EXHIBIT B

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DELIVERED BY HAND

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Re: *Democratic National Committee v. The Russian Federation* (S.D.N.Y. No. 1:18-cv-3501)

Dear Mr. Sellers:

On behalf of Defendant Donald J. Trump for President, Inc. ("the Campaign"), and in accordance with Federal Rule of Civil Procedure 11(c)(2), I write to serve the Democratic National Committee with the Campaign's Motion for Rule 11 Sanctions. The Campaign will file the motion if the DNC does not dismiss all of its claims against the Campaign within twenty-one days. The basis for this motion is simple: The DNC's theory of liability has been definitively refuted by Special Counsel Robert Mueller's Report On The Investigation Into Russian Interference In The 2016 Presidential Election, publicly released by the Attorney General on April 18.

I. The Special Counsel's Findings Refute the DNC's Core Allegations Against the Campaign.

The DNC's claims against the Campaign are all predicated on the notion that the Campaign "participated in a criminal conspiracy to steal the DNC's information and use it to support Russia's preferred presidential candidate." MTD Opp. at 3 (ECF 241). That is the very same theory the Special Counsel was appointed to investigate two years ago. Mueller Report, Vol. I at 11 (citing Office of the Deputy Att'y Gen., Order No. 3915-2017, *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017)). Specifically, the Special Counsel assessed whether the Campaign participated in any "conspiracy as defined in federal law" and whether there was any "agreement—tacit or express—between the Trump Campaign and the Russian government on election interference." *Id.* at 2. In conducting this investigation, the Special Counsel deployed resources far beyond what would ever be available—let alone feasible—in civil discovery. His Office included 19 attorneys, various support staff, and "approximately 40 FBI agents, intelligence analysts, forensic accounts, a paralegal, and professional staff assigned by the FBI." *Id.* at 13. Among other things, the Office interviewed approximately 500 witnesses, issued over 2,800 subpoenas, and executed nearly 500 search-and-seizure warrants. *Id.*

After carrying out this historically expansive inquiry, the Special Counsel reached an unsurprising conclusion: "the investigation did not establish that members of the Trump Campaign conspired or coordinated with the Russian government in its election interference activities." Mueller Report, Vol. I at 1–2. In other words, the Special Counsel's Office, wielding investigative powers far greater than the DNC could ever hope to exercise here, failed to establish the core theory underlying every claim the DNC has asserted against the Campaign.

In reaching this conclusion, the Special Counsel considered all of the key events that are the subject of the DNC's allegations. At each turn, the Special Counsel affirmatively *refuted* the DNC's inferences that the Campaign conspired or coordinated in Russia's hacking-and-dumping conspiracy. In fact, the Special Counsel expressly disproved the key pillars of the DNC's conspiracy theory against the Campaign, which center on George Papadopoulos's interactions with Joseph Mifsud and the June 9, 2016, meeting at Trump Tower.

The DNC claims that the Campaign joined forces with Russia "by March 2016, or, at the very least, by June 2016." Second Am. Compl. ¶ 272 ("SAC") (ECF 216). The DNC's allegations as to March 2016 center on interactions between Papadopoulos and Mifsud. Specifically, the DNC alleges that those two met on several occasions in March and April 2016, and that, on April 26, "Mifsud told Papadopoulos that the Russians had 'thousands of emails' that could harm Hillary Clinton's presidential campaign." *Id.* ¶ 94(d). From this, the DNC draws the inference that "Russia was reporting on the progress of its cybercrimes to Papadopoulos, apprising him of stolen materials that could be helpful to the Trump Campaign, and giving him an opportunity to tell them whether the Campaign wanted more." MTD Opp. at 36; *see also id.* at 19–20 (insisting that Papadopoulos "deliver[ed] information" about "stolen Democratic emails" "to his superiors at the Trump Campaign"), *id.* at 27 ("Papadopoulos … met repeatedly with Mifsud to obtain damaging information regarding Clinton …."), *id.* at 41 ("Papadopoulos was responsible for coordinating with Russian operatives before and during the April 2016 hacks on the DNC's computer systems.").

The Mueller Report debunks the inference that, through Papadopoulos's interactions with Mifsud, the Campaign conspired or coordinated with Russia. There is no finding or evidence that Papadopoulos told the Campaign about any "stolen materials." Indeed, there is no finding or evidence that he even mentioned *any* emails or "dirt" to the Campaign, much less brokered an agreement with the Russians. The Special Counsel reported that Papadopoulos "could not clearly recall having told anyone on the Campaign" about Mifsud's reference to emails, and that "the Campaign officials who interacted or corresponded with him … could not recall Papadopoulos sharing the information that Russia had obtained 'dirt' on candidate Clinton in the form of emails or that Russia could assist the Campaign through the anonymous release of information about Clinton." Mueller Report, Vol. I at 93. Nor was the DNC's inference substantiated by any other evidence: "No documentary evidence, and nothing in the email accounts or other communications facilities reviewed by the Office, shows that Papadopoulos shared this information with the Campaign." *Id.* at 94. The Special Counsel also explained that, although Papadopoulos had discussed "with Mifsud and two Russian nationals" the possibility of arranging a meeting between the Campaign and the Russian government, "[t]hat meeting never came to pass." *Id.* at 81. Papadopoulos's interactions with Mifsud and other Russians simply cannot support any claim that the Campaign conspired or otherwise coordinated with Russia's hacking efforts.

The other pillar of the DNC's theory is the June 9 meeting between several Campaign officials and certain individuals with ties to the Russian government. In the DNC's telling, at this meeting "Russians [a]gain [o]ffer[ed] [t]o [a]ssist Trump—[a]nd Trump Associates [a]ccept[ed] [t]he [o]ffer." SAC at 34, § H; *see also id.* ¶¶ 132–48. And the DNC draws from the meeting the "infer[ences] that: (a) Russia used the meeting to tell members of the Trump Campaign about the documents it had stolen from the DNC, including trade secrets; and (b) members of the Campaign blessed a plan in which Russia would continue stealing similar documents and disseminate the documents it already

had to the public." MTD Opp. at 37; *see also id.* at 19 (claiming that the meeting participants "likely discussed data stolen from the DNC, and how that data could be of use to the Campaign"), *id.* at 21 ("[T]he Trump Campaign repeatedly communicated with Russian agents (including the Russian agents at the Trump Tower meeting …) to obtain information about stolen DNC documents.").

Once again, the Special Counsel's investigation yielded facts that completely contradict the DNC's theory, and that put to rest the notion that the June 9 meeting had anything to do with the Campaign becoming involved in an effort to steal and disseminate the DNC's materials. As the Mueller Report explains, "[t]he meeting lasted approximately 20 minutes." Mueller Report, Vol. I at 117. During that time, the individuals associated with the Campaign did not raise any topics for discussion, and the Russian-connected individuals raised just two topics: (1) alleged "funds derived from illegal activities in Russia [that] were provided to Hillary Clinton and other Democrats," and (2) "a critique of the origins of … a 2012 [U.S.] statute that imposed financial and travel sanctions on Russian officials and that resulted in a retaliatory ban on adoptions of Russian children." *Id.* at 110. The meeting ended shortly thereafter, and was regarded by both American and Russian participants as a "waste of time." *Id.* at 118, 120. The Special Counsel did not find that the meeting had *anything* to do with documents stolen from the DNC, let alone that the Campaign "blessed" or otherwise became involved with a plan for Russia to continue stealing and disseminating such documents. The DNC's inferences to the contrary have thus been exposed as imaginary.

These are hardly the only ways in which the Mueller Report undercuts the DNC's allegations. Although the DNC claims that the Campaign "water[ed] down" a provision of the Republican Party platform to appease Russia (SAC ¶ 153), the Special Counsel's "investigation did not establish that [the amendment efforts] were undertaken at the behest of candidate Trump or Russia" (Mueller Report, Vol I at 10). In fact, several Campaign officials believed the amendment—pressed for by one Campaign employee—did not even accurately reflect the Campaign's stance. *Id.* at 127. Likewise, although the DNC baldly asserts that Paul Manafort shared polling data with a Russian to "help[] Russia gauge the effects of publishing DNC documents" (MTD Opp. at 8, 38), the Special Counsel "did not identify evidence of a connection between Manafort's sharing polling data and Russia's interference in the election," and "did not establish that Manafort otherwise coordinated with the Russian government on its election-interference efforts" (Mueller Report, Vol. I at 131). And although the DNC speculates that various individuals made misstatements after the election in an effort to "conceal[] their collusion" (MTD Opp. at 9), the Special Counsel drew no such connection—and his Report makes clear that there could be no such connection, because there can be no concealment of something that did not occur in the first place.

In short, the Special Counsel's Report confirms that the DNC will never be able to substantiate its theory that the Campaign joined a conspiracy to steal and disseminate the DNC's materials. And that debunked theory underlies *all* of the DNC's claims against the Campaign. The DNC's RICO claims are predicated on the notion that the Campaign joined an enterprise conducting "a cyber-espionage operation" against the DNC. SAC ¶ 306; *see also id.* at ¶¶ 272, 282–83, 289–90. The DNC's Wiretap Act claim depends on the Campaign having knowingly used stolen communications. *Id.* at ¶ 312. The DNC's D.C. Uniform Trade Secrets Act claim requires it to establish that the Campaign misappropriated DNC trade secrets. *Id.* at ¶ 339. The DNC's claim for conspiracy to commit trespass to chattels requires the Campaign to have actually joined a conspiracy to steal DNC

materials. *Id.* at ¶ 356. And the DNC's Virginia Computer Crimes Act claim depends on the notion that the Campaign aided and abetted Russia's theft of DNC materials. *Id.* at ¶ 371.

The Mueller Report, however, establishes that the DNC cannot make any of these showings. Any discovery the DNC could ever hope to take would involve only a subset of the massive evidentiary record available to the Special Counsel's Office, and some small fraction of the nearly 500 individuals from whom the Office obtained sworn testimony under penalty of perjury or subject to potential prosecution under the federal false-statements statute. Mueller Report, Vol. I at 191–92. The DNC would need to not merely show that the same evidence available to the Special Counsel establishes what the Special Counsel did not establish, but affirmatively *disprove* many of the Office's key factual findings grounded in that massive evidentiary record. And the DNC would be doing all of this under the constraints of civil discovery rules far stricter than any limit on the Special Counsel's sweeping investigation, which was backed by the vast financial and manpower resources of the Department of Justice and the FBI.

To spell this out is to confirm the impossibility of the DNC ever being able to substantiate its claims against the Campaign. The DNC's case has always been founded on little more than conclusory inferences. Those inferences have now been definitively refuted by the Special Counsel's painstaking factual findings.

To further proceed with its claims, the DNC would need some good-faith basis to believe that the Special Counsel simply got it wrong. It obviously has no such basis. Indeed, DNC Chair Tom Perez emphasized, soon after filing this lawsuit, that he "ha[s] great respect for Director Mueller," and that the DNC filed this suit in part because "I don't know when Director Mueller's investigation is going to end" relative to the applicable statute of limitations, "so we need to file now to protect our rights." *DNC Chair Tom Perez On Trump/Russia Lawsuit: "We Have To Deter This Conduct,"* Real Clear Politics (Apr. 22, 2018), http://bit.ly/2JdOhvV. The DNC cannot reject the Special Counsel's core conclusions simply because those conclusions refute rather than substantiate the DNC's preferred theory.

II. The DNC Is Violating Rule 11 By Maintaining Its Claims Against the Campaign.

In light of the foregoing, the DNC cannot—consistent with Rule 11—maintain any of its claims against the Campaign. As Mr. Perez noted when addressing the possibility that this litigation would be used to air "wild theories," "[t]he beauty of the civil justice system" is that "there's this thing called Rule 11 where you get sanctioned for trying to do things like that." *Id.*

That is of course correct. Rule 11(b)(3) mandates that when presenting any "pleading, written motion, or other paper" to the court, or "later advocating" for positions contained in those submissions, a party's counsel "certifies," among other things, that "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the "factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3). This duty is a continuing one: "a litigant's obligations with respect to the contents of … papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit." *Galin v. Hamada*, 753 F. App'x 3, 8 (2d Cir. 2018) (quoting Fed. R. Civ. P. 11 Adv. Comm. Note (1993)).

Accordingly, once a party learns that its "allegations on the central (and dispositive) issue in the case were 'utterly lacking in support,'" it is obligated to "withdraw the Complaint" containing those allegations. *Galin v. Hamada*, 283 F. Supp. 3d 189, 203–04 (S.D.N.Y. 2017) (quoting *StreetEasy, Inc. v. Chertok*, 752 F.3d 298, 307 (2d Cir. 2014)), *aff'd*, 753 F. App'x 3 (2d Cir. 2018). A party's refusal to do so takes its "actions outside the ambit of 'zealous advocacy' and into the realm of Rule 11 sanctions." *Id.*; *see also Calloway v. Marvel Entm't Grp., a Div. of Cadence Indus. Corp.*, 854 F.2d 1452, 1472 (2d Cir. 1988) (sanctions are appropriate where an attorney or party "decline[s] to withdraw [a claim] upon an express request by his or her adversary after learning that it was groundless"), *rev'd in part on other grounds sub nom. Pavelic & LeFlore v. Marvel Entm't Grp.*, 493 U.S. 120 (1989); *Catcove Corp. v. Patrick Heaney*, 685 F. Supp. 2d 328, 335 (E.D.N.Y. 2010) ("[A]ttorneys 'have a continuing obligation to monitor the strength of their clients' claims and discontinue representing clients who pursue claims that—although not obviously frivolous at the outset—are entirely unsupported or refuted by the evidence.'" (citation omitted)); *Gambello v. Time Warner Comm'ns, Inc.*, 186 F. Supp. 2d 209, 229 (E.D.N.Y. 2002) (sanctions warranted when plaintiff "refused to withdraw the claim" and "made arguments … [that] are completely contradicted by his sworn deposition testimony").

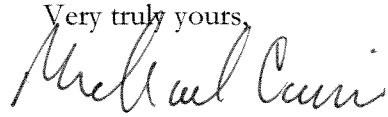
Nor can a party sidestep its Rule 11 obligations by simply making allegations "on information and belief." Although Rule 11(b)(3) authorizes parties to make allegations that "will likely have evidentiary support after a reasonable opportunity for further investigation or discovery," "this allowance cannot be understood to give parties free reign to fire shots into the proverbial dark." *Bletas v. Deluca*, 2011 WL 13130879, at *10 (S.D.N.Y. Nov. 15, 2011). " [A] reasonable inquiry must still support the likelihood of the inference drawn." *Id.* As the Advisory Committee notes to Rule 11 explain, "[t]olerance of factual contentions … made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances." Fed. R. Civ. P. 11 Adv. Comm. Note (1993). "[I]f evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule *not* to persist with that contention." *Id.* (emphasis added).

The DNC's conduct to date is irreconcilable with its continuing obligation under Rule 11. The DNC has not made any effort to withdraw or even amend its claims, notwithstanding that its key allegations have been disproven by the Mueller Report. To the contrary, mere hours after the Mueller Report was publicly released, the DNC filed its Opposition to Defendants' motions to dismiss, in which the DNC doubled down on its now demonstrably false insistence that "[t]he Trump Campaign, Trump's closest advisors, WikiLeaks, and Russia participated in a common scheme to hack into the DNC's computer system, steal its trade secrets and other private documents, and then strategically disseminate those materials to the public to improve Trump's chances of winning the election." MTD Opp. at 1–2. In fact, the DNC expressly urged the Court to adopt inferences that it by then had every reason to know the Special Counsel had specifically refuted, including that the Campaign, through Papadopoulos, was providing input into Russia's hacking efforts (it was not), and that the Campaign "blessed" Russia's hacking operation at the June 9 meeting (it did not). MTD Opp. at 36–37; *see also, e.g.*, *id.* at 19–20, 27, 41. And although the DNC's Second Amended Complaint had specifically omitted any allegation that the Campaign was involved in Russia's hacking efforts—and notwithstanding that the Mueller Report found no such involvement—the DNC's Opposition repeatedly suggests the Campaign's involvement in precisely those efforts, falsely labeling the Campaign an "information thie[f]" who "aid[ed], abet[ted], or conspire[d] with" Russia. *Id.* at 3, 101.

Simply enough, the DNC is in violation of Rule 11 every day that it refuses to withdraw its claims against the Campaign. Rule 11 requires the DNC to amend or withdraw each and every factual allegation that is inconsistent with the facts set forth in the Special Counsel's Report. After doing so, there will be no possible basis upon which the DNC could continue to assert any of its claims against the Campaign. Accordingly, consistent with Rule 11(c)(2), if the DNC does not dismiss those claims within twenty-one days of receiving this letter, the Campaign will be left with no choice but to file the enclosed Motion for Rule 11 Sanctions, in which we will ask the Court to (1) dismiss all claims against the Campaign with prejudice; (2) order the DNC to pay the Campaign's attorneys' fees and costs associated with the motion itself, and all other fees and costs that the Campaign incurs going forward from the time of filing the Rule 11 motion; and (3) impose any additional sanctions that the court deems just and proper.

Please let me know as soon as possible—and no later than June 2—how the DNC will proceed.

Very truly yours,



Michael A. Carvin

Attachment

Cc: Counsel to Plaintiff Democratic National Committee (via email)