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January 14, 2022

Via Email

New Venture Fund
Attn: Teresa Burke Wright, Esq.
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Secure Democracy
Attn: Amy Epstein Gluck, Esq.
FisherBroyles LLP
1200 G. Street, NW, Suite 800
Washington DC 20005

Re: Sarah Walker v. New Venture Fund and Secure Democracy

Dear Mses. Wright and Gluck:

We write in follow-up on our December 2, 2021, and December 10, 2021, calls with respect to our client Sarah C. Walker. Pursuant to the published New Venture Fund Whistleblower policy, our client notified New Venture Fund (*NVF*), and its tax-exempt entities Secure Democracy (*SD*) and Voting Rights Lab (*VRL*), of serious workplace and federal tax violations. Guided by well-established statutory and decisional law, this letter sets forth the pertinent—and highly troubling—facts with respect to both categories of violations.

NVF is a billion-dollar *a year* juggernaut. Indeed, in 2020 alone, NVF disbursed nearly \$500 million to address issues such as racial justice.¹ NVF proclaimed its *commitment* to Race Equity, Equity, Diversity, and Inclusion in its “Mission and Values” statement:

Race, Equity, Diversity, & Inclusion Commitment

We envision a more equitable world, built on fair treatment, access, opportunity, and advancement for all.

As changemakers building the most effective charitable projects, we know that advancing race equity, equity, diversity and inclusion (REDI) is essential to solving our world’s most pressing problems. As such, we dedicate ourselves to integrating REDI into our work and our culture. As we learn more, we will do more — ours is a continuous journey of learning, growth, and innovation.²

¹ Joe Schoffstall & Cameron Cawthorne, *Liberal Dark Money Juggernaut Raises \$1.6 billion to Flood Left-Wing Groups with Cash, Tax Forms Reveal*, Fox News Nov. 26, 2021, <https://www.foxnews.com/politics/dem-dark-money-juggernaut-raises-1-6-billion-flood-liberal-groups-cash-tax-forms> (last visited Jan. 14, 2022).

² <https://newventurefund.org/who-we-are/mission-and-values/> (last visited Jan. 14, 2022).

It is regrettable that an organization purportedly committed to “unapologetically integrating REDI in [its] work culture”³ is actually a *do-as-I-say-and-not-as-I-do* organization that retaliated against one of its own employees who courageously called out NVF’s own wrongdoings.

Ms. Walker is an African American woman with a physical disability (lupus), which is exacerbated by stress. Her disability was fully disclosed to NVF and SD at the time she was hired. When Ms. Walker spoke up about the workplace injustice and tax fraud at NVF and SD, those organizations swiftly retaliated against her. In addition to furthering a hostile work environment that severely compromised her ability to perform her duties for SD and NVF, the ongoing hostile work environment has worsened her physical disability and damaged her professional reputation. Unsurprisingly—and in seeming acknowledgement of the substantial tax violations that Ms. Walker alleged, the 501(c)(4) implicated in the misconduct was *dissolved* less than two months after she reported the systemic fraudulent tax practices.

NVF’s retaliatory acts to silence Ms. Walker about workplace injustices and the flagrant tax violations truly reads like a multi-series investigative exposé into what really goes on behind closed doors at one of America’s most powerful “nonprofit” funds.

This case involves a plethora of race-based workforce discrimination claims encompassing benefit eligibility and potential ERISA violations, disability discrimination, and retaliation, as well as the filing of false tax returns, *viz.* illegal subsidies from NVF to SD involving both employee compensation and operating expenses actually incurred, *as well as* illegal control by the 501(c)(3) over the 501(c)(4) (including assigning key NVF employees SD emails to use when conducting their political and lobbying activities). In short, SD was NVF’s alter ego used to engage in abusive tax reporting practices.

When Ms. Walker discovered the improper tax issues (in late October, 2021) she was advocating for her workers to receive equal treatment and benefits. After reviewing the applicable Internal Revenue Code provisions and learning about the comprehensive tax fraud, she exposed it, which then triggered NVF’s retaliatory response.

In the opening section below, we outline various instances of race-based workforce discrimination and retaliation ensuing from Ms. Walker acting as a Whistleblower. Highlighting the accuracy of Ms. Walker’s disclosure that SD was simply an alter ego controlled by NVF, after Ms. Walker raised the above issues NVF’s Megan Lewis informed SD that she had unilaterally suspended Ms. Walker’s access to SD’s electronic assets and email. Ms. Lewis also placed Ms. Walker on administrative leave from both NVF and the purportedly “separately” run SD.

Finally, we outline NVF’s repeated failures to comply with the Internal Revenue Code provisions applicable to tax-exempt organizations, *particularly* when, as is the case here, those entities are affiliated. When Ms. Walker came forward as a Whistleblower challenging NVF’s multi-million-dollar fraud, NVF retaliated against her, despite the NVF Employee Handbook describing the organization’s obligations to someone in exactly Ms. Walker’s position. This retaliation was intentionally effected in a manner damaging to Ms. Walker’s professional reputation and her personal health. It was also carried out in violation of multiple local and federal

³ *Id.*

legal protections in place to deter such egregious behavior targeting Whistleblowers, including the Taxpayer First Act of 2019, 26 U.S.C. § 7623(d).

PART ONE: RACE-BASED WORKFORCE DISCRIMINATION⁴

Collectively and individually, the directors and officers of NVF indisputably discriminated against Ms. Walker—and numerous other employees—based on race. This conduct violated both the District of Columbia Human Rights Act (DCHRA), DC Code § 2-1401.01 *et seq.* (2021) and of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* As discussed in greater detail below, NVF discriminated against Ms. Walker *and other employees of color* by (i) sidelining their work while contemporaneously advancing inferior work product produced by white employees; (ii) exploiting the racial identity of Ms. Walker and other employees of color at their expense and for the sole benefit of NVF; (iii) providing Ms. Walker and other employees of color significantly less compensation than less-qualified white employees; and (iv) denying Ms. Walker and other employees of color equal benefits to those provided to white employees. NVF was put on notice of this racial discrimination as early as June 2020. Nevertheless, NVF did nothing to address repeated concerns raised by its employees of color. Instead, when Ms. Walker informed NVF of specific misconduct, she was immediately, in practical effect, terminated.

A. RACIAL DISCRIMINATION BY NVF

NVF paid employees of color at VRL and SD less than white employees who had less experience and education and fewer responsibilities, even when the white employees **were subordinate** to the employees of color. On June 8, 2020, Ms. Walker brought these concerns to Christian LoBue, then Chief of Staff, and NVF co-founders Ms. Lewis and Sam Tarazi (C2), and in additional communications with Ms. Tarazi and Colin Weaver that same month (C3-C6). Unequal pay persisted even after Ms. Walker brought these concerns to management's attention (C7). Beyond the circumstance of unequal pay, employees of color were disrespected, not given proper authority or information to perform their jobs, put through far more stringent hiring processes, and sidelined into work where they would be unable to collaborate with progressive nonprofits and donors with whom they could develop and expand important professional networks. When employees of color were asked to interact with progressive donors or partners, it was not because of their expertise, but rather, in Ms. Lewis' words, it was to lend "credibility" to VRL's work.

As indicated, Ms. Walker was not the only employee of color who voiced discrimination-related concerns. Other employees of color likewise made the similar range of complaints concerning lack of pay equity, lack of empowerment in their work, and unequal application of employment policies. All employees of color at the organization began meeting in January 2020 about these concerns and submitted a letter to Ms. Lewis and Ms. Tarazi on June 2, 2020, raising the serious problem of racial discrimination within the organization. Ms. Lewis' response acknowledged that workflows, hiring processes, and budgetary authority were inconsistent and non-transparent (C8). However, no improvements were forthcoming, and many employees of color were thereafter terminated.

As with its compensation-related decisions, NVF consistently demonstrated an intention not to follow the law with respect to employee classification and benefits eligibility. As detailed below, whether employees were classified as full-time VRL or shared VRL/SD employees was

⁴ See the Appendix C materials.

entirely disconnected from where they actually performed the majority of their work (*B16-B21, C10*). This arbitrariness caused discrimination in the availability of certain employment benefits. When VRL became a fiscally-sponsored project of NVF in April 2020, all employees were informed that they would be eligible for short-term disability, long-term disability, and life insurance, in addition to healthcare benefits. Job postings indicated availability of these benefits (*C9*). In reality, employees who were not full-time VRL employees were *not* eligible for STD, LTD, and life-insurance benefits.

It is a question of fact both *whether* and *when* NVF leaders knew of this difference in benefit status and whether they made knowingly false statements to employees about the matter. When Ms. Walker learned of the benefit-status difference in September 2021, she was told that leadership was not going to inform employees, potentially exposing the organization to serious penalties under the Employee Retirement Income Security Act of 1974 (*ERISA*), 29 U.S.C § 1149. It is a related question of fact whether NVF and SD constituted a single employer under ERISA regulations, potentially affecting compliance for other employee-benefit plans. If this matter proceeds, we believe documents related to the administration of the NVF employee-benefit plans will prove helpful to determine the full extent of potential ERISA violations which may be pursued in private actions.

Continuing the narrative, as recently as September and October 2021, NVF/VRL hired three new employees, two persons of color and one white person (Amanda Harrington). All three worked primarily for SD, but the two persons of color were classified as 50% VRL employees thus making them *ineligible* for benefits. In contrast, Ms. Harrington was classified as a full-time VRL employee expressly so she *could* access long-term and short-term disability benefits (*C10*). In addition to possible ERISA violations, the benefit differential constitutes race-based discrimination prohibited by DCHRA, and, as Ms. Walker shared with Chief of Staff Anthony Dale and NVF Human Resources (*C12, C13*), the employee benefit disparity was particularly meaningful for Ms. Walker, since she was dealing with severe health problems made worse from the stress caused by the continuing hostile work environment.

NVF cannot defend these practices or otherwise produce “admissible evidence from which the trier of fact [could] rationally conclude that the employment action [was not] motivated by discriminatory animus but, rather, reflected a legitimate, nondiscriminatory reason for its action.” *Cain v. Reinoso*, 43 A.3d 302, 306 (D.C. 2012). Under District of Columbia law we believe we will be able to prove that NVF’s decision-making was not tied to legitimate business needs. Indeed, rather than articulating clear reasons for decisions, NVF and SD sought to cover up their malfeasance by offering on-the-spot raises or promising future changes to their decision-making and budgetary authority processes (*C8*). In particular, the nearly immediate decision to dissolve SD is highly probative of this ongoing prohibited practice. NVF’s attempts at correction were no more tied to legitimate reasons than was the differential treatment of Ms. Walker and other employees of color in the first place.

It bears noting that in response to the racial-justice protests that broke out in summer 2020, NVF commissioned a report, *Leveraging Fiscal Sponsorship for Racial Equity*, written in June 2021, discussing how fiscal sponsors could support grassroots groups focused on racial equity issues. Significantly, the report did not address racial equity concerns within NVF’s own fiscally-sponsored groups. The hypocrisy of NVF’s purporting to teach others about racial equity while discriminating against its own non-white employees makes it a particularly unsympathetic defendant.

B. DISABILITY DISCRIMINATION

NVF intentionally refused to accommodate Ms. Walker's chronic health condition while accommodating the health condition of a similarly situated white employee. NVF was aware that Ms. Walker suffers from lupus and related conditions of pericarditis, arthritis and neuropathy in the hands. In addition, NVF was aware that the stress of her work environment made her symptoms worse. In repeated communications during fall 2021, Ms. Walker informed leadership that her health was deteriorating and inquired about the availability of part-time work or disability benefits (C12-C14).

In another instance of refusing to follow the law, NVF ignored Ms. Walker's request for a reasonable accommodation due to a chronic health condition, as required by 42 U.S.C. § 12112. NVF failed to engage in any interactive process to determine what accommodation would be appropriate. Instead, in response to Ms. Walker's request for a part-time schedule, Ms. Lewis suggested that the organization would have to reduce the scope of its work, impliedly signaling that providing an accommodation for Ms. Walker would create an undue hardship for the business. Consequently, no accommodation was even proposed, much less provided.

In contrast, the organization was able to accommodate a request by another leader, Ms. Tarazi, a white woman. Like Ms. Walker, Ms. Tarazi was a director who supervised people in 2020 and was promoted to Vice President during an organizational restructure in November 2020. Unlike Ms. Walker, Ms. Tarazi was able to change to a limited, part-time schedule in 2021. Not only was Ms. Walker not afforded this same benefit, but at the leadership retreat held October 26–28, 2021, she was told she had to accommodate Ms. Tarazi's "mold sensitivity" (we revisit the pivotally important events at the leadership retreat in the paragraphs that follow). All the while, the organization belittled concerns related to Ms. Walker's serious chronic health condition as "lifestyle" choices (C11).

Even more troubling was NVF's response to Ms. Walker's recent requests for a reasonable accommodation. In her October 28, 2021, email to Mr. Dale, Ms. Walker stated: "To ensure that my health related concerns are taken seriously and are treated with equal weight I would like someone to advise me on the medical information needed from me to ensure proper and fair consideration" (C15). A clearer request for accommodation could scarcely be crafted. Unfortunately, the response was equally clear: The next day, Ms. Walker was placed on administrative leave.

C. RETALIATION

It is indisputable that NVF retaliated against Ms. Walker due to her Whistleblowing about the numerous categories of NVF's illegal conduct. The retaliation against Ms. Walker for her claims of racial discrimination began during the VRL/SD leadership retreat held October 26-28, 2021. From her perspective, it appeared the retreat was structured in a way to intimidate Ms. Walker for previously raising concerns, an action prohibited under DC Code § 2-1402.61(b). Although the moderator confirmed that Ms. Walker's concerns were consistent with others interviewed, she was singled out and appeared as though she was the lone complainant. During the first day of the retreat, under the pretense that it would help build trust, Ms. Walker was forced to share her complaints of discrimination against the two white co-founders of the organization (who held or previously held supervisory authority over her). Ms. Walker had to endure this intimidating treatment in front of an audience that included the very same white colleagues who had belittled her.

The numerous acts of discrimination during Ms. Walker's employment—and the hostile environment at the retreat—created a situation “that would seriously affect a reasonable person's psychological well-being,” which is clearly prohibited under Title VII. *Daka, Inc. v. Breiner*, 711 A.2d 86, 93 (D.C. 1998). The retreat represented the most intense iteration of the ongoing hostile work environment to which Ms. Walker had been subjected. Although her work performance had never faltered, the hostility evidenced at the retreat was so severe that it visibly affected Ms. Walker. Anthony Dale, VRL Chief of Staff, told her on the second day of the retreat (October 27th) that he and Megan Lewis were concerned about Ms. Walker's mental and physical well-being and suggested that she might want to leave the retreat early. Ms. Walker expressed shock that he would suggest that she shouldn't participate. In addition to the perceived disability claim to which his comments give rise, they also illustrate the degree to which the discrimination against Ms. Walker amounted to an actionable hostile work environment claim.

In the face of this intimidation, Ms. Walker left the retreat early. On October 28, 2021, Ms. Walker sent emails to multiple individuals at NVF expressing various concerns. To Mr. Dale., she discussed the hostile work environment stemming from ongoing racial discrimination, and, as previously mentioned, asked for a reasonable accommodation (C12). She also asked Mr. Dale and Ms. DeSmedt of HR directly for an accommodation (C14). Ms. Walker informed Mr. Dale of these same concerns, and they discussed IRS compliance concerns in detail due to the VRL/SD employee misclassifications (C15). Finally, pursuant to NVF's whistleblower policy, she also emailed NVF General Counsel Andrew Schulz (C16).

NVF's response was immediate retaliation against Ms. Walker. The day after Ms. Walker sent these emails, her email account and access to all SD electronic assets were suspended without warning to her or even to the SD board (C18-C22, B50). These actions prevented Ms. Walker from: performing her job (including her management and leadership of employees), attending high-profile meetings, authorizing expenses, and communicating with contractors and funders. Ms. Walker was never given an NVF email and has been on administrative leave at NVF since October 29, 2021, so the actions on the 29th made her completely unable to work and perpetuated the hostile work environment.

Given the close proximity of NVF's actions to all of these complaints, NVF's actions can only be interpreted as an act of retaliation for each of these claims: (i) prior assertions of racial, disability and benefit-eligibility discrimination, in violation of DC Code § 2-1402.61(a) and 42 U.S.C. § 2000e-3(a); (ii) failure to provide a reasonable accommodation as required by 42 U.S.C. § 12203(b); (iii) the assertion of discrimination and mismanagement of employee benefit plans, in violation of 29 U.S.C. § 1140; and (iv) Whistleblower claims, in violation of the Taxpayer First Act of 2019, 26 U.S.C. § 7623(d).

In a brazen additional act of retaliation, NVF effectively terminated Ms. Walker two weeks later. On or around November 20, 2021, Mr. Dale contacted Google to claim ownership of the SD accounts, ending Ms. Walker's access to SD accounts (C23). On November 17, 2021, a new entity, SD USA was created. SD dissolved December 20, 2021. This new entity looks for all intents and purposes the same as Secure Democracy and employs the same people (C24-C25), except for Ms. Walker. It is clear that SD USA was created in order to perpetuate NVF's wrongdoing and to end Ms. Walker's employment. Given these actions, we believe we will be entitled to documents and information related to SD USA, SD, and NVF to fully understand the facts and circumstances related to the above-described actions.

PART TWO: FILING OF FALSE OF FALSE TAX RETURNS

In Ms. Walker's October 28, 2021 email, she described three significant failures by NVF under the Internal Revenue Code in relation to its funding and operations of SD. This detailed email was sent to NVF's General Counsel Andrew Schultz. It is uncontested this email communication fully complied with the Whistleblower policy (C1, C16). Notwithstanding Ms. Walker following the NVF policy for reporting such suspected violations, NVF retaliated against her by effectively ending her employment (C18-C25). The damages Ms. Walker is entitled to recover for NVF's tax violations in this case are permitted by at least two separate, but independent, legal theories.

First, it is important to note that when considering liability for retaliation claims, the amount and scope of the reported problematic conduct that was the cause of the retaliation can be considered. *See* Sarbanes Oxley Act (SOX), Pub. L. No. 107-204; 18 U.S.C. § 1514A (authorizing civil action to prohibit retaliation against Whistleblowers in fraud cases).

Second, when the retaliation against a Whistleblower employee is, as here, based substantially on the company's failure to operate within the bounds of the federal tax laws, this constitutes a separate and discrete violation of federal law. 26 U.S.C. § 7623(d) provides "No employer ... may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee ... in reprisal for any lawful act" such as Ms. Walker providing information regarding conduct "which the employee reasonable believes constitutes a violation of the internal revenue law[.]" and which the NVF Employee Handbook deems to be her "responsibility" (C1).

Third, the compensatory damages the employee retaliated against may claim "*shall* include. . . the following items: compensation for any special damages sustained as a result of the reprisal, including litigation costs, expert witness fees, and reasonable attorney fees" (emphasis supplied). 26 U.S.C. § 7623(d). There is no question we can pursue both theories of recovery.

Fourth, the above referenced remedies at Ms. Walker's disposal caused by NVF's retaliation against her in response to her Whistleblower report of federal tax violations, entitles her to fully litigate the various types of 501(c)(3) offenses committed by NVF (A1-A65). Her emails overall referred to the following areas of fraudulent tax reporting by NVF (and SD) and the relevant Forms 990, including:

- (i) NVF omitting its subsidizing of numerous SD employee wages;
- (ii) NVF underreported other consultant and operating costs NVF illegally paid f to benefit SD using public charity 501(c)(3) funding;
- (iii) NVF misreporting its subsidizing of numerous NVF/501(c)(3) employees who substantially worked for SD/501(c)(4) and including NVF employees who misrepresented to the public their true employer's identity;
- (iv) omitting its subsidizing of various SD expenses; and
- (v) the near total legal, financial and operational control exercised by Ms. Lewis of NVF over all operations of its affiliated 501(c)(4) organization, SD, as well as the total control over actual operations regarding decision making.

Due to the bad acts of NVF, there is at least some risk these entities will be collapsed and NVF will lose its tax-exempt status going back potentially to 2019.

A. ILLEGAL NVF/C3 SUBSIDIES TO SD/C4

#1. Subsidized SD Employees. This violation was committed in two specific ways. First, numerous employees were 100% compensated by NVF (*A6I*). However, these employees in fact worked 80-90% of the time for SD (*A1-A23*). This compensation arrangement is blatantly unlawful. We anticipate current and former employees will corroborate Ms. Walker's accounts, including, but not limited to: Jay Reistenberg, Amanda Soncia Coleman, Michael King, Portia Allen Kyle, Christian LoBue, Jegath Athilingam (Geronimo), Mila Al-Ayoubi, Sofia Mankin, Megan DeSmedt, Karina Provost, Sarah Jane Higginbotham, Abigail Fields, and Jessica Herrera, among others.

Further proof of this particular fraudulent practice is evidenced in the SD Form 990 (Part V) stating that SD had only one employee in 2019, and just 5 SD employees in 2020. These statements describing SD's workforce are materially false.⁵ Although Ms. Walker saw the list of SD employees in her role as its Executive Director, and observed there were more employees providing substantial services to SD than reflected on the payroll, she was never told why this practice was implemented by NVF's management.

The alternative improper approach involved certain employees, such as Ms. Walker, who were paid 50% by SD and 50% by NVF. However, these employees also worked 80-90% of their time on SD projects and objectives. This practice was followed so that the 501(c)(3) could pay benefits to certain employees who in reality worked overwhelmingly for the 501(c)(4). **There is no acceptable threshold for a 501(c)(3) entity to subsidize an affiliated 501(c)(4)'s workforce indirectly with employee benefits.** Strong proof of NVF's *intentional* violation of the IRS rules applicable to tax-exempt entities is the total lack of accurate time sheets (or other work studies) to determine the reasonable value of the services provided by NVF's 501(c)(3) employees to its affiliated 501(c)(4) organization (*A6I*). These types of documents are created, and reviews are performed, so that the 501(c)(4) entity may reimburse the affiliated 501(c)(3) entity for the actual fair value of the shared employees' services. Such analysis is performed when there is a scintilla of intent to lawfully operate in accordance with applicable IRS guidelines. No such actions were taken by NVF because there was never an intent to comply with this cardinal principle of operating affiliated tax-exempt organizations. Indeed, why would management create a record consisting of accurate timesheets (or other documentation of the value of shared services) if there was no intention for the 501(c)(4) entity to reimburse the 501(c)(3) taxpayer-subsidized nonprofit corporation? Not only would it have been a fool's errand to create a meaningless document satisfying an IRS rule the organization intended to ignore, but this action *would also have created affirmative proof of the dollar amount by which the 501(c)(3) was violating the law.*⁶

⁵ Schedule O of SD'S Form 990 references Part VI, Line 11B, and states the "Governing Body" (i.e., the three board members) was involved in the submission of this (false) document to the IRS by making the following admission: "FORM 990 IS PROVIDED TO THE GOVERNING BODY AND LEGAL COUNSEL FOR REVIEW AND APPROVAL PRIOR TO FILING."

⁶ It is our understanding that as much as 90% of employee communications were conducted using the Slack platform. We believe that review of Slack communications as well as emails and text messages will establish not only further foundation for the conduct discussed in this letter, but also additional violations. And *see* Mr. Pedigo's Litigation Hold Letter dated November 2, 2021, addressed to NVF, VRL, and SD, as a reminder that these entities are under an obligation to preserve internal communications, including such Slack communications among employees.

Potential Tax Violations: The estimated dollar amount of the violations in the form of NVF subsidizing SD’s workforce includes: the 100% NVF employees; the 50-50% shared NVF employees; and the benefits paid by NVF to each group of employees. The annual unlawful subsidy is estimated to be in the range of:

- \$3 million in 2019
- \$4 million in 2020
- \$4.5 million in 2021

Accordingly, Ms. Walker’s meritorious Whistleblower complaint—and NVF’s retaliation against her—allow one to take into account the dollar amount of the underlying tax violations related to the subsidized employees. We believe this discrete issue of improper tax reporting is in an amount exceeding **\$10 million**.

#2. Subsidized SD Expenses. The other type of subsidy referenced in the NVF General Counsel email (and Ms. Walker’s follow-up Whistleblower email on November 1, 2021, to Heather Smith) involves SD operations that NVF “subsidized extensively.” SD’s illegally subsidized operational expenses—being provided to SD at *no charge* by NVF—included: Slack, political magazine subscriptions, travel costs, computers, training, website costs, and hiring various categories of consultants including research consultants, data consultants, and digital and design consultants. Again, a review of the SD Form 990 fraudulently reflects “\$0” as the amount received from “Related organizations” (see Part VIII, line 1f), and it substantially understates the SD expenses incurred on Part IX (Statement of Functional Expenses.).

Potential Tax Violations: The estimated dollar amount of the annual violations in the form of NVF subsidizing SD expenses that were not properly reported to the IRS to be in the range of:

- \$1.5 million in 2019
- \$2.0 million in 2020
- \$2.5 million in 2021

Accordingly, Ms. Walker’s meritorious Whistleblower complaint—and NVF’s retaliation against her—allow one to take into account the dollar amount of tax non-compliance in the form of unreported subsidized expenses. We believe this category of improper tax reporting is in the amount of approximately **\$6 million**.

B. ILLEGAL CONTROL BY NVF/C3 OF SD/C4⁷

A separate category referenced in Ms. Walker’s email with respect to NVF’s Internal Revenue Code violations as a 501(c)(3) involves its pervasive management and control over essentially every aspect of SD’s daily operations, legal/accounting decisions, and management. At every instance, NVF’s management (i.e., Ms. Lewis) made the day-to-day decisions with respect to all aspects of SD’s operations. This total control by NVF covered the following range of actions and topics:

- Requiring NVF to approve all literature for, and used by, SD;
- Approving all SD legislative campaigns and actions;
- Interviewing all SD potential employees;

⁷ See the Appendix B materials.

- Approving the SD budgets;
- Hiring consultants on behalf of SD;
- Placing Ms. Walker on administrative leave without consulting the SD Board;
- Ms. Lewis signing the credit card contract with AmEx on behalf of SD; and
- Ms. Lewis signing as a fiduciary of SD documents for its 401(k) plan. (This discrete act potentially constitutes another type of misconduct involving pension and retirement benefits with associated penalties.)

C. POLITICAL MOTIVE FOR ENGAGING IN UNLAWFUL CONDUCT

NVF subsidized SD employees for financial reasons. That is clear. There was a political motive for this deceptive conduct as well. For example, many of the 501(c)(3) employees engaged in legislative lobbying activities although this practice is strictly prohibited by the IRS. It is axiomatic that the federal fisc should not subsidize overt lobbying activities. *Regan v. Taxation with Representation*, 461 U.S. 540 (1983). Examples of this misconduct involved: contacting various state legislatures, contacting members of Congress, and even Ms. Lewis coordinating requests for donations to the Georgia Secretary of State Brad Raffensberger to be made on behalf of SD. The donation to Raffensberger's campaign is expressly prohibited under Section 501(c)(3), as 501(c)(3) assets were used to intervene in a political campaign. *See* Rev. Rul. 07-41, 2007-25 I.R.B. The indirect intervention in a political campaign means that NVF is not operated exclusively for charitable purposes. *See id.*

The IRS regularly revokes the tax-exempt status of organizations not operated exclusively for charitable purposes because, as the Tax Court has noted, “the presence of a single substantial purpose that is not described in section 501(c)(3) precludes exemption from tax under section 501(a) regardless of the number or the importance of the purposes that are present and described in section 501(c)(3).” *Korean-American Senior Mut. Ass’n v. Commissioner*, No. 21829-17X, 2020 Tax Ct. Memo (T.C. Sep. 9, 2020). Further, the revocation or modification of an organization’s tax-exempt status “may be retroactive if the organization *omitted or misstated a material fact . . .*” in its communications with the IRS. 26 C.F.R. § 601.201(n)(6)(i) (emphasis added).

Compounding the problem of shared employees NVF improperly paid when they in fact substantially worked for SD, one related circumstance is particularly egregious. As established above, employees of a taxpayer subsidized 501(c)(3) entity are prohibited from engaging in specific legislative lobbying. If a nonprofit organization is caught engaging in such activity, a 501(c)(3) entity can expect to receive a severe penalty from the IRS. Therefore, armed with the knowledge of the illegal conduct NVF was directing its employees to engage in, NVF’s so-called ‘solution’ was for certain key employees to send emails and otherwise *represent themselves to be employees and/or representatives of* the 501(c)(4) Secure Democracy. There is no reason for an entity to instruct its employees to lie about their employer’s identity as a C3 entity unless it was understood that disclosing their status as a 501(c)(3) compensated employee/representative was tantamount to an admission the governing 501(c)(3) tax laws were being broken.

This improper practice was neither isolated nor random behavior of a rogue employee(s). Rather, it was a systemic and entity-wide deception perpetrated, including even by Ms. Lewis (*B1, B2, B22, B31*). There is simply no innocent rationale to justify or explain away perpetrating this fraud on third parties. The NVF employees undoubtedly knew they were paid by a 501(c)(3) entity and thus were not allowed to engage in this type of prohibited lobbying activity. Consequently, they misled third parties with whom they were dealing by claiming to be

SD's own employees/representatives. This conduct and misrepresentation by SD/NVF/VRL employees can and will be corroborated by elected officials, lobbyists, reporters, and communication consultants. Again, this was a widespread pattern of misconduct which only happens on such a large scale when management has colluded with this group of employees to tell the same lie regarding "who" was providing their paycheck.⁸

PART THREE: BASIS FOR SUBSTANTIAL PUNITIVE AND COMPENSATORY DAMAGES

Given NVF's numerous instances of discrimination and its reckless and willful disregard of the rights of Ms. Walker and of other employees of color, we believe we would prevail with claims for damages in the District of Columbia for the DCHRA violations alone. *See Arthur Young & Co. v. Sutherland*, 631 A.2d 354 (D.C. 1993), (affirming jury award for lost income, compensatory damages for discrimination and retaliation claims, and punitive damages); *United Mine Workers of America v. Moore*, 717 A.2d 332 (D.C. 1998) (employer's actions caused employee severe emotional distress because they negatively impacted the employee's ability to remain working in her chosen field). The *Sutherland* court found that the award of punitive damages was justified because the employer's actions "had a significant adverse effect on [the plaintiff's] career, her professional reputation, and her financial wellbeing." *Id.* at 372.

Similarly, NVF's ongoing discriminatory conduct and its retaliation against Ms. Walker had a significant adverse effect on her career, reputation, and financial well-being. The chaos resulting from Ms. Walker's hostile work environment made the organization look disorderly and chaotic to external partners in the voting rights field and reflected poorly on Ms. Walker as SD's executive director. In addition to impacting Ms. Walker's ability to work, NVF's misconduct has caused long-term damage of her professional image within the voting rights community, impacting her ability to find a new position commensurate with her experience.

The retaliation against Ms. Walker on October 29th was intentionally done in a way that would be most damaging to *both* her professional reputation and personal health. The resultant stress caused her symptoms of lupus to become even worse. On December 2, 2021, Ms. Walker had to be admitted to the emergency room for acute Lupus Pericarditis and hand immobility. She is still recovering. Expert testimony will corroborate claims that NVF's actions were the proximate cause of her hospitalization. We believe this was an intentional infliction of emotional distress with a fact pattern that is particularly troubling.

DC courts allow taking into consideration the defendant's net worth when determining an appropriate damages award. In *Daka, Inc. v. Breiner*, 711 A.2d 86 (D.C. 1998) the District of Columbia's high court upheld a damages award thirty-nine times the compensatory damages awarded. The *Breiner* court stated that since "the purpose of punitive damages is to punish a tortfeasor and deter future conduct, the amount of such damages should be enough to inflict punishment, while not so great as to exceed the boundaries of punishment and lead to bankruptcy." *Id.* at 101. In so doing, the jury should "consider the net worth [of the defendant] when determining what damages would be sufficient to serve as a deterrent." *Id.* (upholding punitive damages that were less than 3% of the defendant's gross income from plaintiff's worksite). *See also Modern*

⁸ For example, the July 7, 2021 press release announced to the public that Jay Riestenberg was joining Secure Democracy—despite Mr. Riestenberg never being employed by Secure Democracy, "Jay Riestenberg is joining Secure Democracy as associate director of state comms. He previously was deputy comms director at Common Cause." Politico Playbook, Jul. 7, 2021, (last visited Jan. 14, 2022), <https://www.politico.com/newsletters/playbook/2021/07/07/putin-ignores-bidens-tough-talk-493490>

Mgmt. Co. v. Wilson, 997 A.2d 37, 59 (D.C. 2010) (upholding punitive damages of over \$3 million when defendant had a net worth of \$10 million).

Courts in whistleblower cases use similar considerations when determining award amounts. Whistleblowing claims under Sarbanes-Oxley (SOX) are illustrative because the TFA, like the SOX whistleblower protection provisions, allows for compensatory and uncapped “special damages.” These include damages for emotional distress, mental anguish, humiliation and injury to reputation. *See, e.g., Lockheed Martin Corp. v. Admin. Rev. Bd.*, 717 F.3d 1121 (10th Cir. 2013) (upholding an award of “noneconomic compensatory damages” for “emotional pain and suffering, mental anguish, and humiliation”); *Hanna v. WCI Communities, Inc.*, 348 F.Supp.2d 1332, 1334 (S.D.Fla.2004) (holding that employee must be made whole by “being compensated for damages for reputational injury that diminished plaintiff’s future earnings capacity”). Courts may consider the defendant’s wealth in determining these awards. *See CGB Occupational Therapy, Inc. v. RHA Health Services, Inc.*, 499 F.3d 184, 193 (3d Cir. 2007); *Parexel Int’l Corp. v. Feliciano*, No. 04-cv-3798 (E.D. Pa. Dec. 3, 2008) (affirming \$1.7 million punitive damages award based in part on defendant corporation’s substantial wealth).

Significantly, like SOX, the TFA does not “diminish the rights, privileges, or remedies of any employee under *any* Federal or State law” (emphasis added). Whistleblowing claims under SOX have been coupled with state anti-retaliation claims to provide the plaintiff with both special and punitive damages. In one such case, the whistleblower received damages nearly double the amount of special damages. *Wadler v. Bio-Rad Labs., Inc.*, No. 15-cv-02356-JCS (N.D. Cal. May 10, 2017). Accordingly, Ms. Walker is eligible for uncapped special damages and compensatory damages, as well as punitive damages, which there is every reason to expect should be measured against NVF’s net worth.

In summation, NVF’s conduct showed:

- (i) an ongoing and willful disregard for the rights of Ms. Walker and other employees of color;
- (ii) a reckless disregard of her need for an accommodation;
- (iii) intentional acts of retaliation;
- (iv) flagrant violation of tax rules; and
- (v) utter hypocrisy in discriminating against employees of color while at the same time profiting by externally espousing values of race equity, equity, diversity, and inclusion.

And to remove any doubt as to its across-the-board reprehensible misconduct, NVF attempted to cover up its problems by dissolving SD nearly immediately after Ms. Walker brought the problems to NVF’s attention.

Taken together, Ms. Walker’s Whistleblower complaint involved in the approximate range of \$16 million of fraudulent tax reporting for the years of 2019-2021. We would note that NVF had almost \$400 million in cash at the end of 2019 (and both the budget and cash reserves amount are now likely a multiple of that balance based on the article cited in footnote 1). Accordingly, all of this information is relevant when determining an award against NVF for its retaliation against Ms. Walker for the ‘*offense*’ of unwittingly trusting the NVF published Whistleblower policy and

reporting *meritorious and substantial* fraudulent financial behavior permeating the operations of these two affiliated tax-exempt organizations.

The rampant and egregious violations of the 501(c)(3) regulations, in conjunction with the endemic fraud perpetrated on third parties by NVF employees portraying themselves as counterfeit SD employees *while* engaged in prohibited lobbying activities, presents an existential threat to the continued viability of the NVF.

CONCLUSION

NVF created and maintained a discriminatory and hostile workplace environment for Ms. Walker as well as others and retaliated against Ms. Walker in violation of her federal and statutory protections. In addition to the workplace harms to Ms. Walker, the rampant and egregious violations of the 501(c)(3) regulations orchestrated and carried out by NVF leadership described above, represent multiple *prima facie* tax violations.

This organization's illegal conduct was compounded by retaliating against Ms. Walker *qua* Whistleblower. As noted above, the scope of damages Ms. Walker is entitled to seek (including punitive damages) is not based simply on her compensation or the harm to Ms. Walker but we expect the award to be measured by the scope of the problematic conduct she reported as well as the net worth of the employer.

We are open to setting up an in-person mediation in an effort to reach an amicable and just resolution to the above-referenced conduct. To facilitate a more-productive discussion, we will compile any additional documents and information needed to sufficiently quantify the scope of the violations. Please let us know by January 26, 2022, when you are available to discuss next steps in an effort to reach a confidential and final resolution to this matter.

Respectfully,



Zeke DeRose III

cc:

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