – through the campaign in the course of public political debate.

Sincerely,

Richard W. Smith
Krystal B. Swendsboe