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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6850¹

DATE COMPLAINT FILED: June 30, 2014

DATE OF NOTIFICATIONS: July 3, 2014

July 23, 2014

August 26, 2014

DATE OF LAST RESPONSE: October 7, 2014

DATE ACTIVATED: October 14, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:

Earliest: June 12, 2015

Latest: June 22, 2015

ELECTION CYCLE: 2010

COMPLAINANT:

Maryann Martindale, Alliance for a Better Utah

RESPONDENTS:

Jeremy Johnson

John E. Swallow

Arvin Lee Black

Atia Black

Matthew Black

Friends of Mike Lee and Mike McCauley in his
official capacity

as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30109(a)(5)(B)²

52 U.S.C. § 30109(d)

52 U.S.C. § 30116(a)(1)(A)

52 U.S.C. § 30116(f)

¹ This Report addresses the allegations of reimbursed contributions in June of 2010 to the Lee Campaign directed to the respondents named on this page. Due to the impending statute of limitations ("SOL"), our analysis of these allegations in this report has been expedited pursuant to Commission Directive 68. The Complaint also includes additional allegations involving real estate transactions in 2012 between Lee and additional respondents that are not SOL imperiled. A separate Report addressing those allegations and respondents will follow in the ordinary course and will include a recommendation to sever those allegations into a new MUR.

Consistent with this Report's focus solely on the 2010 allegations and respondents listed on this page, the Statute of Limitations and Date of Last Response dates are similarly specific to those allegations and respondents.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

52 U.S.C. § 30122
11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Jeremy Johnson — at the request and direction of John Swallow, former Utah Attorney General — contributed \$50,000 in the names of others to Friends of Mike Lee (the “Lee Committee”) for Senator Lee’s June 2010 primary election.³ As a basis for the allegations, the Complaint relies on a Utah law enforcement agent’s search warrant affidavit, which recounts that Johnson admitted to making \$50,000 in reimbursed contributions to the Lee Committee at Swallow’s request, as they had done for a prior U.S. Senate candidate. The Complaint further alleges that Arvin Lee Black, Atia Black, and Matthew Black — reportedly associates of Mr. Johnson — allowed their names to be used for Johnson’s contributions. A Special Investigation Committee of the Utah House of Representatives also identified the Blacks as three of Johnson’s potential conduits.

In its Response, the Lee Committee denies that it knowingly received reimbursed contributions from Johnson. The Committee, however, conducted an internal review that identified 15 potential contributors who may have been conduits for Johnson’s contributions. None of those named donors agreed to the Committee’s request to certify that their contributions were made with their own funds, although one donor contacted the Committee by phone to inform them that she had been reimbursed by “Mr. Black.” Swallow’s Response states that his attorney advised him to not substantively respond to the Complaint due to a pending criminal

³ The Complaint also includes unrelated allegations arising from the sale of Lee’s home in 2012, which, as noted, we will analyze in a subsequent report.

proceeding in Utah, but Swallow nonetheless stated also that two e-mails between Johnson and him related to the allegations do not demonstrate that he knew that Johnson had reimbursed certain contributions to the Lee Committee. Further, Swallow denies having any such knowledge at the time.⁴

For the reasons described at greater length below, we conclude that there is reason to believe that Johnson, Swallow, and Arvin Black violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making contributions in the name of another, that Johnson violated 52 U.S.C. §30116(a) by making excessive contributions, and that Johnson and Swallow's violations were knowing and willful. We further recommend that the Commission conduct an investigation to obtain additional relevant information concerning the contributions at issue.

II. FACTS

A. Swallow's and Johnson's \$50,000 Straw-Donor Contributions

In 2009, Swallow served as the Chief Deputy to, and chief fundraiser for, then-Utah Attorney General Mark Shurtleff. *See* Utah House of Representatives, Rpt. of the Special Investigative Committee at 5 (Mar. 11, 2014) (available at http://le.utah.gov/investigative/final_report_simple.pdf). In addition to serving as Utah Attorney General from January 2001 to January 2013, Shurtleff was also a Senate candidate in 2009. Swallow met Johnson in connection with Swallow's fundraising efforts for Shurtleff. Shurtleff withdrew from the Senate race in November 2009. In early 2010, then-candidate Mike Lee entered the U.S. Senate race and later won the general election the U.S. Senate. In 2012, Swallow ran as a candidate for and was elected to the position of Utah Attorney General and began his tenure in January 2013.

4

Johnson, Arvin Black, Atia Black, and Matthew Black have not responded to the Complaint.

1 During the course of the 2010 Utah Senate election cycle, Swallow and Johnson
2 apparently engaged in a scheme to use straw donors to contribute to Shurtleff's and Lee's
3 campaigns. According to a report of the Special Investigative Committee of the Utah House of
4 Representatives ("Special Committee"), "Swallow enlisted Mr. Johnson in an effort to raise
5 money for the U.S. Senatorial campaign of a political ally of Mr. Swallow's, now-Senator Mike
6 Lee," before the June 22, 2010, primary election in which Lee was participating. *Id.* at 55.
7 Further, Agent Scott Nesbitt of the Utah Department of Public Safety averred in a search warrant
8 affidavit that Johnson admitted to him that he made approximately \$50,000 in contributions to
9 Sen. Lee's campaign in the names of straw donors at Swallow's direction. Aff. of Scott Nesbitt
10 ¶ 116 (Feb. 12, 2014) (Compl. Ex. A).

11 This was not the first time that Swallow and Johnson arranged for Johnson to make
12 federal contributions in the names of others. Nesbitt's affidavit also recounts that Johnson first
13 admitted that Swallow told Johnson that Shurtleff needed \$100,000 for his Senate race in 2009.
14 *Id.* ¶ 116. Johnson offered to contribute \$100,000 to Shurtleff. *Id.* Swallow informed Johnson
15 that contributions were limited to \$2,500, however, and "told [Johnson] that he could gift money
16 to other individual[s] who could then make a contribution." *Id.* In fact, Johnson told Nesbitt that
17 "he did donate money to Mark Shurtleff's campaign in behalf of other individuals." *Id.*

18 Later, "Swallow asked [Johnson] to do the same thing for Mike Lee's campaign for
19 United States Senate, and he did so in the amount of about \$50,000." *Id.* Johnson told Nesbitt
20 that "he gave money to other individuals who then wrote checks donating to either Mark
21 Shurtleff or Mike Lee's campaign." *Id.* ¶ 117. But "Swallow had some of the checks cashed so
22 quickly that they bounced because the money he (Jeremy Johnson) had given the donors to
23 donate had not been deposited yet." *Id.*

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1 In an email chain dated June 21, 2010 — the day before the primary in which Lee would
 2 be nominated — Swallow wrote to Johnson: “We are working hard and tomorrow is the big
 3 day.” Special Committee Report, Appendix III, Ex. 22 [p. 918] (“Swallow June 22 Email”); *see*
 4 *also* Nesbitt Aff. ¶¶ 117, 119 (describing this email as one that Johnson provided to him).
 5 Swallow also informed Johnson that “4 [o]f those checks bounced. I’ll forward you the names.”
 6 *Id.* In reply, Johnson stated “I am really sorry about the checks. I will get it fixed ASAP! Let
 7 me know whos [*sic*] bounced. I was in a mad rush to get those so maybe I pushed a few people
 8 too hard.” *Id.*

9 Swallow forwarded his email exchange with Johnson to “a member of the Lee campaign
 10 staff,” Special Committee Report at 55, with the email address “dan@mikelee2010.com.” That
 11 email address appears to belong to Dan Hauser,⁵ the Deputy Campaign Manager and Finance
 12 Director of the Lee Committee in 2010. Aff. of Dan Hauser ¶ 1 (Aug. 19, 2014) (Lee Comm.
 13 Resp. Attach.). Hauser avers that his duties included fundraising and that he “received
 14 information from [Swallow] that an individual named Jeremy Johnson was interested in helping
 15 raise money for the Mike Lee campaign.” *Id.* ¶¶ 2-3. Hauser had never met Johnson and
 16 therefore conducted his own independent research into Johnson “before [the Committee] agreed
 17 to allow Mr. Johnson to raise money for the Mike Lee campaign as we were careful about who
 18 became involved in the fundraising for the campaign.” *Id.* ¶ 6. “After vetting Mr. Johnson as
 19 best [it] could,” the Lee Committee “agreed to accept Mr. Johnson’s offer of assistance to the
 20 campaign in the form of raising funds.” *Id.* ¶ 9. The Lee Committee “received a number of

⁵ In press reports, Hauser appears to have confirmed that he was the recipient of that email. *See* Robert Gehrke, *Complaint to Target Alleged Laundered Donations to Mike Lee*, SALT LAKE TRIB. (June 5, 2014), *available at* <http://m.sltrib.com/sltrib/mobile3/58032271-219/campaign-lee-johnson-swallow.html.csp> (“Hauser said he was included in the email after the checks bounced for informational purposes.”).

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checks from Southern Utah in June, 2010, and [it was] advised that these were the contributions solicited by Mr. Johnson.” *Id.* ¶ 10.⁶

Both the Special Committee and the Lee Committee attempted to identify the potentially reimbursed contributions. Based on the evidence that some of the straw donors' checks bounced, and other evidence such as the Lee Committee's Commission disclosure reports, the Special Committee concluded that three of the conduits were Arvin Lee Black, Atia Black, and Matthew Black, individuals that the Special Committee determined had ties to Mr. Johnson based on unspecified “court documents.” Special Committee Report at 55 n.39; *see also* Report of Receiver's Financial Reconstruction at 6, 8, 12-15, 51-63, *FTC v. Jeremy Johnson, et al.*, No. 10-cv-2203 (D. Nev. Jan. 31, 2012), ECF No. 464 (describing Arvin Lee Black's alleged role in concealing assets for Johnson in advance of an FTC action against Johnson and containing excerpts of a deposition of Black that the Receiver concluded “lacks any credibility”).

The Lee Committee's method for identifying Johnson's conduits involved identifying contributions made at the same time, in the same bank deposit at a Southern Utah bank branch, by the same campaign volunteer as the deposit that contained Mr. Johnson's contribution check. That deposit contained the contributions checks of 17 donors (including Johnson) and two of those contribution checks were redeposited on June 22, 2010. Lee Committee Resp. at 4; Aff. of Mike McCauley ¶¶ 7-13 (Aug. 19, 2014); *id.*, Ex. A.⁷

⁶ Dan Hauser does not identify who “advised” the Committee that the contributions were solicited by Johnson, nor does he address the email quoted above from Swallow to “dan” at the Lee Committee about the contribution checks linked to Johnson that bounced. Hauser avers, however, that he was not aware of any reimbursed contributions. Hauser Aff. ¶ 14.

⁷ According to the Committee treasurer's affidavit, the June 12, 2014, deposit contained the contributions of seventeen individual donors, McCauley Aff. ¶ 12, but the list of donors included with his affidavit identifies only “15 donors whose contributions were included in that June 12, 2010 deposit, with two checks subsequently redeposited on June 22, 2010 that cleared the bank.” *Id.* ¶ 13, Ex. A. It is not clear based on the text of McCauley's affidavit, but the affidavit may be read to suggest that checks for two of the 17 donors did not clear.

The Lee Committee then mailed these individuals a letter asking them to certify that they contributed their own funds and were not reimbursed.⁸ Lee Committee Resp. at 4; McCauley Aff. ¶ 14, Ex. B (copy of letter and certification). No donors returned the certifications and four letters were returned indicating that the donors moved without forwarding addresses. Committee Resp. at 4; McCauley Aff. ¶¶ 15-16. However, one of the suspected conduits, Savannah Jones, phoned McCauley on August 16, 2014, and told him that “Mr. Black” was a person for whom she had been working at the time of her contribution and that he had asked her to write a check to the Lee Committee and reimbursed her contribution.⁹ Committee Resp. at 4; McCauley Aff. ¶¶ 17, 18. Three of the donors on the Lee Committee’s list have also been identified as relatives of Johnson.¹⁰ Report of Receiver’s Financial Reconstruction at 8, 17-19, *FTC v. Jeremy Johnson, et al.*, No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464).

Accordingly, Johnson’s statement to Agent Nesbitt and the evidence that four conduit checks bounced would be consistent with the Committee’s information — four checks bounced initially and two were later successfully redeposited.

⁸ The Lee Committee’s list of potentially reimbursed contributions includes Johnson, the alleged true donor, and Atia Black, but it does not include either Arvin or Matthew Black’s contributions, which were identified by the Utah Special Committee as likely conduit contributions. (Matthew Black does not appear to live in Southern Utah and therefore his check may not have been included in the deposit with the other checks.)

⁹ Although the Committee did not identify “Mr. Black,” it is probable that Jones was referring to Arvin Black, reportedly one of Johnson’s associates and one of the contributors to the Lee Committee identified by the Utah House Special Committee as a likely conduit. (The other potential male conduit with the same last name, Matthew Black, appears to have an address that is approximately 250 miles away from the town in which Ms. Jones appears to live, whereas Arvin Black appears to have lived within 50 miles of Ms. Jones.) On December 20, 2013, Arvin Black was charged in the District Court for the District of Utah with wire fraud and money laundering in connection with a ponzi scheme he operated between 2007 and 2012 in which he victimized approximately 50 persons. Information, *United States v. Arvin Lee Black*, No. 2:13-cr-00836 (D. Utah Dec. 20, 2013). On January 10, 2014, Black pleaded guilty to both charges and on May 9, 2014, the Court sentenced him to 60 months of incarceration and ordered him to pay \$13,793,626.55 in restitution. According to the Bureau of Prisons inmate locator, Black is presently incarcerated in Florence ADMAX prison in Florence, Colorado.

¹⁰ Sharla Johnson is identified as the Respondent’s wife, *id.* at 8, and Kerry and Barbara Johnson (who asserted their 5th Amendment rights in their depositions) are identified as the Respondent’s parents and allegedly facilitated concealment of his financial transactions. *Id.* at 8, 17-19.

B. Swallow's and Johnson's Criminal Prosecutions

On July 3, 2013, six months after Swallow became Attorney General of Utah, the Utah House of Representatives established the Special Committee to investigate and report on allegations of misconduct involving Swallow and Johnson. Special Committee Report at 2. After interviewing 165 witnesses and analyzing tens of thousands of documents, the Special Committee issued its report on March 11, 2014, in which it concluded that "Swallow hung a veritable 'for sale' sign on the [Attorney General's] Office door that invited moneyed interests to seek special treatment and favors." *Id.* at 2.¹¹

On July 14, 2014, Swallow and Shurtleff were arrested and charged with 23 counts in connection with these alleged activities. Robert Gehrke, *Swallow, Shurtleff Arrested, Face 23 Counts, Up To 30 years Prison*, SALT LAKE TRIB. (updated July 20, 2014), available at <http://www.sltrib.com/sltrib/news/58185969-78/swallow-shurtleff-utah-general.html.csp>. As for Johnson, the Federal Trade Commission filed a Complaint in the District Court for the District of Nevada on December 21, 2010, and a Motion for Preliminary Injunction on January 12, 2011, alleging that Johnson, nine other individuals, and 61 corporations acted as a common enterprise to conduct an unlawful internet-based scheme that deceptively induced customers to purchase unwanted products and services. Johnson's alleged scheme generated more than \$275 million in revenue and approximately \$48 million in operating profits paid to Johnson. Compl. at 6-9, *FTC v. Jeremy Johnson, et al.*, No. 10-cv-2203 (D. Nev. Dec. 21, 2010); FTC Mot.

¹¹ The Special Committee's investigation also revealed that "a significant amount of Mr. Swallow's email" and "a large quantity of other data and data devices belonging to Mr. Swallow had also gone missing." *Id.* at 3. In addition to concerns that this information and device loss was "intentional," the Special Committee "came to understand that certain documents presented by Mr. Swallow in response to a Committee subpoena were fabricated well after the events they purported to record." *Id.* The Special Committee concluded "that Mr. Swallow intentionally endeavored to obstruct inquiry into his conduct." *Id.* Mr. Swallow refused to talk with the Special Committee despite its request to do so. *Id.*

Prelim. Inj. at 1-3, *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Jan. 12, 2011). The District Court entered a Preliminary Injunction on February 10, 2011, and ordered a receiver to take possession of the named corporate defendants and Johnson's assets. Prelim. Inj. Ord., *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Feb. 10, 2011). Johnson was arrested in June 2011 on a single count of mail fraud in connection with the scheme and subsequently indicted on a further 86 charges on March 3, 2013, by a grand jury in the District of Utah. His trial is set for March 2, 2015. Order Setting Trial Date and Excluding Time from Speedy Trial Act Calculation at 2, *United States v. Jeremy Johnson*, No. 2:11-cr-501 (D. Utah Aug. 14, 2014).

III. ANALYSIS

The Complaint alleges that, at Swallow's request and direction, Johnson contributed approximately \$50,000 to the Lee Committee in the names of other persons.¹² The Act provides that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for federal office that, for the 2010 election cycle, exceed \$2,400 in the aggregate. 52 U.S.C. §30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)); FEC, *Record* at 9 (Mar. 2009). Candidates and political committees also may not accept contributions which exceed the statutory limitations. 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)). The Act further provides that no person "shall make a contribution in the name of another person." 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f). That prohibition extends to knowingly permitting one's name to be used to effect the making of a contribution in the name of another, or to knowingly helping or assisting any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(ii), (iii). The Commission has explained that

¹² We note that the Complaint also contains allegations regarding contributions to Shurtleff's U.S. Senate campaign. Because those contributions were beyond the statute of limitations when this matter was activated, we do not address those allegations in this Report, which only addresses those violations which are covered by the Commission's Directive 68.

“knowingly helping or assisting” a false-name contribution would reach the conduct of “those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another.” Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

The Act also prescribes additional monetary penalties for violations that are knowing and willful. *See* 52 U.S.C. §§ 30109(a)(5)(B), 30109(d) (formerly 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)). A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. 12,197, 12,199 (May 3, 1976). But this does not require proving knowledge of the specific statute or regulation the respondent allegedly violated. *United States v. Danielczyk*, 917 F.Supp.2d 573 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)). Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.” *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)). This may be shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may be inferred. *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).¹³ For

¹³ *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

example, a person's awareness that an action is prohibited may be inferred from "the [person's] elaborate scheme for disguising their . . . political contributions." *Id.* at 214-15.¹⁴

A. Jeremy Johnson

According to the sworn affidavit of Agent Nesbitt, Johnson admitted that he made \$50,000 in contributions to the Lee Committee in the names of others in 2010. Nesbitt Aff. ¶ 117.¹⁵ Johnson's statements to Agent Nesbitt, though potentially motivated by a desire to curry favor with the government, are corroborated by objective contemporaneous evidence as well as information ascertained by the Lee Committee in the course of its subsequent internal review.

First, as Johnson told Agent Nesbitt, contemporaneous emails show that Johnson, Swallow, and the Lee Committee communicated about the fact that some of the conduits' contribution checks bounced — a very specific detail. Swallow June 22 Email; Nesbitt Aff. ¶¶ 117, 119. *Second*, the Lee Committee's FEC disclosure reports also corroborate the fact that some contributors' checks bounced. Specifically, the reports show that contributions checks purportedly from Arvin Black (disclosed as "A Lee Black"), Atia Black, and Matthew Black had insufficient funds in their accounts for the checks to clear. *See* Friends of Mike Lee July 2010 Quarterly Report at 15, 121-122. *Third*, the bounced contribution checks included one from Atia Black, a person who both the Utah House Special Committee and the Lee Committee each identified, based on different methods, as a likely conduit for Johnson's contribution. Utah

¹⁴ As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹⁵ Johnson's contributions in the names of others to the Lee Committee were preceded by \$100,000 that Johnson contributed in the names of others to Mark Shurtleff's Senate campaign before Shurtleff dropped his candidacy. Nesbitt Aff. ¶ 116. Johnson's contributions to Shurtleff are beyond the statute of limitations and we are therefore not recommending that the Commission make reason to believe findings as to those contributions.

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1 House Committee Special. Rpt. at 55 n. 39; McCauley Aff., Ex. A. *Fourth*, the Utah Special
2 Committee determined that Arvin, Atia, and Matthew Black were associates of Johnson,
3 providing further reason to believe that their contribution were connected to the alleged
4 reimbursement scheme. Utah House Committee Special. Rpt. at 55 n. 39. *Fifth*, none of the 15
5 donors that the Lee Committee sought verification from certified that they used their personal
6 funds. McCauley Aff. ¶¶ 7-16. Indeed, the only person who responded to the Lee Committee
7 confirmed that she was reimbursed by “Mr. Black,” *id.* ¶¶ 17-22, who appears to be Arvin Lee
8 Black.

9 When taken together, these factors provide a reasonable basis to conclude that Johnson
10 reimbursed contributions to the Blacks and others, as Johnson himself stated to Nesbitt. And
11 without a denial from Johnson, who did not respond to the Complaint, the available information
12 provides a reasonable belief that Johnson made contributions in the names of others.
13 Additionally, according to Nesbitt’s search warrant affidavit, Johnson resorted to reimbursing
14 contributions only when, with respect to earlier contributions to Shurtleff in the same cycle for
15 the same election, Swallow informed him that the legal contribution limit was \$2,500 and
16 directed him to circumvent that limit by reimbursing contributions made by other persons.
17 Nesbit Aff. ¶ 116. Thus, by his own admission, Johnson knew he was committing an unlawful
18 Act when he provided the funds to reimburse contributions to the Lee Committee.

19 Consequently, we recommend that the Commission find reason to believe that Jeremy
20 Johnson knowingly and willfully violated 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)) and
21 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making excessive contributions in the names of
22 others to Friends of Mike Lee.

B. John Swallow

As described above, Johnson informed Agent Nesbitt that Swallow solicited Johnson to contribute \$50,000 to the Lee Committee in the names of others, after previously soliciting Johnson to contribute \$100,000 to the campaign of Mark Shurtleff in the names of others. Nesbitt Aff. ¶ 116. According to Johnson, Swallow instructed him that the contribution limit was \$2,500 and told Johnson that he should make his contributions in the names of others and reimburse those individuals to circumvent the limit. *Id.* Swallow also appears to have acted as an intermediary between the Lee Committee and Johnson, including notifying Johnson that four of his conduits' checks bounced and forwarding to the Lee Committee Johnson's pledge to "fix" the issue. Swallow June 22 Email.

Swallow's Response states that, although advised by counsel "to not substantively respond to the allegations in the complaint" due to an "an open criminal proceeding in the State of Utah" in which he is a defendant, he disputes the allegations in the Complaint. Swallow Resp. at 1. He further addresses the Swallow June 22 E-mail, stating that "[t]here is no indication in that correspondence to me, made contemporaneous with the donations, that [Johnson] had provided the funds to" the donors whose checks bounced. *Id.* "If he did, I was unaware of it[.]" *Id.* Swallow also noted, with respect to Johnson's earlier alleged contributions in the names of others to Shurtleff, that Johnson indicated in an e-mail related to those contributions that the "donors desired to meet Mr. Shurtleff personally to hand the contributions to him," which led Swallow "to believe the donors were providing their own funds." *Id.* "Again, in that contemporaneous correspondence, there is no indication that he had provided the funds to such donors and I dispute the allegations." *Id.*

1 Swallow's unsworn contentions and denial are insufficient to rebut the allegations. Read
2 closely, Swallow's Response — even if true — states only that he was unaware *at the time of the*
3 *e-mail* that Johnson had already “provided the funds” to the four donors whose checks bounced.
4 And Swallow's statement is not necessarily at odds with the record: we know from the Lee
5 Committee's response that at least one other individual, Arvin Black, may have provided funds
6 for reimbursed contributions and two of the other conduits whose checks bounced, to which the
7 email referred, appear to be related to Arvin Black.¹⁶ Accordingly, it is possible that Johnson
8 only indirectly reimbursed the contributions referenced in the e-mail. More importantly,
9 Swallow offers no rebuttal or denial whatsoever to the key evidence cited in the Complaint —
10 Johnson's statement to Agent Nesbitt that Swallow asked Johnson to make \$50,000 in
11 contributions to the Lee Committee in the names of others and Johnson's admission that he had.

12 Thus, the available information indicates that Swallow violated the Act because he
13 “initiate[d] or instigate[d] or ha[d] some significant participation in a plan or scheme to make a
14 contribution in the name of another.” Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed.
15 Reg. 34,098, 34,105 (Aug. 17, 1989). Additionally, the Utah House Special Committee
16 uncovered evidence that Swallow was experienced with the routing of contributions for state
17 committees through intermediaries to conceal the identity of the true donors. Special Committee
18 Rpt. at 76-90. And Swallow had specific knowledge of the Act's prohibition against

¹⁶ The Lee Committee's July 2010 Quarterly Report states that Atia Black and Arvin Black shared the same address at the time of their contributions. *See* Friends of Mike Lee July 2010 Quarterly Report at 15. We also note that according to www.whitepages.com, Arvin and Matthew Black each had a prior address of 1043 Chippewa, Washington, UT. Additionally, according to the Clear service provided by Thomson Reuters, a public fee-based research service to which the Commission subscribes, one of the addresses associated with Arvin Black is 1155 W 1200 N, Mapleton, UT — the address disclosed for Matthew Black in connection with his contribution in the Lee Committee's July 2010 Quarterly Report. *Id.*

1 contributing in the name of another: he testified as much under oath to the Commission in a
2 prior MUR.¹⁷

3 Accordingly, there is ample evidence that Swallow's alleged violations in this matter
4 were committed with knowledge that they were unlawful. We therefore recommend that the
5 Commission find reason to believe that John Swallow knowingly and willfully violated
6 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)) and 52 U.S.C. § 30122 (formerly 2 U.S.C.
7 § 441f) by making excessive contributions in the names of others to Friends of Mike Lee.

8 **C. Arvin Black**

9 Arvin Black appears to have been a conduit for Johnson's contributions to the Lee
10 Committee. Compl. at 2; Special Committee Rpt. at 55 n.39. Black also reportedly has ties to
11 Johnson. *Id.*; Report of Receiver's Financial Reconstruction at 6, 8, 12-15, 51-63, *FTC v.*
12 *Jeremy Johnson, et al.*, No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464). Black
13 appears, however, to have served as more than a passive conduit. Savannah Jones — an
14 apparent conduit herself who lives near Arvin Black in Southern Utah and indicated that in 2010
15 she worked for him — stated that "Mr. Black" solicited and reimbursed her contribution to the
16 Lee Committee. McCauley Aff. ¶ 17.¹⁸

17 The present record therefore provides reason to believe that Arvin Black allowed his
18 name to be used for Johnson's contribution, and reimbursed at least one person's contribution to

¹⁷ The Commission previously investigated Swallow for making contributions in the names of others when he allegedly directed a donor to his Congressional campaign committee to make contributions to him by dispensing funds from a partnership account and attributing the checks to different partners. *See* General Counsel's Report #3, MUR 5333. In his deposition, Swallow indicated that he knew, and told the donor, that contributors must use their own funds. *See* General Counsel's Report #5 (OGC credited Swallow's account over that of the donor and the Commission took no further action as to Swallow).

¹⁸ Black submitted no response to the Complaint. Our July 23, 2014 notification letter to Black was not returned and we assume it was effective. On October 3, 2014, we also mailed a courtesy copy of the notification to Black at his prison address. If we receive a response from Black, we will promptly notify the Commission.

1 the Lee Committee. We therefore recommend that the Commission find reason to believe that
2 Arvin Lee Black violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).¹⁹

3 **D. Atia Black, Matthew Black, and Other Potential Conduits**

4 Although the record includes information indicating that Atia Black, Matthew Black, and
5 other persons identified by the Lee Committee may have allowed their names to be used for
6 Johnson's (or Black's) contributions, our information is limited and their roles may be relatively
7 minor. Further information confirming the identities of Johnson's conduits and the full extent of
8 their roles in the scheme would be useful before making such recommendations. Consequently,
9 we recommend that the Commission take no action at this time as to whether there is reason to
10 believe that any of these individuals violated the Act.

11 **E. Friends of Mike Lee and Mike McCauley as Treasurer**

12 To violate the Act as a recipient of contributions in the name of another or excessive
13 contributions, the Lee Committee must have known that the contributions it was accepting were
14 reimbursed or excessive. *See* 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)) and 52 U.S.C.
15 § 30122 (formerly 2 U.S.C. § 441f). The Lee Committee acknowledges that Swallow introduced
16 it to Johnson as a potential fundraiser and that it vetted Johnson before agreeing to allow Johnson
17 to raise money for the Committee. Hauser Aff. ¶¶ 4-9. And although Swallow forwarded
18 Johnson's pledge to "fix" the four contribution checks that bounced, Swallow June 22 Email, this
19 email does not necessarily reflect notice that the referenced contributions were reimbursed.²⁰

¹⁹ Based on the state of the current record, which does not include information about Black's knowledge or ignorance of the lawfulness of his alleged actions, we are not recommending that the Commission find that Black violated the Act knowingly and willfully.

²⁰ The available evidence also includes a February 2010 email from Swallow to Shurtleff in which Swallow asks Shurtleff if Johnson can meet then-candidate Mike Lee, to which Shurtleff replied "Sure." Utah House Rpt. at

1 The Lee Committee's Response also includes a statement that "there is no evidence the
2 Committee knew or should have known about the alleged contribution reimbursements," Resp. at
3 1, and that, until news reports about Johnson's alleged reimbursements, "had no reason to
4 believe or suspect that the contributions solicited by any individual, including Mr. Johnson, for
5 the Committee were not fully compliant with the" Act. *Id.* at 2. After those reports, the
6 Committee reviewed its records but found no "documents or evidence in the possession of the
7 Committee that would suggest or indicate that any contribution to the Committee was from a
8 course other than the donor" disclosed to the Commission. *Id.* at 1-2; *see also* McCauley Aff.
9 ¶ 6; Hauser Aff. ¶ 12. Additionally, Hauser's affidavit states that, at the time Swallow suggested
10 that Johnson fundraise for the Committee in June 2010, "[n]either Mike Lee nor the campaign
11 manager nor I were familiar with Jeremy Johnson, having not met or dealt with him previously."
12 Hauser Aff. ¶ 4. That said, the Lee Committee has received information since the filing of this
13 Complaint that at least one contribution made by Savannah Jones was reimbursed. McCauley
14 Aff. ¶ 17.

15 The present record does not provide a reason to believe that the Lee Committee knew at
16 the time that it received the contributions that they were reimbursed. Nonetheless, pending
17 completion of the proposed investigation that necessarily will yield information related to these
18 contributions, we recommend that the Commission take no action at this time as to the Friends of
19 Mike Lee and Mike McCauley in his official capacity as treasurer.

20 **IV. INVESTIGATION**

21 Given concerns regarding the statute of limitations, the purpose of an investigation would
22 be to quickly corroborate the identities of the straw donors and the specific contributions that

56 n.40; *id.*, Ex. 23. There is no further evidence in the record indicating that any such meeting took place or, if so, what was discussed.

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1 were reimbursed. Further, we would aim to expeditiously obtain any additional evidence of the
2 circumstances of the reimbursed contributions. Although the time to investigate is limited, other
3 federal and state agencies have extensively investigated the respondents and may have readily
4 available evidence to share with the Commission. Additionally, the Special Committee and the
5 Lee Committee have already independently identified a likely and limited set of conduits who
6 may serve as witnesses in the investigation. Because nearly all of the potential conduits whom
7 the Lee Committee contacted informally have declined to respond, we anticipate seeking the
8 Commission's authorization to immediately serve them with interrogatories and document
9 requests narrowly focused on whether their contributions were reimbursed, by whom, and under
10 what circumstances. Other than the potential conduits, there are only three key witnesses /
11 Respondents — Swallow, Johnson, and Arvin Black — and we further anticipate seeking the
12 Commission's immediate authorization to serve them with interrogatories, document requests,
13 and deposition subpoenas.


14 To expedite the gathering of evidence and the efficient completion of an investigation, we
15 plan to provide the Commission with our discovery requests under separate cover to consider
16 alongside this Report while it is pending with the Commission. We recognize that Johnson and
17 Swallow may be unlikely to cooperate at this point given their respective criminal trials — in
18 fact, Swallow's counsel has apparently advised him not to respond to the substance of the
19 allegations. It is conceivable, however, that Swallow and Johnson will agree to toll and postpone
20 this matter until after those proceedings are resolved.

21 If the Commission approves our recommendations and discovery requests, we will
22 endeavor to return to the Commission with further recommendations as expeditiously as
23 possible.

V. RECOMMENDATIONS

1. Find reason to believe that Jeremy Johnson knowingly and willfully violated 52 U.S.C. §30116(a) (formerly 2 U.S.C. § 441a(a)) and 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making excessive contributions in the names of others to Friends of Mike Lee.
2. Find reason to believe that John Swallow knowingly and willfully violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making excessive contributions in the names of others to Friends of Mike Lee.
3. Find reason to believe that Arvin Lee Black violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).
4. Take no action at this time as to the allegations that Atia Black, Matthew Black, or Friends of Mike Lee and Mike McCauley in his official capacity as treasurer violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) and 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)).
5. Approve the attached Factual and Legal Analyses.
6. Authorize the use of compulsory process.
7. Approve the appropriate letters

Date: 10/16/14


Daniel A. Petalas
Associate General Counsel


William A. Powers
Assistant General Counsel


Michael A. Columbo
Attorney

Attachments:

1. Factual and Legal Analysis for Jeremy Johnson
2. Factual and Legal Analysis for John Swallow
3. Factual and Legal Analysis for Arvin Lee Black

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Jeremy Johnson

I. INTRODUCTION

The Complaint alleges that Jeremy Johnson — at the request and direction of John Swallow, former Utah Attorney General — contributed \$50,000 in the names of others to Friends of Mike Lee (the “Lee Committee”) for Senator Lee’s June 2010 primary election. As a basis for the allegations, the Complaint relies on a Utah law enforcement agent’s search warrant affidavit, which recounts that Johnson admitted to making \$50,000 in reimbursed contributions to the Lee Committee at Swallow’s request, as they had done for a prior U.S. Senate candidate. The Complaint further alleges that Arvin Lee Black, Atia Black, and Matthew Black — reportedly associates of Mr. Johnson — allowed their names to be used for Johnson’s contributions.

A Special Investigation Committee of the Utah House of Representatives also identified the Blacks as three of Johnson’s potential conduits. The available information includes 15 potential contributors who may have been conduits for Johnson’s contributions. None of those donors would agree to certify that their contributions were made with their own funds, and one has stated that she had been reimbursed by “Mr. Black.” Johnson has not responded to the Complaint.

For the reasons described at greater length below, there is reason to believe that Johnson violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making contributions in the name of another, violated 52 U.S.C. §30116(a) by making excessive contributions, and that Johnson’s violations were knowing and willful.

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1 **II. FACTS**

2 **A. Swallow's and Johnson's \$50,000 Straw-Donor Contributions**

3
4 In 2009, Swallow served as the Chief Deputy to, and chief fundraiser for, then-Utah
5 Attorney General Mark Shurtleff. *See* Utah House of Representatives, Rpt. of the Special
6 Investigative Committee at 5 (Mar. 11, 2014) (available at [http://le.utah.gov/investigative/](http://le.utah.gov/investigative/final_report_simple.pdf)
7 [final_report_simple.pdf](http://le.utah.gov/investigative/final_report_simple.pdf)). In addition to serving as Utah Attorney General from January 2001 to
8 January 2013, Shurtleff was also a Senate candidate in 2009. Swallow met Johnson in
9 connection with Swallow's fundraising efforts for Shurtleff. Shurtleff withdrew from the Senate
10 race in November 2009. In early 2010, then-candidate Mike Lee entered the U.S. Senate race
11 and later won the general election the U.S. Senate. In 2012, Swallow ran as a candidate for and
12 was elected to the position of Utah Attorney General and began his tenure in January 2013.

13 During the course of the 2010 Utah Senate election cycle, Swallow and Johnson
14 apparently engaged in a scheme to use straw donors to contribute to Shurtleff's and Lee's
15 campaigns. According to a report of the Special Investigative Committee of the Utah House of
16 Representatives ("Special Committee"), "Swallow enlisted Mr. Johnson in an effort to raise
17 money for the U.S. Senatorial campaign of a political ally of Mr. Swallow's, now-Senator Mike
18 Lee," before the June 22, 2010, primary election in which Lee was participating. *Id.* at 55.
19 Further, Agent Scott Nesbitt of the Utah Department of Public Safety averred in a search warrant
20 affidavit that Johnson admitted to him that he made approximately \$50,000 in contributions to
21 Sen. Lee's campaign in the names of straw donors at Swallow's direction. Aff. of Scott Nesbitt
22 ¶ 116 (Feb. 12, 2014) (Compl. Ex. A).

23 This was not the first time that Swallow and Johnson arranged for Johnson to make
24 federal contributions in the names of others. Nesbitt's affidavit also recounts that Johnson first

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1 admitted that Swallow told Johnson that Shurtleff needed \$100,000 for his Senate race in 2009.
2 *Id.* ¶ 116. Johnson offered to contribute \$100,000 to Shurtleff. *Id.* Swallow informed Johnson
3 that contributions were limited to \$2,500, however, and “told [Johnson] that he could gift money
4 to other individual[s] who could then make a contribution.”¹ *Id.* In fact, Johnson told Nesbitt
5 that “he did donate money to Mark Shurtleff’s campaign in behalf of other individuals.” *Id.*

6 Later, “Swallow asked [Johnson] to do the same thing for Mike Lee’s campaign for
7 United States Senate, and he did so in the amount of about \$50,000.” *Id.* Johnson told Nesbitt
8 that “he gave money to other individuals who then wrote checks donating to either Mark
9 Shurtleff or Mike Lee’s campaign.” *Id.* ¶ 117. But “Swallow had some of the checks cashed so
10 quickly that they bounced because the money he (Jeremy Johnson) had given the donors to
11 donate had not been deposited yet.” *Id.*

12 In an e-mail chain dated June 21, 2010 — the day before the primary in which Lee would
13 be nominated — Swallow wrote to Johnson: “We are working hard and tomorrow is the big
14 day.” Special Committee Report, Appendix III, Ex. 22 [p. 918] (“Swallow June 22 E-mail”);
15 *see also* Nesbitt Aff. ¶¶ 117, 119 (describing this e-mail as one that Johnson provided to him).
16 Swallow also informed Johnson that “4 [o]f those checks bounced. I’ll forward you the names.”
17 *Id.* In reply, Johnson stated “I am really sorry about the checks. I will get it fixed ASAP! Let
18 me know whos [*sic*] bounced. I was in a mad rush to get those so maybe I pushed a few people
19 too hard.” *Id.*

20 Swallow forwarded his e-mail exchange with Johnson to “a member of the Lee campaign
21 staff,” Special Committee Report at 55, with the e-mail address “dan@mikelee2010.com.” That

¹ In the 2010 election cycle, the individual contribution limit was \$2,400. FEC, *Record* at 9 (Mar. 2009).

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1 e-mail address appears to belong to Dan Hauser,² the Deputy Campaign Manager and Finance
2 Director of the Lee Committee in 2010. The Available information indicates that Hauser
3 received information from Swallow that Johnson was interested in helping raise money for the
4 Mike Lee campaign. Hauser had never met Johnson and therefore conducted his own
5 independent research into Johnson before the Lee Committee agreed to allow Mr. Johnson to
6 raise money for the Mike Lee campaign. After vetting Mr. Johnson as best it could, the Lee
7 Committee agreed to accept Mr. Johnson's offer to raise funds. The Lee Committee received a
8 number of checks from Southern Utah in June, 2010, and it was advised that these were the
9 contributions solicited by Mr. Johnson.

10 The Special Committee attempted to identify the potentially reimbursed contributions.
11 Based on the evidence that some of the straw donors' checks bounced, and other evidence such
12 as the Lee Committee's Commission disclosure reports, the Special Committee concluded that
13 three of the conduits were Arvin Lee Black, Atia Black, and Matthew Black, individuals that the
14 Special Committee determined had ties to Mr. Johnson based on unspecified "court documents."
15 Special Committee Report at 55 n.39; *see also* Report of Receiver's Financial Reconstruction at
16 6, 8, 12-15, 51-63, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF
17 Docket No. 464) (describing Arvin Lee Black's alleged role in concealing assets for Johnson in
18 advance of an FTC action against Johnson and containing excerpts of a deposition of Black that
19 the Receiver concluded "lacks any credibility").

² In press reports, Hauser appears to have confirmed that he was the recipient of that e-mail. *See* Robert Gehrke, *Complaint to Target Alleged Laundered Donations to Mike Lee*, SALT LAKE TRIB. (June 5, 2014), *available at* <http://m.sltrib.com/sltrib/mobile3/58032271-219/campaign-lee-johnson-swallow.html.csp> ("Hauser said he was included in the email after the checks bounced for informational purposes.").

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The Commission has information that contributions made at the same time, in the same bank deposit at a Southern Utah bank branch, by the same campaign volunteer as the deposit that contained Mr. Johnson's contribution check also contained the contribution checks of 17 donors (including Johnson) and two of those contribution checks were redeposited on June 22, 2010.³

The Commission also has information that donors were asked to certify that they contributed their own funds and were not reimbursed. No donors returned the certifications and four letters were returned indicating that the donors moved without forwarding addresses. However, one of the suspected conduits stated that "Mr. Black" was a person for whom she had been working at the time of her contribution and that he had asked her to write a check to the Lee Committee and reimbursed her contribution.⁴ Three of the donors have also been identified as relatives of Johnson.⁵ Report of Receiver's Financial Reconstruction at 8, 17-19, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Jan. 31, 2012), ECF No. 464.

³ The June 12, 2014, deposit contained the contributions of seventeen individual donors but checks for two of the 17 donors did not clear. Accordingly, Johnson's statement to Agent Nesbitt and the evidence that four conduit checks bounced is consistent with the information that four checks bounced initially and two were later successfully redeposited, for a total of 15 disclosed contributions. The list of 15 potentially reimbursed contributions includes Johnson, the alleged true donor, and Atia Black, but it does not include either Arvin or Matthew Black's contributions, which were identified by the Utah Special Committee as likely conduit contributions. (Matthew Black does not appear to live in Southern Utah and therefore his check may not have been included in the deposit with the other checks.)

⁴ It is probable that the conduit was referring to Arvin Black, reportedly one of Johnson's associates and one of the contributors to the Lee Committee identified by the Utah House Special Committee as a likely conduit. (The other potential male conduit with the same last name, Matthew Black, appears to have an address that is far from the town in which the donor appears to live, whereas Arvin Black appears to have lived much closer to the donor.) On December 20, 2013, Arvin Black was charged in the District Court for the District of Utah with wire fraud and money laundering in connection with a ponzi scheme he operated between 2007 and 2012 in which he victimized approximately 50 persons. Information, *United States v. Arvin Lee Black*, No. 2:13-cr-00836 (D. Utah Dec. 20, 2013). On January 10, 2014, Black pleaded guilty to both charges and on May 9, 2014, the Court sentenced him to 60 months of incarceration and ordered him to pay \$13,793,626.55 in restitution. According to the Bureau of Prisons, Black is presently incarcerated.

⁵ Sharla Johnson is identified as the Respondent's wife, *id.* at 8, and Kerry and Barbara Johnson (who asserted their 5th Amendment rights in their depositions) are identified as the Respondent's parents and allegedly facilitated concealment of his financial transactions. *Id.* at 8, 17-19.

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B. Swallow's and Johnson's Criminal Prosecutions

On July 3, 2013, six months after Swallow became Attorney General of Utah, the Utah House of Representatives established the Special Committee to investigate and report on allegations of misconduct involving Swallow and Johnson. Special Committee Report at 2. After interviewing 165 witnesses and analyzing tens of thousands of documents, the Special Committee issued its report on March 11, 2014, in which it concluded that “Swallow hung a veritable ‘for sale’ sign on the [Attorney General’s] Office door that invited moneyed interests to seek special treatment and favors.” *Id.* at 2.⁶

On July 14, 2014, Swallow and Shurtleff were arrested and charged with 23 counts in connection with these alleged activities. Robert Gehrke, *Swallow, Shurtleff Arrested, Face 23 Counts, Up To 30 years Prison*, SALT LAKE TRIB. (updated July 20, 2014), available at <http://www.sltrib.com/sltrib/news/58185969-78/swallow-shurtleff-utah-general.html.csp>. As for Johnson, the Federal Trade Commission filed a Complaint in the District Court for the District of Nevada on December 21, 2010, and a Motion for Preliminary Injunction on January 12, 2011, alleging that Johnson, nine other individuals, and 61 corporations acted as a common enterprise to conduct an unlawful internet-based scheme that deceptively induced customers to purchase unwanted products and services. Johnson’s alleged scheme generated more than \$275 million in revenue and approximately \$48 million in operating profits paid to Johnson. Compl. at 6-9, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Dec. 21, 2010); FTC Mot.

⁶ The Special Committee’s investigation also revealed that “a significant amount of Mr. Swallow’s email” and “a large quantity of other data and data devices belonging to Mr. Swallow had also gone missing.” *Id.* at 3. In addition to concerns that this information and device loss was “intentional,” the Special Committee “came to understand that certain documents presented by Mr. Swallow in response to a Committee subpoena were fabricated well after the events they purported to record.” *Id.* The Special Committee concluded “that Mr. Swallow intentionally endeavored to obstruct inquiry into his conduct.” *Id.* Mr. Swallow refused to talk with the Special Committee despite its request to do so. *Id.*

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Prelim. Inj. at 1-3, *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Jan. 12, 2011). The District Court entered a Preliminary Injunction on February 10, 2011, and ordered a receiver to take possession of the named corporate defendants and Johnson's assets. Prelim. Inj. Ord., *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Feb. 10, 2011). Johnson was arrested in June 2011 on a single count of mail fraud in connection with the scheme and subsequently indicted on a further 86 charges on March 3, 2013, by a grand jury in the District of Utah. His trial is set for March 2, 2015. Order Setting Trial Date and Excluding Time from Speedy Trial Act Calculation at 2, *United States v. Jeremy Johnson*, No. 2:11-cr-501 (D. Utah Aug. 14, 2014).

III. ANALYSIS

The Complaint alleges that, at Swallow's request and direction, Johnson contributed approximately \$50,000 to the Lee Committee in the names of other persons.⁷ The Act provides that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for federal office that, for the 2010 election cycle, exceed \$2,400 in the aggregate. 52 U.S.C. §30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)); FEC, *Record* at 9 (Mar. 2009). Candidates and political committees also may not accept contributions which exceed the statutory limitations. 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)). The Act further provides that no person "shall make a contribution in the name of another person." 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f). That prohibition extends to knowingly permitting one's name to be used to effect the making of a contribution in the name of another, or to knowingly helping or assisting any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(ii), (iii). The Commission has explained that

⁷ We note that the Complaint also contains allegations regarding contributions to Shurtleff's U.S. Senate campaign. Because those contributions were beyond the statute of limitations, we do not address them.

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“knowingly helping or assisting” a false-name contribution would reach the conduct of “those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another.” Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

The Act also prescribes additional monetary penalties for violations that are knowing and willful. *See* 52 U.S.C. §§ 30109(a)(5)(B), 30109(d) (formerly 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)). A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. 12,197, 12,199 (May 3, 1976). But this does not require proving knowledge of the specific statute or regulation the respondent allegedly violated. *United States v. Danielczyk*, 917 F.Supp.2d 573 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)). Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.” *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)). This may be shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may be inferred. *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).⁸ For example,

⁸ *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

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a person's awareness that an action is prohibited may be inferred from "the [person's] elaborate scheme for disguising their . . . political contributions." *Id.* at 214-15.⁹

According to the sworn affidavit of Agent Nesbitt, Johnson admitted that he made \$50,000 in contributions to the Lee Committee in the names of others in 2010. Nesbitt Aff. ¶ 117.¹⁰ Johnson's statements to Agent Nesbitt, though potentially motivated by a desire to curry favor with the government, are corroborated by objective contemporaneous evidence as well as information ascertained by the Lee Committee in the course of its subsequent internal review.

First, as Johnson told Agent Nesbitt, contemporaneous e-mails show that Johnson, Swallow, and the Lee Committee communicated about the fact that some of the conduits' contribution checks bounced — a very specific detail. Swallow June 22 E-mail; Nesbitt Aff. ¶¶ 117, 119. *Second*, the Lee Committee's FEC disclosure reports also corroborate the fact that some contributors' checks bounced. Specifically, the reports show that contributions checks purportedly from Arvin Black (disclosed as "A Lee Black"), Atia Black, and Matthew Black had insufficient funds in their accounts for the checks to clear. *See* Friends of Mike Lee July 2010 Quarterly Report at 15, 121-122. *Third*, the bounced contribution checks included one from Atia Black, a person who the Utah House Special Committee and the available information indicates is a likely conduit for Johnson's contribution. Utah House Committee Special. Rpt. at 55 n. 39. *Fourth*, the Utah Special Committee determined that Arvin, Atia, and Matthew Black were

⁹ As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹⁰ Johnson's contributions in the names of others to the Lee Committee were preceded by \$100,000 that Johnson contributed in the names of others to Mark Shurtleff's Senate campaign before Shurtleff dropped his candidacy. Nesbitt Aff. ¶ 116. Johnson's contributions to Shurtleff are beyond the statute of limitations and we are therefore not making reason to believe findings as to those contributions.

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1 associates of Johnson, providing further reason to believe that their contribution were connected
2 to the alleged reimbursement scheme. Utah House Committee Special. Rpt. at 55 n. 39. *Fifth*,
3 none of the 15 donors who were contacted to verify that they used their personal funds did so.
4 Indeed, the only person who responded to the Lee Committee confirmed that she was reimbursed
5 by “Mr. Black,” *id.* ¶¶ 17-22, who appears to be Arvin Lee Black.

6 When taken together, these factors provide a reasonable basis to conclude that Johnson
7 reimbursed contributions to the Blacks and others, as Johnson himself stated to Nesbitt. And
8 without a denial from Johnson, who did not respond to the Complaint, the available information
9 provides a reasonable belief that Johnson made contributions in the names of others.

10 Additionally, according to Nesbitt’s search warrant affidavit, Johnson resorted to reimbursing
11 contributions only when, with respect to earlier contributions to Shurtleff in the same cycle for
12 the same election, Swallow informed him that the legal contribution limit was \$2,500 and
13 directed him to circumvent that limit by reimbursing contributions made by other persons.

14 Nesbit Aff. ¶ 116. Thus, by his own admission, Johnson knew he was committing an unlawful
15 Act when he provided the funds to reimburse contributions to the Lee Committee.

16 Consequently, the Commission finds reason to believe that Jeremy Johnson knowingly
17 and willfully violated 52 U.S.C. §30116(f) (formerly 2 U.S.C. § 441a(f)) and 52 U.S.C. § 30122
18 (formerly 2 U.S.C. § 441f) by making excessive contributions in the names of others to Friends
19 of Mike Lee.

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: John E. Swallow

I. INTRODUCTION

The Complaint alleges that Jeremy Johnson — at the request and direction of John Swallow, former Utah Attorney General — contributed \$50,000 in the names of others to Friends of Mike Lee (the “Lee Committee”) for Senator Lee’s June 2010 primary election. As a basis for the allegations, the Complaint relies on a Utah law enforcement agent’s search warrant affidavit, which recounts that Johnson admitted to making \$50,000 in reimbursed contributions to the Lee Committee at Swallow’s request, as they had done for a prior U.S. Senate candidate. The Complaint further alleges that Arvin Lee Black, Atia Black, and Matthew Black — reportedly associates of Mr. Johnson — allowed their names to be used for Johnson’s contributions.

A Special Investigation Committee of the Utah House of Representatives also identified the Blacks as three of Johnson’s potential conduits. The available information includes 15 potential contributors who may have been conduits for Johnson’s contributions. None of those donors would agree to certify that their contributions were made with their own funds, and one has stated that she had been reimbursed by “Mr. Black.” Johnson has not responded to the Complaint.

Swallow’s Response states that his attorney advised him to not substantively respond to the Complaint due to a pending criminal proceeding in Utah, but Swallow nonetheless stated also that two e-mails between Johnson and him related to the allegations do not demonstrate that he

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1 knew that Johnson had reimbursed certain contributions to the Lee Committee. Further,
2 Swallow denies having any such knowledge at the time.

3 For the reasons described at greater length below, there is reason to believe that Swallow
4 violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making contributions in the name of
5 another, and that violations were knowing and willful.

6 **II. FACTS**

7 **A. Swallow's and Johnson's \$50,000 Straw-Donor Contributions**

8
9 In 2009, Swallow served as the Chief Deputy to, and chief fundraiser for, then-Utah
10 Attorney General Mark Shurtleff. *See* Utah House of Representatives, Rpt. of the Special
11 Investigative Committee at 5 (Mar. 11, 2014) (available at [http://le.utah.gov/investigative/](http://le.utah.gov/investigative/final_report_simple.pdf)
12 [final_report_simple.pdf](http://le.utah.gov/investigative/final_report_simple.pdf)). In addition to serving as Utah Attorney General from January 2001 to
13 January 2013, Shurtleff was also a Senate candidate in 2009. Swallow met Johnson in
14 connection with Swallow's fundraising efforts for Shurtleff. Shurtleff withdrew from the Senate
15 race in November 2009. In early 2010, then-candidate Mike Lee entered the U.S. Senate race
16 and later won the general election the U.S. Senate. In 2012, Swallow ran as a candidate for and
17 was elected to the position of Utah Attorney General and began his tenure in January 2013.

18 During the course of the 2010 Utah Senate election cycle, Swallow and Johnson
19 apparently engaged in a scheme to use straw donors to contribute to Shurtleff's and Lee's
20 campaigns. According to a report of the Special Investigative Committee of the Utah House of
21 Representatives ("Special Committee"), "Swallow enlisted Mr. Johnson in an effort to raise
22 money for the U.S. Senatorial campaign of a political ally of Mr. Swallow's, now-Senator Mike
23 Lee," before the June 22, 2010, primary election in which Lee was participating. *Id.* at 55.

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Further, Agent Scott Nesbitt of the Utah Department of Public Safety averred in a search warrant affidavit that Johnson admitted to him that he made approximately \$50,000 in contributions to Sen. Lee's campaign in the names of straw donors at Swallow's direction. Aff. of Scott Nesbitt ¶ 116 (Feb. 12, 2014) (Compl. Ex. A).

This was not the first time that Swallow and Johnson arranged for Johnson to make federal contributions in the names of others. Nesbitt's affidavit also recounts that Johnson first admitted that Swallow told Johnson that Shurtleff needed \$100,000 for his Senate race in 2009. *Id.* ¶ 116. Johnson offered to contribute \$100,000 to Shurtleff. *Id.* Swallow informed Johnson that contributions were limited to \$2,500, however, and "told [Johnson] that he could gift money to other individual[s] who could then make a contribution."¹ *Id.* In fact, Johnson told Nesbitt that "he did donate money to Mark Shurtleff's campaign in behalf of other individuals." *Id.*

Later, "Swallow asked [Johnson] to do the same thing for Mike Lee's campaign for United States Senate, and he did so in the amount of about \$50,000." *Id.* Johnson told Nesbitt that "he gave money to other individuals who then wrote checks donating to either Mark Shurtleff or Mike Lee's campaign." *Id.* ¶ 117. But "Swallow had some of the checks cashed so quickly that they bounced because the money he (Jeremy Johnson) had given the donors to donate had not been deposited yet." *Id.*

In an e-mail chain dated June 21, 2010 — the day before the primary in which Lee would be nominated — Swallow wrote to Johnson: "We are working hard and tomorrow is the big day." Special Committee Report, Appendix III, Ex. 22 [p. 918] ("Swallow June 22 E-mail"); *see also* Nesbitt Aff. ¶¶ 117, 119 (describing this e-mail as one that Johnson provided to him).

¹ In the 2010 election cycle, the individual contribution limit was \$2,400. FEC, *Record* at 9 (Mar. 2009).

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1 Swallow also informed Johnson that “4 [o]f those checks bounced. I’ll forward you the names.”

2 *Id.* In reply, Johnson stated “I am really sorry about the checks. I will get it fixed ASAP! Let
3 me know whos [*sic*] bounced. I was in a mad rush to get those so maybe I pushed a few people
4 too hard.” *Id.*

5 Swallow forwarded his e-mail exchange with Johnson to “a member of the Lee campaign
6 staff,” Special Committee Report at 55, with the e-mail address “dan@mikelee2010.com.” That
7 e-mail address appears to belong to Dan Hauser,² the Deputy Campaign Manager and Finance
8 Director of the Lee Committee in 2010. The Available information indicates that Hauser
9 received information from Swallow that Johnson was interested in helping raise money for the
10 Mike Lee campaign. Hauser had never met Johnson and therefore conducted his own
11 independent research into Johnson before the Lee Committee agreed to allow Mr. Johnson to
12 raise money for the Mike Lee campaign. After vetting Mr. Johnson as best it could, the Lee
13 Committee agreed to accept Mr. Johnson’s offer to raise funds. The Lee Committee received a
14 number of checks from Southern Utah in June, 2010, and it was advised that these were the
15 contributions solicited by Mr. Johnson.

16 The Special Committee attempted to identify the potentially reimbursed contributions.
17 Based on the evidence that some of the straw donors’ checks bounced, and other evidence such
18 as the Lee Committee’s Commission disclosure reports, the Special Committee concluded that
19 three of the conduits were Arvin Lee Black, Atia Black, and Matthew Black, individuals that the

² In press reports, Hauser appears to have confirmed that he was the recipient of that e-mail. See Robert Gehrke, *Complaint to Target Alleged Laundered Donations to Mike Lee*, SALT LAKE TRIB. (June 5, 2014), available at <http://m.sltrib.com/sltrib/mobile3/58032271-219/campaign-lee-johnson-swallow.html.csp> (“Hauser said he was included in the email after the checks bounced for informational purposes.”).

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Special Committee determined had ties to Mr. Johnson based on unspecified “court documents.” Special Committee Report at 55 n.39; *see also* Report of Receiver’s Financial Reconstruction at 6, 8, 12-15, 51-63, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464) (describing Arvin Lee Black’s alleged role in concealing assets for Johnson in advance of an FTC action against Johnson and containing excerpts of a deposition of Black that the Receiver concluded “lacks any credibility”).

The Commission has information that contributions made at the same time, in the same bank deposit at a Southern Utah bank branch, by the same campaign volunteer as the deposit that contained Mr. Johnson’s contribution check also contained the contribution checks of 17 donors (including Johnson) and two of those contribution checks were redeposited on June 22, 2010.³

The Commission also has information that donors were asked to certify that they contributed their own funds and were not reimbursed. No donors returned the certifications and four letters were returned indicating that the donors moved without forwarding addresses. However, one of the suspected conduits stated that “Mr. Black” was a person for whom she had been working at the time of her contribution and that he had asked her to write a check to the Lee Committee and reimbursed her contribution.⁴ Three of the donors have also been identified as

³ The June 12, 2014, deposit contained the contributions of seventeen individual donors but checks for two of the 17 donors did not clear. Accordingly, Johnson’s statement to Agent Nesbitt and the evidence that four conduit checks bounced is consistent with the information that four checks bounced initially and two were later successfully redeposited, for a total of 15 disclosed contributions. The list of 15 potentially reimbursed contributions includes Johnson, the alleged true donor, and Atia Black, but it does not include either Arvin or Matthew Black’s contributions, which were identified by the Utah Special Committee as likely conduit contributions. (Matthew Black does not appear to live in Southern Utah and therefore his check may not have been included in the deposit with the other checks.)

⁴ It is probable that the conduit was referring to Arvin Black, reportedly one of Johnson’s associates and one of the contributors to the Lee Committee identified by the Utah House Special Committee as a likely conduit. (The other potential male conduit with the same last name, Matthew Black, appears to have an address that is far from the town in which the donor appears to live, whereas Arvin Black appears to have lived much closer to the donor.) On

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relatives of Johnson.⁵ Report of Receiver's Financial Reconstruction at 8, 17-19, *FTC v. Jeremy Johnson, et al.*, No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464).

B. Swallow's and Johnson's Criminal Prosecutions

On July 3, 2013, six months after Swallow became Attorney General of Utah, the Utah House of Representatives established the Special Committee to investigate and report on allegations of misconduct involving Swallow and Johnson. Special Committee Report at 2. After interviewing 165 witnesses and analyzing tens of thousands of documents, the Special Committee issued its report on March 11, 2014, in which it concluded that "Swallow hung a veritable 'for sale' sign on the [Attorney General's] Office door that invited moneyed interests to seek special treatment and favors." *Id.* at 2.⁶

On July 14, 2014, Swallow and Shurtleff were arrested and charged with 23 counts in connection with these alleged activities. Robert Gehrke, *Swallow, Shurtleff Arrested, Face 23 Counts, Up To 30 years Prison*, SALT LAKE TRIB. (updated July 20, 2014), available at <http://www.sltrib.com/sltrib/news/58185969-78/swallow-shurtleff-utah-general.html.csp>.

December 20, 2013, Arvin Black was charged in the District Court for the District of Utah with wire fraud and money laundering in connection with a ponzi scheme he operated between 2007 and 2012 in which he victimized approximately 50 persons. Information, *United States v. Arvin Lee Black*, No. 2:13-cr-00836 (D. Utah Dec. 20, 2013). On January 10, 2014, Black pleaded guilty to both charges and on May 9, 2014, the Court sentenced him to 60 months of incarceration and ordered him to pay \$13,793,626.55 in restitution. According to the Bureau of Prisons, Black is presently incarcerated.

⁵ Sharla Johnson is identified as the Respondent's wife, *id.* at 8, and Kerry and Barbara Johnson (who asserted their 5th Amendment rights in their depositions) are identified as the Respondent's parents and allegedly facilitated concealment of his financial transactions. *Id.* at 8, 17-19.

⁶ The Special Committee's investigation also revealed that "a significant amount of Mr. Swallow's email" and "a large quantity of other data and data devices belonging to Mr. Swallow had also gone missing." *Id.* at 3. In addition to concerns that this information and device loss was "intentional," the Special Committee "came to understand that certain documents presented by Mr. Swallow in response to a Committee subpoena were fabricated well after the events they purported to record." *Id.* The Special Committee concluded "that Mr. Swallow intentionally endeavored to obstruct inquiry into his conduct." *Id.* Mr. Swallow refused to talk with the Special Committee despite its request to do so. *Id.*

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As for Johnson, the Federal Trade Commission filed a Complaint in the District Court for the District of Nevada on December 21, 2010, and a Motion for Preliminary Injunction on January 12, 2011, alleging that Johnson, nine other individuals, and 61 corporations acted as a common enterprise to conduct an unlawful internet-based scheme that deceptively induced customers to purchase unwanted products and services. Johnson's alleged scheme generated more than \$275 million in revenue and approximately \$48 million in operating profits paid to Johnson. Compl. at 6-9, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Dec. 21, 2010); FTC Mot. Prelim. Inj. at 1-3, *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Jan. 12, 2011). The District Court entered a Preliminary Injunction on February 10, 2011, and ordered a receiver to take possession of the named corporate defendants and Johnson's assets. Prelim. Inj. Ord., *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Feb. 10, 2011). Johnson was arrested in June 2011 on a single count of mail fraud in connection with the scheme and subsequently indicted on a further 86 charges on March 3, 2013, by a grand jury in the District of Utah. His trial is set for March 2, 2015. Order Setting Trial Date and Excluding Time from Speedy Trial Act Calculation at 2, *United States v. Jeremy Johnson*, No. 2:11-cr-501 (D. Utah Aug. 14, 2014).

III. ANALYSIS

The Complaint alleges that, at Swallow's request and direction, Johnson contributed approximately \$50,000 to the Lee Committee in the names of other persons.⁷ The Act provides that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for federal office that, for the 2010 election cycle, exceed \$2,400 in the aggregate. 52 U.S.C. §30116(a)(1)(A) (formerly 2 U.S.C.

⁷ We note that the Complaint also contains allegations regarding contributions to Shurtleff's U.S. Senate campaign. Because those contributions were beyond the statute of limitations, we do not address them.

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1 § 441a(a)(1)(A)); FEC, *Record* at 9 (Mar. 2009). Candidates and political committees also may
2 not accept contributions which exceed the statutory limitations. 52 U.S.C. § 30116(f) (formerly
3 2 U.S.C. § 441a(f)). The Act further provides that no person “shall make a contribution in the
4 name of another person.” 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f). That prohibition
5 extends to knowingly permitting one’s name to be used to effect the making of a contribution in
6 the name of another, or to knowingly helping or assisting any person in making a contribution in
7 the name of another. 11 C.F.R. § 110.4(b)(ii), (iii). The Commission has explained that
8 “knowingly helping or assisting” a false-name contribution would reach the conduct of “those
9 who initiate or instigate or have some significant participation in a plan or scheme to make a
10 contribution in the name of another.” Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed.
11 Reg. 34,098, 34,105 (Aug. 17, 1989).

12 The Act also prescribes additional monetary penalties for violations that are knowing and
13 willful. *See* 52 U.S.C. §§ 30109(a)(5)(B), 30109(d) (formerly 2 U.S.C. §§ 437g(a)(5)(B),
14 437g(d)). A violation of the Act is knowing and willful if the “acts were committed with full
15 knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122
16 Cong. Rec. 12,197, 12,199 (May 3, 1976). But this does not require proving knowledge of the
17 specific statute or regulation the respondent allegedly violated. *United States v. Danielczyk*, 917
18 F.Supp.2d 573 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23
19 (1998) (holding that, to establish a violation is willful, government needs to show only that
20 defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory
21 provision violated)). Instead, it is sufficient to demonstrate that a respondent “acted voluntarily
22 and was aware that his conduct was unlawful.” *Id.* (citing jury instructions in *United States v.*

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Edwards, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009),
United States v. Fieger, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69
(N.D. Fla. 2005)). This may be shown by circumstantial evidence from which the respondents'
unlawful intent reasonably may be inferred. *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th
Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).⁸ For example,
a person's awareness that an action is prohibited may be inferred from "the [person's] elaborate
scheme for disguising their . . . political contributions." *Id.* at 214-15.⁹

According to the sworn affidavit of Agent Nesbitt, Johnson admitted that he made
\$50,000 in contributions to the Lee Committee in the names of others in 2010. Nesbitt Aff.
¶ 117.¹⁰ Johnson's statements to Agent Nesbitt, though potentially motivated by a desire to
curry favor with the government, are corroborated by objective contemporaneous evidence as
well as information ascertained by the Lee Committee in the course of its subsequent internal
review.

First, as Johnson told Agent Nesbitt, contemporaneous e-mails show that Johnson,
Swallow, and the Lee Committee communicated about the fact that some of the conduits'
contribution checks bounced — a very specific detail. Swallow June 22 E-mail; Nesbitt Aff.
¶¶ 117, 119. Second, the Lee Committee's FEC disclosure reports also corroborate the fact that

⁸ *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁹ As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹⁰ Johnson's contributions in the names of others to the Lee Committee were preceded by \$100,000 that Johnson contributed in the names of others to Mark Shurtleff's Senate campaign before Shurtleff dropped his candidacy. Nesbitt Aff. ¶ 116. Johnson's contributions to Shurtleff are beyond the statute of limitations and we are therefore not making reason to believe findings as to those contributions.

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1 some contributors' checks bounced. Specifically, the reports show that contributions checks
2 purportedly from Arvin Black (disclosed as "A Lee Black"), Atia Black, and Matthew Black had
3 insufficient funds in their accounts for the checks to clear. *See* Friends of Mike Lee July 2010
4 Quarterly Report at 15, 121-122. *Third*, the bounced contribution checks included one from Atia
5 Black, a person who the Utah House Special Committee and the available information indicates
6 is a likely conduit for Johnson's contribution. Utah House Committee Special. Rpt. at 55 n. 39.
7 *Fourth*, the Utah Special Committee determined that Arvin, Atia, and Matthew Black were
8 associates of Johnson, providing further reason to believe that their contribution were connected
9 to the alleged reimbursement scheme. Utah House Committee Special. Rpt. at 55 n. 39. *Fifth*,
10 none of the 15 donors who were contacted to verify that they used their personal funds did so.
11 Indeed, the only person who responded to the Lee Committee confirmed that she was reimbursed
12 by "Mr. Black," *id.* ¶¶ 17-22, who appears to be Arvin Lee Black.

13 When taken together, these factors provide a reasonable basis to conclude that Johnson
14 reimbursed contributions to the Blacks and others, as Johnson himself stated to Nesbitt.
15 Additionally, according to Nesbitt's search warrant affidavit, Johnson resorted to reimbursing
16 contributions only when, with respect to earlier contributions to Shurtleff in the same cycle for
17 the same election, Swallow informed him that the legal contribution limit was \$2,500 and
18 directed him to circumvent that limit by reimbursing contributions made by other persons.
19 Nesbit Aff. ¶ 116.

20 As described above, Johnson informed Agent Nesbitt that Swallow solicited Johnson to
21 contribute \$50,000 to the Lee Committee in the names of others, after previously soliciting
22 Johnson to contribute \$100,000 to the campaign of Mark Shurtleff in the names of others. Nesbit

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1 Aff. ¶ 116. According to Johnson, Swallow instructed him that the contribution limit was \$2,500
2 and told Johnson that he should make his contributions in the names of others and reimburse
3 those individuals to circumvent the limit. *Id.* Swallow also appears to have acted as an
4 intermediary between the Lee Committee and Johnson, including notifying Johnson that four of
5 his conduits' checks bounced and forwarding to the Lee Committee Johnson's pledge to "fix" the
6 issue. Swallow June 22 E-mail.

7 Swallow's Response states that, although advised by counsel "to not substantively
8 respond to the allegations in the complaint" due to an "an open criminal proceeding in the State
9 of Utah" in which he is a defendant, he disputes the allegations in the Complaint. Swallow Resp.
10 at 1. He further addresses the Swallow June 22 E-mail, stating that "[t]here is no indication in
11 that correspondence to me, made contemporaneous with the donations, that [Johnson] had
12 provided the funds to" the donors whose checks bounced. *Id.* "If he did, I was unaware of it[.]"
13 *Id.* Swallow also noted, with respect to Johnson's earlier alleged contributions in the names of
14 others to Shurtleff, that Johnson indicated in an e-mail related to those contributions that the
15 "donors desired to meet Mr. Shurtleff personally to hand the contributions to him," which led
16 Swallow "to believe the donors were providing their own funds." *Id.* "Again, in that
17 contemporaneous correspondence, there is no indication that he had provided the funds to such
18 donors and I dispute the allegations." *Id.*

19 Swallow's unsworn contentions and denial are insufficient to rebut the allegations. Read
20 closely, Swallow's Response — even if true — states only that he was unaware *at the time of the*
21 *e-mail* that Johnson had already "provided the funds" to the four donors whose checks bounced.
22 And Swallow's statement is not necessarily at odds with the record: we know from the Lee

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Committee's response that at least one other individual, Arvin Black, may have provided funds for reimbursed contributions and two of the other conduits whose checks bounced, to which the e-mail referred, appear to be related to Arvin Black. Accordingly, it is possible that Johnson only indirectly reimbursed the contributions referenced in the e-mail. More importantly, Swallow offers no rebuttal or denial whatsoever to the key evidence cited in the Complaint — Johnson's statement to Agent Nesbitt that Swallow asked Johnson to make \$50,000 in contributions to the Lee Committee in the names of others and Johnson's admission that he had.

Thus, the available information indicates that Swallow violated the Act because he "initiate[d] or instigate[d] or ha[d] some significant participation in a plan or scheme to make a contribution in the name of another." Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989). Additionally, the Utah House Special Committee uncovered evidence that Swallow was experienced with the routing of contributions for state committees through intermediaries to conceal the identity of the true donors. Special Committee Rpt. at 76-90. And Swallow had specific knowledge of the Act's prohibition against contributing in the name of another: he testified as much under oath to the Commission in a prior MUR.¹¹

Accordingly, there is ample evidence that Swallow's alleged violations in this matter were committed with knowledge that they were unlawful. The Commission therefore finds reason to believe that John Swallow knowingly and willfully violated 52 U.S.C. §30116(f)

¹¹ The Commission previously investigated Swallow for making contributions in the names of others when he allegedly directed a donor to his Congressional campaign committee to make contributions to him by dispensing funds from a partnership account and attributing the checks to different partners. See General Counsel's Report #3, MUR 5333. In his deposition, Swallow indicated that he knew, and told the donor, that contributors must use their own funds. See General Counsel's Report #5 (OGC credited Swallow's account over that of the donor and the Commission took no further action as to Swallow).

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- 1 (formerly 2 U.S.C. § 441a(f)) and 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making
- 2 excessive contributions in the names of others to Friends of Mike Lee.

3

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Arvin Lee Black

I. INTRODUCTION

The Complaint alleges that Jeremy Johnson — at the request and direction of John Swallow, former Utah Attorney General — contributed \$50,000 in the names of others to Friends of Mike Lee (the “Lee Committee”) for Senator Lee’s June 2010 primary election. As a basis for the allegations, the Complaint relies on a Utah law enforcement agent’s search warrant affidavit, which recounts that Johnson admitted to making \$50,000 in reimbursed contributions to the Lee Committee at Swallow’s request, as they had done for a prior U.S. Senate candidate. The Complaint further alleges that Arvin Lee Black, Atia Black, and Matthew Black — reportedly associates of Mr. Johnson — allowed their names to be used for Johnson’s contributions.

A Special Investigation Committee of the Utah House of Representatives also identified the Blacks as three of Johnson’s potential conduits. The available information includes 15 potential contributors who may have been conduits for Johnson’s contributions. None of those donors would agree to certify that their contributions were made with their own funds, and one has stated that she had been reimbursed by “Mr. Black,” who the available evidence indicates is Arvin L. Black.

For the reasons described at greater length below, there is reason to believe that Arvin Black violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making contributions in the name of another.

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1 **II. FACTS**

2 **A. Swallow's and Johnson's \$50,000 Straw-Donor Contributions**

3
4 In 2009, Swallow served as the Chief Deputy to, and chief fundraiser for, then-Utah
5 Attorney General Mark Shurtleff. *See* Utah House of Representatives, Rpt. of the Special
6 Investigative Committee at 5 (Mar. 11, 2014) (available at [http://le.utah.gov/investigative/](http://le.utah.gov/investigative/final_report_simple.pdf)
7 [final_report_simple.pdf](http://le.utah.gov/investigative/final_report_simple.pdf)). In addition to serving as Utah Attorney General from January 2001 to
8 January 2013, Shurtleff was also a Senate candidate in 2009. Swallow met Johnson in
9 connection with Swallow's fundraising efforts for Shurtleff. Shurtleff withdrew from the Senate
10 race in November 2009. In early 2010, then-candidate Mike Lee entered the U.S. Senate race
11 and later won the general election the U.S. Senate. In 2012, Swallow ran as a candidate for and
12 was elected to the position of Utah Attorney General and began his tenure in January 2013.

13 During the course of the 2010 Utah Senate election cycle, Swallow and Johnson
14 apparently engaged in a scheme to use straw donors to contribute to Shurtleff's and Lee's
15 campaigns. According to a report of the Special Investigative Committee of the Utah House of
16 Representatives ("Special Committee"), "Swallow enlisted Mr. Johnson in an effort to raise
17 money for the U.S. Senatorial campaign of a political ally of Mr. Swallow's, now-Senator Mike
18 Lee," before the June 22, 2010, primary election in which Lee was participating. *Id.* at 55.
19 Further, Agent Scott Nesbitt of the Utah Department of Public Safety averred in a search warrant
20 affidavit that Johnson admitted to him that he made approximately \$50,000 in contributions to
21 Sen. Lee's campaign in the names of straw donors at Swallow's direction. *Aff. of Scott Nesbitt*
22 ¶ 116 (Feb. 12, 2014) (Compl. Ex. A).

23 This was not the first time that Swallow and Johnson arranged for Johnson to make
24 federal contributions in the names of others. Nesbitt's affidavit also recounts that Johnson first

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1 admitted that Swallow told Johnson that Shurtleff needed \$100,000 for his Senate race in 2009.
2 *Id.* ¶ 116. Johnson offered to contribute \$100,000 to Shurtleff. *Id.* Swallow informed Johnson
3 that contributions were limited to \$2,500, however, and “told [Johnson] that he could gift money
4 to other individual[s] who could then make a contribution.”¹ *Id.* In fact, Johnson told Nesbitt
5 that “he did donate money to Mark Shurtleff’s campaign in behalf of other individuals.” *Id.*

6 Later, “Swallow asked [Johnson] to do the same thing for Mike Lee’s campaign for
7 United States Senate, and he did so in the amount of about \$50,000.” *Id.* Johnson told Nesbitt
8 that “he gave money to other individuals who then wrote checks donating to either Mark
9 Shurtleff or Mike Lee’s campaign.” *Id.* ¶ 117. But “Swallow had some of the checks cashed so
10 quickly that they bounced because the money he (Jeremy Johnson) had given the donors to
11 donate had not been deposited yet.” *Id.*

12 In an e-mail chain dated June 21, 2010 — the day before the primary in which Lee would
13 be nominated — Swallow wrote to Johnson: “We are working hard and tomorrow is the big
14 day.” Special Committee Report, Appendix III, Ex. 22 [p. 918] (“Swallow June 22 E-mail”);
15 *see also* Nesbitt Aff. ¶¶ 117, 119 (describing this e-mail as one that Johnson provided to him).
16 Swallow also informed Johnson that “4 [o]f those checks bounced. I’ll forward you the names.”
17 *Id.* In reply, Johnson stated “I am really sorry about the checks. I will get it fixed ASAP! Let
18 me know whos [*sic*] bounced. I was in a mad rush to get those so maybe I pushed a few people
19 too hard.” *Id.*

20 Swallow forwarded his e-mail exchange with Johnson to “a member of the Lee campaign
21 staff,” Special Committee Report at 55, with the e-mail address “dan@mikelee2010.com.” That

¹ In the 2010 election cycle, the individual contribution limit was \$2,400. FEC, *Record* at 9 (Mar. 2009).

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e-mail address appears to belong to Dan Hauser,² the Deputy Campaign Manager and Finance Director of the Lee Committee in 2010. The Available information indicates that Hauser received information from Swallow that Johnson was interested in helping raise money for the Mike Lee campaign. Hauser had never met Johnson and therefore conducted his own independent research into Johnson before the Lee Committee agreed to allow Mr. Johnson to raise money for the Mike Lee campaign. After vetting Mr. Johnson as best it could, the Lee Committee agreed to accept Mr. Johnson's offer to raise funds. The Lee Committee received a number of checks from Southern Utah in June, 2010, and it was advised that these were the contributions solicited by Mr. Johnson.

The Special Committee attempted to identify the potentially reimbursed contributions. Based on the evidence that some of the straw donors' checks bounced, and other evidence such as the Lee Committee's Commission disclosure reports, the Special Committee concluded that three of the conduits were Arvin Lee Black, Atia Black, and Matthew Black, individuals that the Special Committee determined had ties to Mr. Johnson based on unspecified "court documents." Special Committee Report at 55 n.39; *see also* Report of Receiver's Financial Reconstruction at 6, 8, 12-15, 51-63, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464) (describing Arvin Lee Black's alleged role in concealing assets for Johnson in advance of an FTC action against Johnson and containing excerpts of a deposition of Black that the Receiver concluded "lacks any credibility").

² In press reports, Hauser appears to have confirmed that he was the recipient of that e-mail. *See* Robert Gehrke, *Complaint to Target Alleged Laundered Donations to Mike Lee*, SALT LAKE TRIB. (June 5, 2014), available at <http://m.sltrib.com/sltrib/mobile3/58032271-219/campaign-lee-johnson-swallow.html.csp> ("Hauser said he was included in the e-mail after the checks bounced for informational purposes.").

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1 The available information also includes that contributions made at the same time, in the
2 same bank deposit at a Southern Utah bank branch, by the same campaign volunteer as the
3 deposit that contained Mr. Johnson's contribution check also contained the contribution checks
4 of 17 donors (including Johnson) and two of those contribution checks were redeposited on June
5 22, 2010.³

6 The Lee Committee mailed these individuals a letter asking them to certify that they
7 contributed their own funds and were not reimbursed.⁴ No donors returned the certifications and
8 four letters were returned indicating that the donors moved without forwarding addresses.
9 However, one of the suspected conduits informed the Committee that "Mr. Black" was a person
10 for whom she had been working at the time of her contribution and that he had asked her to write
11 a check to the Lee Committee and reimbursed her contribution.⁵ Three of the donors on the Lee
12 Committee's list have also been identified as relatives of Johnson.⁶ Report of Receiver's

³ The June 12, 2014, deposit contained the contributions of seventeen individual donors but checks for two of the 17 donors did not clear. Accordingly, Johnson's statement to Agent Nesbitt and the evidence that four conduit checks bounced is consistent with the information that four checks bounced initially and two were later successfully redeposited, for a total of 15 disclosed contributions.

⁴ The list of 15 potentially reimbursed contributions includes Johnson, the alleged true donor, and Atia Black, but it does not include either Arvin or Matthew Black's contributions, which were identified by the Utah Special Committee as likely conduit contributions. (Matthew Black does not appear to live in Southern Utah and therefore his check may not have been included in the deposit with the other checks.)

⁵ It is probable that the conduit was referring to Arvin Black, reportedly one of Johnson's associates and one of the contributors to the Lee Committee identified by the Utah House Special Committee as a likely conduit. (The other potential male conduit with the same last name, Matthew Black, appears to have an address that is far from the town in which the donor appears to live, whereas Arvin Black appears to have lived much closer to the donor.) On December 20, 2013, Arvin Black was charged in the District Court for the District of Utah with wire fraud and money laundering in connection with a ponzi scheme he operated between 2007 and 2012 in which he victimized approximately 50 persons. Information, *United States v. Arvin Lee Black*, No. 2:13-cr-00836 (D. Utah Dec. 20, 2013). On January 10, 2014, Black pleaded guilty to both charges and on May 9, 2014, the Court sentenced him to 60 months of incarceration and ordered him to pay \$13,793,626.55 in restitution. According to the Bureau of Prisons, Black is presently incarcerated.

⁶ Sharla Johnson is identified as the Respondent's wife, *id.* at 8, and Kerry and Barbara Johnson (who asserted their 5th Amendment rights in their depositions) are identified as the Respondent's parents and allegedly facilitated concealment of his financial transactions. *Id.* at 8, 17-19.

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Financial Reconstruction at 8, 17-19, *FTC v. Jeremy Johnson, et al.*, No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464).

B. Swallow's and Johnson's Criminal Prosecutions

On July 3, 2013, six months after Swallow became Attorney General of Utah, the Utah House of Representatives established the Special Committee to investigate and report on allegations of misconduct involving Swallow and Johnson. Special Committee Report at 2. After interviewing 165 witnesses and analyzing tens of thousands of documents, the Special Committee issued its report on March 11, 2014, in which it concluded that "Swallow hung a veritable 'for sale' sign on the [Attorney General's] Office door that invited moneyed interests to seek special treatment and favors." *Id.* at 2.⁷

On July 14, 2014, Swallow and Shurtleff were arrested and charged with 23 counts in connection with these alleged activities. Robert Gehrke, *Swallow, Shurtleff Arrested, Face 23 Counts, Up To 30 years Prison*, SALT LAKE TRIB. (updated July 20, 2014), available at <http://www.sltrib.com/sltrib/news/58185969-78/swallow-shurtleff-utah-general.html.csp>.

As for Johnson, the Federal Trade Commission filed a Complaint in the District Court for the District of Nevada on December 21, 2010, and a Motion for Preliminary Injunction on January 12, 2011, alleging that Johnson, nine other individuals, and 61 corporations acted as a common enterprise to conduct an unlawful internet-based scheme that deceptively induced customers to purchase unwanted products and services. Johnson's alleged scheme generated more than \$275

⁷ The Special Committee's investigation also revealed that "a significant amount of Mr. Swallow's email" and "a large quantity of other data and data devices belonging to Mr. Swallow had also gone missing." *Id.* at 3. In addition to concerns that this information and device loss was "intentional," the Special Committee "came to understand that certain documents presented by Mr. Swallow in response to a Committee subpoena were fabricated well after the events they purported to record." *Id.* The Special Committee concluded "that Mr. Swallow intentionally endeavored to obstruct inquiry into his conduct." *Id.* Mr. Swallow refused to talk with the Special Committee despite its request to do so. *Id.*

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1 million in revenue and approximately \$48 million in operating profits paid to Johnson. Compl.
2 at 6-9, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Dec. 21, 2010); FTC Mot.
3 Prelim. Inj. at 1-3, *FTC v. Johnson*, No. 10-cv-2203 (D. Nev. Jan. 12, 2011). The District Court
4 entered a Preliminary Injunction on February 10, 2011, and ordered a receiver to take possession
5 of the named corporate defendants and Johnson's assets. Prelim. Inj. Ord., *FTC v. Johnson*, No.
6 10-cv-2203 (D. Nev. Feb. 10, 2011). Johnson was arrested in June 2011 on a single count of
7 mail fraud in connection with the scheme and subsequently indicted on a further 86 charges on
8 March 3, 2013, by a grand jury in the District of Utah. His trial is set for March 2, 2015. Order
9 Setting Trial Date and Excluding Time from Speedy Trial Act Calculation at 2, *United States v.*
10 *Jeremy Johnson*, No. 2:11-cr-501 (D. Utah Aug. 14, 2014).

11 **III. ANALYSIS**

12 The Complaint alleges that, at Swallow's request and direction, Johnson contributed
13 approximately \$50,000 to the Lee Committee in the names of other persons.⁸ The Act provides
14 that no person shall make contributions to any candidate and his or her authorized political
15 committees with respect to any election for federal office that, for the 2010 election cycle,
16 exceed \$2,400 in the aggregate. 52 U.S.C. §30116(a)(1)(A) (formerly 2 U.S.C.
17 § 441a(a)(1)(A)); FEC, *Record* at 9 (Mar. 2009). Candidates and political committees also may
18 not accept contributions which exceed the statutory limitations. 52 U.S.C. §30116(f) (formerly
19 2 U.S.C. § 441a(f)). The Act further provides that no person "shall make a contribution in the
20 name of another person." 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f). That prohibition
21 extends to knowingly permitting one's name to be used to effect the making of a contribution in
22 the name of another, or to knowingly helping or assisting any person in making a contribution in

⁸ We note that the Complaint also contains allegations regarding contributions to Shurtleff's U.S. Senate campaign. Because those contributions were beyond the statute of limitations, we do not address them.

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the name of another. 11 C.F.R. § 110.4(b)(ii), (iii). The Commission has explained that “knowingly helping or assisting” a false-name contribution would reach the conduct of “those who initiate or instigate or have some significant participation in a plan or scheme to make a contribution in the name of another.” Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

The Act also prescribes additional monetary penalties for violations that are knowing and willful. *See* 52 U.S.C. §§ 30109(a)(5)(B), 30109(d) (formerly 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)). A violation of the Act is knowing and willful if the “acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. 12,197, 12,199 (May 3, 1976). But this does not require proving knowledge of the specific statute or regulation the respondent allegedly violated. *United States v. Danielczyk*, 917 F.Supp.2d 573 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)). Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was aware that his conduct was unlawful.” *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)). This may be shown by circumstantial evidence from which the respondents’ unlawful intent reasonably may be inferred. *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)).⁹ For example,

⁹ *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

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a person's awareness that an action is prohibited may be inferred from "the [person's] elaborate scheme for disguising their . . . political contributions." *Id.* at 214-15.¹⁰

According to the sworn affidavit of Agent Nesbitt, Johnson admitted that he made \$50,000 in contributions to the Lee Committee in the names of others in 2010. Nesbitt Aff. ¶ 117.¹¹ Johnson's statements to Agent Nesbitt, though potentially motivated by a desire to curry favor with the government, are corroborated by objective contemporaneous evidence as well as information ascertained by the Lee Committee in the course of its subsequent internal review.

First, as Johnson told Agent Nesbitt, contemporaneous e-mails show that Johnson, Swallow, and the Lee Committee communicated about the fact that some of the conduits' contribution checks bounced — a very specific detail. Swallow June 22 E-mail; Nesbitt Aff. ¶¶ 117, 119. *Second*, the Lee Committee's FEC disclosure reports also corroborate the fact that some contributors' checks bounced. Specifically, the reports show that contributions checks purportedly from Arvin Black (disclosed as "A Lee Black"), Atia Black, and Matthew Black had insufficient funds in their accounts for the checks to clear. *See* Friends of Mike Lee July 2010 Quarterly Report at 15, 121-122. *Third*, the bounced contribution checks included one from Atia Black, a person who the Utah House Special Committee and the available information indicates is a likely conduit for Johnson's contribution. Utah House Committee Special. Rpt. at 55 n. 39. *Fourth*, the Utah Special Committee determined that Arvin, Atia, and Matthew Black were

¹⁰ As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

¹¹ Johnson's contributions in the names of others to the Lee Committee were preceded by \$100,000 that Johnson contributed in the names of others to Mark Shurtleff's Senate campaign before Shurtleff dropped his candidacy. Nesbitt Aff. ¶ 116. Johnson's contributions to Shurtleff are beyond the statute of limitations and we are therefore not making reason to believe findings as to those contributions.

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1 associates of Johnson, providing further reason to believe that their contribution were connected
2 to the alleged reimbursement scheme. Utah House Committee Special. Rpt. at 55 n. 39. *Fifth*,
3 none of the 15 donors that the Lee Committee sought verification from certified that they used
4 their personal funds. Indeed, the only person who responded to the Lee Committee confirmed
5 that she was reimbursed by “Mr. Black,” *id.* ¶¶ 17-22, who appears to be Arvin Lee Black.

6 When taken together, these factors provide a reasonable basis to conclude that Johnson
7 reimbursed contributions to the Blacks and others, as Johnson himself stated to Nesbitt. Arvin
8 Black appears to have been a conduit for Johnson’s contributions to the Lee Committee. Compl.
9 at 2; Special Committee Rpt. at 55 n.39. Black also reportedly has ties to Johnson. *Id.*; Report
10 of Receiver’s Financial Reconstruction at 6, 8, 12-15, 51-63, *FTC v. Jeremy Johnson*, et al., No.
11 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF No. 464). Black appears, however, to have served as
12 more than a passive conduit. An apparent conduit who lives near Arvin Black in Southern Utah
13 and indicated that in 2010 she worked for him stated that “Mr. Black” solicited and reimbursed
14 her contribution to the Lee Committee.¹²

15 The present record therefore provides reason to believe that Arvin Black allowed his
16 name to be used for Johnson’s contribution, and reimbursed at least one person’s contribution to
17 the Lee Committee. The Commission therefore finds reason to believe that Arvin Lee Black
18 violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).¹³

¹² Black submitted no response to the Complaint. Our July 23, 2014 notification letter to Black was not returned and we assume it was effective. On October 3, 2014, we also mailed a courtesy copy of the notification to Black at his prison address. If we receive a response from Black, we will promptly notify the Commission.

¹³ Based on the state of the current record, which does not include information about Black’s knowledge or ignorance of the lawfulness of his alleged actions, we are not finding that Black violated the Act knowingly and willfully.