



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY EXPRESS DELIVERY

DEC 22 2014

John Swallow

Sandy, UT 84094

RE: MUR 6850
John Swallow

Dear Mr. Swallow:

On July 3, 2014, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on November 18, 2014, found that there is reason to believe you violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. Also enclosed is a Deposition Subpoena for you to appear for a deposition to be taken on January 29, 2015, at the Commission's offices in Washington, D.C. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoenas. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Michael Columbo, the attorney assigned to this matter, at (202) 694-1341.

On behalf of the Commission,


Lee Goodman, Chair

Enclosures

Order and Subpoenas

Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
John Swallow)	MUR 6850
)	

**DEPOSITION SUBPOENA, SUBPOENA TO PRODUCE DOCUMENTS, AND
ORDER TO SUBMIT WRITTEN ANSWERS**

TO: John Swallow

Pursuant to 52 U.S.C. § 30107(a)(3) (formerly 2 U.S.C. § 437d(a)(3)), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to allegedly reimbursed contributions to the Friends of Mike Lee committee in June 2010. Notice is hereby given that the deposition is to be taken on January 29, 2015, in Room 623 of the Office of the General Counsel, Federal Election Commission, 999 E Street, NW, Washington, DC 20463, beginning at 10:00 a.m. and continuing each day thereafter as necessary.


Further, pursuant to 52 U.S.C. § 30107(a)(1) and (3) (formerly 2 U.S.C. § 437d(a)(1) and (3)), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

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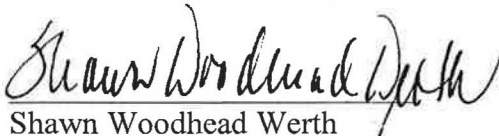
WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 19th day of December, 2014.

On behalf of the Commission,



Lee Goodman
Chair

ATTEST:



Shawn Woodhead Werth
Secretary and Clerk of the Commission

Attachment

Questions and Document Request (5 pages)

INSTRUCTIONS

In answering these written questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the written response.

If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following questions and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following questions and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

“You” shall mean the person to whom these discovery requests are addressed, including your agents and attorneys.

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“Persons” shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

“Document” shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

“Identify” with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

“Identify” with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

“And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of these questions and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

QUESTIONS AND DOCUMENT REQUEST

The Federal Election Commission is investigating an allegation that you asked Jeremy Johnson to make a \$50,000 contribution to Friends of Mike Lee (“Lee Committee”) in June 2010 and advised him to evade the Federal Election Campaign Act’s (the “Act”) contribution limits by concealing his contribution by funding contributions made in the names of others, as you had allegedly previously advised Johnson to do with respect to Mark Shurtleff’s 2009 Senate campaign.

I. QUESTIONS:

Please submit answers to the following questions:

1. What was your relationship or position, if any, with the Friends of Mike Lee committee in advance of the June 2010 primary election?

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2. Did you ask Jeremy Johnson to make a contribution to Friends of Mike Lee in advance of the June 2010 primary election?

If so:

- a. Why did you make this request?
- b. Who, if anyone, asked you to make this request?
- c. When did you make this request?
- d. Where did you make this request?
- e. How (in person, by phone, etc.) did you make this request?
- f. Identify any other persons who were present or became aware that you made this request.
- g. How much did you ask him to contribute?
- h. Did you ask, direct, suggest, or imply that Johnson should make his contribution in the names of others by, for example, funding or reimbursing other persons' contributions, to avoid the Act's contribution limits, or for any other reason?

3. Did you ever become aware that Johnson had made contributions to the Lee Committee and, if so, how?

4. Did you ever become aware that Johnson had solicited contributions to the Lee Committee and, if so, how?

5. Did you ever become aware that Johnson had funded or reimbursed contributions to the Lee Committee made in the names of others and, if so, how?

6. A June 21, 2010 email chain involving you, Johnson, and Dan Hauser, the Deputy Campaign Manager and Finance Director of the Lee Committee in 2010, indicates that you became aware that contribution checks to the Lee Committee submitted by persons associated with Johnson had been declined for insufficient funds, that you brought this to Johnson's attention, that you forwarded Johnson's pledge to "get it fixed" to Hauser, and that Johnson asked you to identify the contributors whose checks bounced.

- a. Who informed you that certain checks associated with Johnson had bounced?
- b. When did you receive that information?
- c. How did you receive that information?
- d. Did you share this information with anyone?
- e. Do you know if the Lee Committee associated particular contributions made by others with Johnson?

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If so,

- i. Do you know the basis on which they did so?
 - ii. Please list any such associated contributions you are aware of.
- f. Did you provide Johnson with the names of the persons whose checks bounced?

If so:

- i. When did you provide that information to Johnson?
 - ii. How did you provide that information to Johnson?
- i. What did you expect Johnson to do to "get it fixed"?
 - j. What did Johnson tell you he would do to "fix" the bounced checks?
7. Regarding any contributions to the Lee Committee in the names of persons other than Johnson that Johnson funded:
- a. Identify the persons to whom Johnson provided funds or something of value in exchange for their contributions to the Lee Committee.
 - b. For each:
 - i. What did Johnson give them?
 - ii. How did he give it to them?
 - iii. When did he give it to them?
 - c. Describe any meetings, discussions, phone calls, emails, other communications, checks, payments, and funds exchanged to accomplish Johnson's making of contributions in the names of others.
 - d. Identify all other persons who assisted Johnson with the making of contributions in the names of others.
8. Before June 30, 2014, when the Complaint in this matter was filed, who, if anyone associated with the Lee Committee was aware that Johnson had reimbursed contributions to the Lee Committee?
9. List the dates, manner of communication, person with whom you communicated, and a summary of the communication for any instances in which you communicated with the Lee Committee or anyone associated with it or acting on its behalf regarding the allegation that Johnson reimbursed contributions to the Lee Committee.

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10. List the dates, manner of communication, and a summary of the communication for any instances in which you communicated with Johnson or anyone associated with him or acting on its behalf regarding the allegation that Johnson reimbursed contributions to the Lee Committee.

11. At the time you solicited Johnson to make a contribution to the Lee Committee, were you aware that it is unlawful for any person to make contributions to a political committee in the name of another?

Required Oath or Affirmation:

Please submit the following oath or affirmation with your answers to the above questions, followed by your signature: "I swear or affirm under penalty of law that that my answers to these questions are true."

II. DOCUMENT REQUEST:

Please submit with your answers all documents related to the contributions discussed above, including but not limited to all letters, notes, emails, texts, or any communications related to the contributions or reimbursements as well as all bank statements, checks, deposit slips, or receipts showing the reimbursement of your contribution.

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

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

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 for 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.

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

1 Sen. Lee's campaign in the names of straw donors at Swallow's direction. Aff. of Scott Nesbitt
2 ¶ 116 (Feb. 12, 2014) (Compl. Ex. A).

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

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

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

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

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1 me know whos [*sic*] bounced. I was in a mad rush to get those so maybe I pushed a few people
2 too hard.” *Id.*

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

14 The Special Committee attempted to identify the potentially reimbursed contributions.
15 Based on the evidence that some of the straw donors’ checks bounced, and other evidence such
16 as the Lee Committee’s Commission disclosure reports, the Special Committee concluded that
17 three of the conduits were Arvin Lee Black, Atia Black, and Matthew Black, individuals that the
18 Special Committee determined had ties to Mr. Johnson based on unspecified “court documents.”
19 Special Committee Report at 55 n.39; *see also* Report of Receiver’s Financial Reconstruction at
20 6, 8, 12-15, 51-63, *FTC v. Jeremy Johnson*, et al., No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF
21 Docket No. 464) (describing Arvin Lee Black’s alleged role in concealing assets for Johnson in
22 advance of an FTC action against Johnson and containing excerpts of a deposition of Black that
23 the Receiver concluded “lacks any credibility”).

1 The Commission has information that contributions made at the same time, in the same
2 bank deposit at a Southern Utah bank branch, and by the same campaign volunteer as the deposit
3 that contained Mr. Johnson's contribution check also contained the contribution checks of 17
4 donors (including Johnson) and two of those contribution checks were redeposited on June 22,
5 2010.²

6 The Commission also has information that donors were asked to certify that they
7 contributed their own funds and were not reimbursed. 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 stated that "Mr. Black" was a person for whom she had
10 been working at the time of her contribution and that he had asked her to write a check to the Lee
11 Committee and reimbursed her contribution.³ Three of the donors have also been identified as
12 relatives of Johnson.⁴ Report of Receiver's Financial Reconstruction at 8, 17-19, *FTC v. Jeremy*
13 *Johnson, et al.*, No. 10-cv-2203 (D. Nev. Jan. 31, 2012) (ECF Docket No. 464).

² The June 12, 2014, deposit contained the contributions of seventeen individual donors but checks for two of the seventeen 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.)

³ 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.

⁴ Sharla Johnson is identified as the Respondent's wife, *id.* at 8, and Kerry and Barbara Johnson (who asserted their Fifth 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 2.⁵

On July 14, 2014, Swallow and Shurtleff were arrested and charged with 23 counts in connection with these alleged activities.

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.

⁵ 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.*

1 10-cv-2203 (D. Nev. Feb. 10, 2011). Johnson was arrested in June 2011 on a single count of
2 mail fraud in connection with the scheme and subsequently indicted on a further 86 charges on
3 March 3, 2013, by a grand jury in the District of Utah. His trial is set for March 2, 2015. Order
4 Setting Trial Date and Excluding Time from Speedy Trial Act Calculation at 2, *United States v.*
5 *Jeremy Johnson*, No. 2:11-cr-501 (D. Utah Aug. 14, 2014).

6 **III. ANALYSIS**

7 The Complaint alleges that, at Swallow's request and direction, Johnson contributed
8 approximately \$50,000 to the Lee Committee in the names of other persons.⁶ The Act provides
9 that no person shall make contributions to any candidate and his or her authorized political
10 committees with respect to any election for federal office that, for the 2010 election cycle,
11 exceed \$2,400 in the aggregate. 52 U.S.C. §30116(a)(1)(A) (formerly 2 U.S.C.
12 § 441a(a)(1)(A)); FEC, *Record* at 9 (Mar. 2009). Candidates and political committees also may
13 not accept contributions that exceed the statutory limitations. 52 U.S.C. §30116(f) (formerly
14 2 U.S.C. § 441a(f)). The Act further provides that no person "shall make a contribution in the
15 name of another person." 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f). That prohibition
16 extends to knowingly permitting one's name to be used to effect the making of a contribution in
17 the name of another, or to knowingly helping or assisting any person in making a contribution in
18 the name of another. 11 C.F.R. § 110.4(b)(ii), (iii). The Commission has explained that
19 "knowingly helping or assisting" a false-name contribution would reach the conduct of "those
20 who initiate or instigate or have some significant participation in a plan or scheme to make a
21 contribution in the name of another." Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed.
22 Reg. 34,098, 34,105 (Aug. 17, 1989).

⁶ 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.

1 According to the sworn affidavit of Agent Nesbitt, Johnson admitted that he made
2 \$50,000 in contributions to the Lee Committee in the names of others in 2010. Nesbitt Aff.
3 ¶ 117.⁷ Johnson's statements to Agent Nesbitt, though potentially motivated by a desire to curry
4 favor with the government, are corroborated by objective contemporaneous evidence as well as
5 information ascertained by the Lee Committee in the course of its subsequent internal review.

6 *First*, as Johnson told Agent Nesbitt, contemporaneous e-mails show that Johnson,
7 Swallow, and the Lee Committee communicated about the fact that some of the conduits'
8 contribution checks bounced — a very specific detail. Swallow June 22 E-mail; Nesbitt Aff
9 ¶¶ 117, 119. *Second*, the Lee Committee's FEC disclosure reports also corroborate the fact that
10 some contributors' checks bounced. Specifically, the reports show that contributions checks
11 purportedly from Arvin Black (disclosed as "A Lee Black"), Atia Black, and Matthew Black
12 were drawn on accounts that had insufficient funds for the checks to clear. *See* Friends of Mike
13 Lee July 2010 Quarterly Report at 15, 121-122. *Third*, the bounced contribution checks included
14 one from Atia Black, a person who the Utah House Special Committee and the available
15 information indicates is a likely conduit for Johnson's contribution. Utah House Committee
16 Special. Rpt. at 55 n. 39. *Fourth*, the Utah Special Committee determined that Arvin, Atia, and
17 Matthew Black were associates of Johnson, providing further reason to believe that their
18 contributions were connected to the alleged reimbursement scheme. Utah House Committee
19 Special. Rpt. at 55 n. 39. *Fifth*, none of the 15 donors who were contacted to verify that they
20 used their personal funds did so. Indeed, the only person who responded to the Lee Committee

⁷ 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.

1 confirmed that she was reimbursed by “Mr. Black,” *id.* ¶¶ 17-22, who appears to be Arvin Lee
2 Black.

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

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

19 Swallow’s Response states that, although advised by counsel “to not substantively
20 respond to the allegations in the complaint” due to an “an open criminal proceeding in the State
21 of Utah” in which he is a defendant, he disputes the allegations in the Complaint. Swallow Resp.
22 at 1. He further addresses the Swallow June 22 E-mail, stating that “[t]here is no indication in
23 that correspondence to me, made contemporaneous with the donations, that [Johnson] had

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1 provided the funds to” the donors whose checks bounced. *Id.* “If he did, I was unaware of it[.]”
2 *Id.* Swallow also noted, with respect to Johnson’s earlier alleged contributions in the names of
3 others to Shurtleff, that Johnson indicated in an e-mail related to those contributions that the
4 “donors desired to meet Mr. Shurtleff personally to hand the contributions to him,” which led
5 Swallow “to believe the donors were providing their own funds.” *Id.* “Again, in that
6 contemporaneous correspondence, there is no indication that he had provided the funds to such
7 donors and I dispute the allegations.” *Id.*

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

19 Thus, the available information indicates that Swallow violated the Act because he
20 “initiate[d] or instigate[d] or ha[d] some significant participation in a plan or scheme to make a
21 contribution in the name of another.” Explanation & Justification for 11 C.F.R. § 110.4, 54 Fed.
22 Reg. 34,098, 34,105 (Aug. 17, 1989). The Commission therefore finds reason to believe that
23 John Swallow violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) and 52 U.S.C.

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

Furthermore, the information presented also raises the question of whether any such violations were knowing and willful.⁸ 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 because he testified as much under oath to the Commission in a prior MUR, it is plausible that Swallow had specific knowledge of the Act's prohibition against contributing in the name of another.⁹ Should the Commission ultimately conclude that any violation of the Act was done knowingly and willfully, the Act permits the Commission to require the payment of heightened monetary penalties for that violation of law. *See* 52 U.S.C. §§ 30109(a)(5)(B), 30109(d) (formerly 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)).

⁸ 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)). 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 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).