



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY EXPRESS DELIVERY

DEC 22 2014

Arvin Lee Black
Register Number: 20617-081
Florence ADMAX USP
5880 HWY 67 SOUTH
FLORENCE, CO 81226

RE: MUR 6850
Arvin Lee Black

Dear Mr. Black:

On July 3 and October 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, 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 21, 2015, at Florence ADMAX U.S. Prison in Florence, Co. 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.

MUR 6850 (Arvin Black)

Page 2

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,

A handwritten signature in black ink, appearing to read "Lee Goodman", written over a horizontal line.

Lee Goodman, Chair

Enclosures

Order and Subpoenas

Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Arvin L. Black

)

)

)

MUR 6850

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

TO: Arvin L. Black

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 21, 2015, at USP Florence ADMAX, 5880 Hwy 67 South, Florence, CO 81226 beginning at 10:00 a.m. and continuing each day thereafter as necessary.

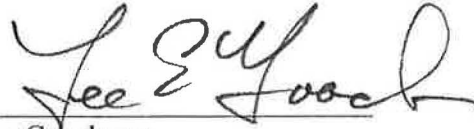
Further, pursuant to 52 U.S.C. § 30107(a)(1) and (3) (formerly 2 U.S.C. § 437d(a)(1) and (3)), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to 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.

MUR 6850
Arvin L. Black
Page 2

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,

A handwritten signature in black ink, appearing to read "Lee Goodman", written over a horizontal line.

Lee Goodman
Chair

ATTEST:

A handwritten signature in black ink, appearing to read "Shawn Woodhead Werth", written over a horizontal line.

Shawn Woodhead Werth
Secretary and Clerk of the Commission

Attachment

Questions and Document Request (4 pages)

MUR 6850
Arvin L. Black
Page 3

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.

MUR 6850
Arvin L. Black
Page 4

“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 concealed June 2010 contributions to Friends of Mike Lee (“Lee Committee”) by funding contributions made by others in their names and that your disclosed contribution to the Lee Committee was not made with your personal funds.

I. QUESTIONS:

Please submit answers to the following questions:

1. Was your contribution made with your own personal funds?
2. Did anyone provide you with funds or anything of value, for example, an advance, bonus, gift, or reimbursement, for your contribution to the Lee Committee?

MUR 6850
Arvin L. Black
Page 5

If so:

- a. Who provided it and what is your relationship with that person?
- b. What were you given?
- c. How was it provided to you?
- d. When was it provided to you?
- e. Who was the ultimate source of the funds, if not that person?
- f. Describe the circumstances under which you were offered payment for the contribution and how it was accomplished, including all other persons involved, and any meetings, discussions, phone calls, emails, other communications, checks, payments, and funds exchanged.
- g. Who else knows about the reimbursement of your contribution?
- h. What was the purpose of reimbursing your contribution to the Lee Committee?
- i. At the time you were reimbursed, were you aware that it is unlawful for any person to allow their name to be used for the making of a contribution by another person to a political committee?

3. Did you provide anyone with funds or anything of value, for example, an advance, bonus, gift, or reimbursement, for making a contribution to the Lee Committee in their name?

If so:

- a. To whom did you provide funds or something of value?
- b. What did you give them?
- c. How did you give it to them?
- d. When did you give it to them?
- e. Why did you give it to them?
- f. Were you the only source of the funds, or did another person provide you with the funds that you gave to the named contributors?
- g. What is your relationship with the person(s) whose contributions you funded?
- h. Describe the circumstances under which you provided payment for the contributions and how it was accomplished, including all other persons involved, and any meetings, discussions, phone calls, emails, other communications, checks, payments, and funds exchanged.
- i. Who else knows about the reimbursement of these contributions?
- j. What was the purpose of reimbursing these contribution to the Lee Committee?
- k. Who, if anyone, asked you to reimburse contributions to the Lee Committee?
- l. When were you asked to reimburse contributions to the Lee Committee?
- m. How were you asked to reimburse contributions to the Lee Committee?
- n. At the time you reimbursed any such contributions, were you aware that it is unlawful for any person to make a contribution to a political committee in the name of another, including by reimbursing contributions?

5. What is your relationship to Atia Black?

6. Did another person provide Atia Black with the funds for her contribution to the Lee Committee or reimburse her contribution and, if so, who?

MUR 6850
Arvin L. Black
Page 6

7. What is your relationship to Matthew Black?
8. Did another person provide Matthew Black with the funds for his contribution to the Lee Committee or reimburse his contribution and, if so, who?

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 any reimbursement of the contributions you identified above, including but not limited to all letters, notes, emails, texts, or any communications related to the contribution or reimbursement as well as all bank statements, deposit slips, or receipts showing the reimbursement of your contribution.

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.

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 for the U.S. Senate. In 2012, Swallow ran as a candidate for
12 and 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

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”); *see*
15 *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
22 e-mail address appears to belong to Dan Hauser, the Deputy Campaign Manager and Finance

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

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

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

19 The Commission has information that contributions made at the same time, in the same
20 bank deposit at a Southern Utah bank branch, and by the same campaign volunteer as the deposit
21 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, 2010.²

The Lee Committee mailed these individuals a letter asking them to certify that they contributed their own funds and were not reimbursed.³ No donors returned the certifications and four letters were returned indicating that the donors moved without forwarding addresses. However, one of the suspected conduits informed the Committee 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 on the Lee Committee’s list 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 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.

³ 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 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 2.⁶

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.

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.*

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.⁷ 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).

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.

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

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

⁸ 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.

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

When taken together, these factors provide a reasonable basis to conclude that Johnson reimbursed contributions to the Blacks and others, as Johnson himself stated to Nesbitt. Arvin Black appears to have been a conduit for Johnson’s contributions to the Lee Committee. Compl. at 2; Special Committee Rpt. at 55 n.39. Black also reportedly has ties to Johnson. *Id.*; 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). Black appears, however, to have served as more than a passive conduit. An apparent conduit who lives near Arvin Black in Southern Utah and who indicated she worked for him in 2010 stated that “Mr. Black” solicited and reimbursed her contribution to the Lee Committee.⁹

The present record therefore provides reason to believe that Arvin Lee Black allowed his name to be used for Johnson’s contribution, and reimbursed at least one person’s contribution to the Lee Committee. The Commission therefore finds reason to believe that Arvin Lee Black violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).¹⁰

⁹ 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.

¹⁰ The Act permits the Commission to require the payment of a heightened monetary penalty for a violation the Commission finds to have been done knowingly and willfully. *See* 52 U.S.C. §§ 30109(a)(5)(B), 30109(d) (formerly 2 U.S.C. §§ 437g(a)(5)(B), 437g(d)). Violations of the Act are 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). The current record in this matter does not include information about Arvin Lee Black’s knowledge or ignorance of the lawfulness of his alleged actions and thus would not support a finding that he knowingly and willfully violated the Act.