

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7272
COMPLAINT FILED: 08/14/2017
NOTIFICATIONS: 08/21/2017; 08/22/2017
LAST RESPONSE RECEIVED: 11/17/2017
DATE ACTIVATED: 05/11/2018

ELECTION CYCLE: 2014
EXPIRATION OF SOL: 03/08/2018 – 07/16/2019

COMPLAINANTS:

J. Whitfield Larrabee
Thomas Giles
Stephanie Barnard
Carole Elizabeth Levers

RESPONDENTS:

Party of Regions
European Centre for a Modern Ukraine
Ina Kirsch
Rep. Steve Chabot
Dana T. Rohrabacher
Edward R. Royce
Sen. James E. Risch
Steve Chabot for Congress and James Schwartz,
Sr. in his official capacity as treasurer
Rohrabacher for Congress and Jen Slater in her
official capacity as treasurer
Royce Campaign Committee and Kelly Lawler in
her official capacity as treasurer
Jim Risch for U.S. Senate Committee and R. John
Insinger in his official capacity as treasurer
DMP International, LLC
Davis, Manafort and Freedman
Mercury Public Affairs, LLC
Mercury, LLC
Paul J. Manafort, Jr.
John V. Weber
Edward S. Kutler
Michael McSherry
Deirdre Stach
Gregory M. Lankler

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30121
52 U.S.C. § 30122

100474707-0000

1 11 C.F.R. § 110.4
2 11 C.F.R. § 110.20
3

4 **INTERNAL REPORTS CHECKED:** Disclosure Reports
5

6 **FEDERAL AGENCIES CHECKED:**
7

8 **I. INTRODUCTION**

9 The Complaint alleges that Paul J. Manafort, Jr. orchestrated a scheme to illegally funnel
10 foreign national contributions to federal candidates using American lobbyists as intermediaries in
11 violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The foreign
12 nationals alleged to have made the prohibited contributions include the Party of Regions, a
13 political party in Ukraine, and the European Centre for a Modern Ukraine ("ECFMU"), a
14 Belgian front organization purportedly formed by a member of the Party of Regions. The
15 allegations rely on the timing and circumstances of the contributions to infer the existence of a
16 scheme, such as contributions that were made close in time to meetings the lobbyists had with
17 the recipient candidates and contributions that were made by multiple lobbyists on or about the
18 same dates. Further, the Complaint relies upon information that the lobbyists allegedly failed to
19 register with the U.S. Department of Justice ("DOJ") as foreign agents until several years after
20 the lobbying campaign had ended.

21 One of the lobbying firms, Mercury,¹ along with the firm's individual lobbyists, filed a
22 joint response, in which they deny the allegations, arguing that the Complaint contains no facts
23 indicating that the foreign nationals provided Mercury or the individual Mercury lobbyists with

¹ "Mercury" is a political consulting and lobbying firm that consists of two entities, Mercury, LLC and Mercury Public Affairs, LLC. We refer to them collectively as "Mercury."

1 funds intended to reimburse contributions.² The Response asserts that “government relations
2 professionals are fully permitted to make political contributions — even to committees of those
3 who might be of some interest to their employer or its clients.”³ The individual Mercury
4 lobbyists provided signed declarations attesting that they were not reimbursed for making the
5 contributions at issue.⁴ The candidates each filed joint responses with their committees, denying
6 the allegations and arguing that the Complaint fails to present any facts that should have put
7 them on notice that the contributions may have originated from a foreign source.⁵

8 Although the activities at issue may have resulted in potential violations of statutes
9 outside the Commission’s jurisdiction, as reflected in the indictments brought by the Special
10 Counsel for the DOJ as well as the resulting criminal convictions and plea agreements,⁶ the
11 available information, on balance, does not give rise to a reasonable inference that any of the
12 foreign nationals identified in the Complaint provided the Respondent lobbyists with funds for
13 the purpose of making contributions in violation of federal campaign finance law. The

² Mercury Joint Resp. at 6 (Oct. 6, 2017).

³ *Id.* at 2.

⁴ *E.g.*, Decl. of John “Vin” Weber ¶¶ 3-4 (Oct. 4, 2017) (attached to Mercury Joint Resp.).

⁵ Risch Joint Resp. at 1 (Sept. 5, 2017); Rohrabacher Joint Resp. at 2 (Sept. 7, 2017); Royce Joint Resp. at 2 (Sept. 21, 2017); Chabot Joint Resp. at 1, 3 (Nov. 17, 2017).

We note that the Party of Regions, ECFMU, Ina Kirsch, Manafort, DMP International, LLC, and Davis, Manafort and Freedman have not filed responses.

⁶ *See, e.g.*, Indictment, *United States v. Paul J. Manafort, Jr. and Richard W. Gates III*, 1:17-cr-00201 (D.D.C. Oct. 30, 2017); Superseding Indictment, *United States v. Manafort and Konstantin Kilimnik*, 1:17-cr-00201 (D.D.C. June 08, 2018) (most recent version). The Special Counsel subsequently filed a second, related indictment in the District Court for the Eastern District of Virginia. Superseding Indictment, *United States v. Manafort and Gates*, 1:18-cr-00083 (E.D. Va. Feb. 22, 2018).

In this Report, we primarily cite to filings brought by the Special Counsel in the District Court for the District of Columbia: Plea Agreement, *United States v. Manafort*, 1:17-cr-00201 (D.D.C. Sept. 14, 2018) (“Plea Agreement”); Superseding Criminal Information, *United States v. Manafort*, 1:17-cr-00201 (D.D.C. Sept. 14, 2018) (“Superseding Criminal Information”) (basis of guilty plea, listing elements of the charges); Statement of the Offenses and Other Acts, *United States v. Manafort*, 1:17-cr-00201 (D.D.C. Sept. 14, 2018) (“Statement of the Offense”) (document which Manafort agreed “fairly and accurately describes and summarizes” his actions and involvement in the offenses).

1 Complaint fails to allege any specific information indicating that the foreign nationals directed
2 the lobbyists to act as conduits for political contributions or provided them with funds for this
3 purpose. Further, there appear to be alternate explanations for when and how the contributions
4 were made that are unrelated to a possible conduit contribution scheme. Moreover, the bulk of
5 the alleged contributions in the name of another fall outside the statute of limitations. As
6 discussed below, the only remaining contribution that is still viable occurred after the lobbyists
7 reportedly ended their work for their foreign national clients and does not appear to be linked to
8 a meeting with the recipient candidate.

9 Therefore, with respect to the foreign nationals, the Party of Regions, ECFMU, and Ina
10 Kirsch, we recommend that the Commission dismiss the allegations that Respondents violated
11 52 U.S.C. §§ 30121, 30122 by making foreign national contributions in the name of another.
12 With respect to the lobbying firms, Mercury Public Affairs, LLC; Mercury, LLC; DMP
13 International, LLC; and Davis, Manafort and Freedman, we recommend that the Commission
14 dismiss the allegations that Respondents violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(h)
15 by providing substantial assistance in the making of foreign national contributions. With respect
16 to the individual lobbyists, Paul J. Manafort, Jr., John V. Weber, Edward S. Kutler, Michael
17 McSherry, Deirdre Stach, and Gregory M. Lankler, we recommend that the Commission dismiss
18 the allegations that Respondents violated 52 U.S.C. §§ 30121, 30122 and 11 C.F.R. § 110.20(h)
19 by allowing their names to be used to effect foreign national contributions in the name of another
20 and, thus, providing substantial assistance in the making of foreign national contributions.
21 Finally, with respect to the candidates, Rep. Steve Chabot, former Rep. Dana T. Rohrabacher,
22 former Rep. Edward R. Royce, and Sen. James E. Risch, and their authorized committees, we
23 recommend that the Commission dismiss the allegations that Respondents violated 52 U.S.C.

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1 §§ 30121, 30122 by knowingly accepting foreign national contributions made in the name of
2 another.

3 **II. FACTUAL SUMMARY**

4 **A. Relevant Parties**

5 The Party of Regions is a Ukrainian political party which has not been active since the
6 2014 Ukrainian revolution.⁷ Viktor Yanukovich, a former leader of the Party of Regions, was
7 elected president of Ukraine in 2010 as the party's candidate, but he later left the country for
8 Russia in February 2014.⁸ ECFMU is a non-profit organization based in Belgium; Ina Kirsch is
9 its executive director.⁹ After the 2014 revolution, ECFMU has effectively ceased to operate.¹⁰

11 Paul J. Manafort, Jr. is a political consultant and lobbyist who served as chairman of
12 Donald J. Trump's 2016 presidential campaign from about May to August 2016.¹² Davis
13 Manafort Partners, Inc. ("DMP") and DMP International, LLC ("DMI") are political consulting
14 and lobbying companies created by Manafort in 2005 and 2011, respectively.¹³ Richard W.

7 Compl. ¶ 11 (Aug. 14, 2017); Superseding Criminal Information ¶ 8.

8 Compl. ¶ 14; Superseding Criminal Information ¶¶ 1, 8.

9 Compl. ¶ 12-13, 41; Superseding Criminal Information ¶ 9.

10 Superseding Criminal Information ¶ 9.

11

12 Compl. ¶ 25; Superseding Criminal Information ¶ 1; Megan R. Wilson, *New Registration Details
Manafort's Lobbying for Group with Pro-Russia Ties*, THE HILL, Apr. 28, 2017 (Chabot Joint Resp., Ex. G at 7).
We created a new version of the Chabot Joint Response with page numbers added to the exhibits

13 Compl. ¶ 33; Superseding Criminal Information ¶ 7. These entities are referenced in the court filings
brought by the Special Counsel. However, only DMI and not DMP was notified as a respondent in this matter.
Another entity, Davis, Manafort and Freedman, was listed in the Complaint and notified as a respondent. Compl.
¶ 34. In any event, only DMI appears to be involved in the relevant facts. See *infra* note 27.

1 Gates III, who is not a respondent, is a political consultant and lobbyist who worked for DMP
2 and DMI; he served as Manafort's "right-hand man."¹⁴ Mercury, LLC and Mercury Public
3 Affairs, LLC are lobbying and political consulting firms with offices in Washington, D.C., that
4 appear to function as a single entity.¹⁵ John "Vin" Weber, Edward S. Kutler, Michael McSherry,
5 Deirdre Stach, and Gregory M. Lankler are lobbyists who worked for Mercury.¹⁶

6 Former Rep. Dana T. Rohrabacher (CA-48), former Rep. Edward R. Royce (CA-39),
7 Rep. Steve Chabot (OH-1), and Sen. James E. Risch of Idaho were Members of Congress and
8 candidates for re-election during the relevant period.¹⁷ Further, they were each members of the
9 House Committee on Foreign Affairs or Senate Committee on Foreign Relations.¹⁸

10 **B. Special Counsel's Investigation**

11 On May 17, 2017, the Deputy Attorney General appointed Robert S. Mueller III to serve
12 as Special Counsel for the DOJ to investigate Russian interference with the 2016 presidential
13 election and any matters that might arise directly from the investigation.¹⁹ On August 14, 2017,

¹⁴ Superseding Indictment ¶ 8, *United States v. Manafort and Konstantin Kilimnik*, 1:17-cr-00201 (D.D.C. June 08, 2018); Superseding Criminal Information ¶¶ 1, 9, *United States v. Gates*, 1:17-cr-00201 (D.D.C. Feb. 23, 2018); see Compl. ¶ 39.

¹⁵ Compl. ¶¶ 31-32; see Mercury Joint Resp. at 1 (referring to Mercury, LLC and Mercury Public Affairs, LLC, collectively, as "Mercury").

¹⁶ Compl. ¶¶ 26-30.

¹⁷ See Compl. ¶¶ 15-24, 54. Jack Wu, the former treasurer of Rohrabacher for Congress, who served during the relevant time period in this matter, was named as a respondent by the Complaint, but was not notified by OGC. *Id.* ¶ 21. The Commission's policy is that a treasurer shall be notified in his or her personal capacity only when the available information indicates that he or she knowingly and willfully violated the Act, recklessly failed to fulfill his or her duties, or intentionally deprived himself or herself of the operative facts. Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

¹⁸ See Compl. ¶¶ 43, 63.

¹⁹ Office of the Deputy Att'y Gen., Order No. 3915-2017: *Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017).

1 the Complaint was filed in this matter. On October 30, 2017, the Special Counsel brought an
2 indictment against Manafort and Gates, charging them with crimes related to the same former
3 Ukrainian lobbying campaign involving Respondents at issue in the Complaint.²⁰ The charges
4 included, among other things, conspiracy against the United States, failure to register as an agent
5 of a foreign principal, and conspiracy to launder money. In court documents filed by the Special
6 Counsel, two of the lobbying firms allegedly involved in the campaign are referred to only as
7 "Company A" and "Company B."²¹ Publicly available information suggests that one of the
8 unidentified firms is likely Respondent Mercury.²² None of the charges brought by the Special
9 Counsel in connection with these matters or persons have involved any campaign finance
10 violations.

²⁰ *Supra* note 6.

²¹ *See, e.g.*; Superseding Criminal Information ¶ 38.

²² It has been publicly reported that Mercury and the Podesta Group are the lobbying firms referred to as Company A and Company B. *See, e.g.*, Julia Ainsley, et al., *Sources: Podesta Group, Mercury are Companies 'A' and 'B' in Indictment*, NBC NEWS, Oct. 30, 2017; Michael Burke, *Investigators Focusing on Foreign Lobbying by Firms Linked to Manafort: Report*, THE HILL, Dec. 5, 2018.

This reporting is consistent with our review of the factual record. *Compare, e.g.*, Superseding Criminal Information ¶ 45 (describing Manafort's efforts to have ECFMU represent falsely that it was "directly or indirectly supervised, directed, [or] controlled" by a foreign sovereign or political party), *with* Mercury, Ex. B to DOJ Registration Statement Pursuant to Foreign Agents Registration Act of 1938 (Apr. 28, 2017) (Chabot Joint Resp., Ex. A at 56) (attaching document signed by ECFMU with same language), *and* Podesta Group, Ex. B to DOJ Registration Statement Pursuant to Foreign Agents Registration Act of 1938 (Apr. 12, 2017) (same). Mercury and the Podesta Group are the only two firms that have registered with the DOJ as agents for ECFMU. FOREIGN AGENTS REGISTRATION ACT | DEPARTMENT OF JUSTICE, <https://www.justice.gov/nsd-fara> (last accessed March 6, 2019). And the news reports on record in this matter provide additional information about Mercury's and the Podesta Group's lobbying activities consistent with the descriptions of the two lobbying firms described in the Special Counsel's filings. *See* Jeff Horwitz and Chad Day, *Trump Advisers Waged Covert Influence Campaign*, ASSOCIATED PRESS, Aug. 18, 2016 (cited by Compl. ¶ 40).

The Complaint does not make any allegations regarding the Podesta Group nor point to any contributions made by Podesta Group lobbyists. *See also* Chabot Joint Resp. at 5 (observing that the Complaint chose to focus on contributions and meetings involving lobbyists from Mercury and DMI, and not those from the Podesta Group, and asserting that it was for political reasons).

1 Gates pleaded guilty to one count of conspiracy against the United States based, in part,
2 on his failure to register as a foreign agent, and one count of making false statements to federal
3 investigators.²³ Manafort, following a jury trial in the Eastern District of Virginia, was found
4 guilty on eight counts involving various financial crimes, including subscribing to a false income
5 tax return, failure to file reports of foreign accounts, and bank fraud (the court declared a mistrial
6 on ten additional counts).²⁴ Manafort subsequently pleaded guilty ahead of a scheduled second
7 trial in the United States District Court for the District of Columbia to one count of conspiracy
8 against the United States based, in part, on failing to register as a foreign agent, and one count of
9 conspiracy to obstruct justice (witness tampering).²⁵ In addition, Manafort admitted his guilt
10 with respect to the remaining ten counts in the case from the Eastern District of Virginia
11 involving additional, related financial crimes.²⁶

12 C. Ukrainian Lobbying Campaign

13 As set forth in the Special Counsel's indictments and other filings, beginning in
14 approximately 2006, Manafort (assisted by Gates and others) engaged in a multi-million dollar
15 global lobbying and influence campaign at the direction of Yanukovich, the Party of Regions,
16 and the Government of Ukraine.²⁷ In February 2012, Manafort enlisted two lobbying firms, one

²³ Plea Agreement at 1, *United States v. Gates*, 1:17-cr-00201 (D.D.C. Feb. 23, 2018); Superseding Criminal Information ¶¶ 37-39, *United States v. Gates*, 1:17-cr-00201 (D.D.C. Feb. 23, 2018); Statement of the Offense ¶¶ 1-16, *United States v. Gates*, 1:17-cr-00201 (D.D.C. Feb. 23, 2018).

²⁴ SPECIAL COUNSEL'S OFFICE | DEPARTMENT OF JUSTICE, <https://www.justice.gov/sco>.

²⁵ Plea Agreement at 1-2; Superseding Criminal Information ¶¶ 61-67; Statement of the Offense ¶¶ 1-46.

²⁶ Plea Agreement at 2; Statement of the Offense ¶¶ 47-54.

²⁷ Statement of the Offense ¶ 4. Manafort performed work for Yanukovich and the Party of Regions through DMI and DMP, *see* Superseding Criminal Information ¶ 8, but the relevant activity in this matter appears to have occurred through DMI.

1 of which appears to have been Mercury, to lobby in the United States.²⁸ At Manafort's direction,
2 they "lobbied dozens of Members of Congress, their staff, and White House and State
3 Department officials about Ukraine sanctions, the validity of Ukraine elections, and the propriety
4 of President Yanukovich's imprisoning [Yulia] Tymoshenko, his presidential rival."²⁹ The
5 Statement of Offense describes how Manafort arranged for ECFMU, a front organization
6 established by a member of the Party of Regions, to serve as the nominal client of the lobbying
7 firms.³⁰ Manafort also arranged to pay the lobbying firms through offshore accounts that
8 apparently obscured the true origin of the funds.³¹ The lobbying campaign ended sometime in
9 early 2014, coinciding with the revolution that ended Yanukovich's regime.³² Although the
10 Special Counsel's investigation revealed that Manafort failed to properly disclose his lobbying
11 activities, the investigation did not address whether the Party of Regions, ECFMU, or other
12 foreign actors sought to funnel foreign contributions in the names of American lobbyists.

13 In August 2016, news reports surfaced that Manafort had been involved in a "covert
14 Washington lobbying operation" on behalf of Ukrainian foreign nationals, which reportedly

²⁸ See Statement of the Offense ¶ 23; *see also supra* note 22.

²⁹ Statement of the Offense ¶ 25.

³⁰ *Id.* ¶¶ 28, 31 ("Despite the Centre being the ostensible client . . . Manafort knew that the Centre did not direct or oversee their work. The firms received direction from Manafort and his subordinate Gates, on behalf of the Government of Ukraine."); *see* Superseding Criminal Information ¶¶ 9, 44.

³¹ See Statement of the Offense ¶¶ 24, 37; *see also id.* ¶ 12 (indicating that Ukraine was the true origin of the funds used to pay the lobbyists for their work); Superseding Criminal Information ¶ 52 (showing various payments from offshore nominee accounts based in Cyprus and St. Vincent and the Grenadines controlled by Manafort to the lobbying firms).

³² Based on reports filed with the DOJ, *see infra* note 34 and accompanying text, the firms lobbied on behalf of Ukrainian foreign nationals in the United States during the following time periods: Podesta Group (Apr. 18, 2012 – Apr. 30, 2014); Mercury (Apr. 18, 2012 – May 8, 2014); and DMI (approximately Jan. 2012 – Feb. 2014). Also, Manafort apparently continued to represent the Opposition Bloc, successor to the Party of Regions, until sometime in 2015. Statement of the Offense ¶ 4; *see* Superseding Criminal Information ¶ 1.

1 caused Manafort to resign from his position as Trump's campaign chairman.³³ In early 2017,
2 following the news reports that forced Manafort's resignation and other subsequent reports,
3 Mercury and DMI filed disclosure reports with the DOJ pursuant to the Foreign Agents
4 Registration Act ("FARA") to register as foreign agents.³⁴ DMI reported the Party of Regions as
5 its client (total receipts of more than \$17.1 million) and Mercury reported ECFMU as its client
6 (total receipts of more than \$1.2 million).³⁵ Mercury attached statements signed by Kirsch for
7 ECFMU, claiming that ECFMU is not affiliated with a foreign government or political party.³⁶

8 Manafort admits that he arranged for ECFMU to "represent falsely" that it was not
9 supervised, directed, or controlled by a foreign government or political party, which he knew
10 would lead the two lobbying firms not to initially register with the DOJ as foreign agents.³⁷
11 Despite the statements attached by the lobbying firms to their FARA disclosure reports,
12 Manafort contends (based on his instructions to the lobbyists at those firms and other
13 interactions) that the two lobbying firms "understood" they were receiving directions from

³³ Horwitz and Day, ASSOCIATED PRESS, Aug. 18, 2016 (cited by Compl. ¶ 40); Kenneth P. Doyle, *DOJ Deflects Calls for More Foreign Agents Act Transparency*, BLOOMBERG BNA, May 11, 2017 (Chabot Joint Resp., Ex. G at 13).

³⁴ See 22 U.S.C. §§ 611(b), 612(a) (providing that no person shall act as an agent of a foreign principal, e.g., a government of a foreign country or foreign political party, unless he or she has filed a detailed written statement with the DOJ to register the affiliation). Mercury had initially disclosed its lobbying work with the Secretary of the Senate and Clerk of the House of Representatives pursuant to the less onerous Lobbying Disclosure Act ("LDA") governing domestic lobbying. Megan R. Wilson, *New Registration Details Manafort's Lobbying for Group with Pro-Russia Ties*, THE HILL, Apr. 28, 2017 (Chabot Joint Resp., Ex. G at 7-8).

³⁵ DMI Registration Statement Pursuant to FARA (June 27, 2017); Mercury Registration Statement Pursuant to FARA (Apr. 28, 2017) (Chabot Joint Resp., Ex. A). We also note that the Podesta Group registered with the DOJ as a foreign agent and reported ECFMU as its client with total receipts of more than \$1.2 million. Podesta Group Amendment to Registration Statement Pursuant to FARA (Apr. 12, 2017) (Chabot Joint Resp., Ex. F).

³⁶ Mercury, Ex. B to Registration Statement. (Apr. 28, 2017) (Chabot Joint Resp., Ex. A at 56).

³⁷ Statement of the Offense ¶ 30.

1 Yanukovich, not ECFMU.³⁸ Moreover, the Special Counsel has acquired communications from
2 individual lobbyists that “referred to the client in ways that made clear they knew” that ECFMU
3 was not their true client.³⁹

4 The FARA disclosure reports contain information about meetings that occurred as part of
5 the Ukrainian lobbying campaign, including the dates and attendees. The Complaint highlights
6 meetings disclosed in Mercury’s and DMI’s reports in which lobbyists from those companies
7 met with three Members of Congress — Rep. Royce, Rep. Rohrabacher, and Sen. Risch.⁴⁰ The
8 Complaint compares the dates of those meetings with the dates of contributions made by the
9 lobbyists to the Members’ re-election campaigns as support for its allegation that the lobbyists
10 acted as conduits for contributions made by their foreign national clients.⁴¹ For each meeting,
11 there are groups of contributions that were made shortly before or after; most were made within a
12 month and some within a few days or on the same day as the meeting. Notably, the group of five
13 contributions made on June 21, 2013, to Rep. Royce includes two from individuals, Lankler and
14 Stach, who apparently did not work on the Ukrainian lobbying campaign.⁴²

³⁸ *Id.* ¶ 32.

³⁹ *Id.* An employee from one of the firms described ECFMU’s written statement as a “fig leaf on a fig leaf,” and another stated that ECFMU was the client “in name only It’s like Alice in Wonderland.” *Id.*

⁴⁰ Compl. ¶¶ 45-52.

⁴¹ The contributions set forth in the Complaint are all from Mercury lobbyists, except for one contribution from Manafort (DMI). As noted above, *supra* note 22, the Complaint does not point to any contributions made by Podesta Group lobbyists.

⁴² Mercury Joint Resp. at 6.

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Figure 1. Meetings and Contributions Listed in the Complaint

Candidate	Lobbyist(s) at Meeting	Date of Meeting	Date of Contribution(s)
Rep. Royce (1)	Kutler	3/14/2013	<u>3/08/2013</u> \$500 from Weber
Rep. Royce (2)*	Kutler	6/05/2013	<u>6/21/2013</u> \$2,000 from Weber \$1,500 from Kutler \$500 from McSherry \$500 from Lankler \$250 from Stach <u>2/27/2014</u> \$2,000 from Kutler
Rep. Rohrabacher	Weber Manafort	3/19/2013	<u>3/19/2013</u> \$500 from Kutler <u>3/22/2013</u> \$1,000 from Weber \$1,000 from Manafort
Sen. Risch	Weber Kutler McSherry	11/13/2013	<u>12/04/2013</u> \$1,000 from Weber \$1,000 from Kutler \$1,000 from McSherry

2 Based on our separate review of the FEC and FARA disclosure reports, it appears there
 3 are six other Members of Congress with whom lobbyists from Mercury had meetings. In two
 4 such instances, occurring between May and September 2013, there were groups of contributions
 5 from Mercury lobbyists made relatively close in time to the meetings similar to those highlighted
 6 in the Complaint.⁴³

* This second meeting was not specifically referenced in the Complaint, but it is listed in Mercury's FARA disclosure reports. Mercury Supp. Statement Pursuant to FARA for Period Ending Oct. 31, 2013 (Apr. 28, 2017) (Chabot Joint Resp., Ex. A at 47).

⁴³ First, Mercury reported a June 6, 2013, meeting with a congressman followed by two contributions totaling \$1,000 to that congressman made on September 27, 2013. Second, Mercury reported a May 9, 2013, meeting with another congressman, as well as having organized a series of meetings between him and Ukrainians on June 24, 2013, followed by three contributions totaling \$1,500 made on August 5, 2013.

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1 The Complaint also points to a \$500 contribution on July 16, 2014, from Ed Kutler of
2 Mercury to Rep. Chabot.⁴⁴ Mercury did not report a meeting or any other contacts with Chabot
3 on its FARA reports. However, the Complaint alleges without any further support that it is
4 "likely" that this contribution was made in furtherance of the alleged conduit contribution
5 scheme.⁴⁵

6 **III. LEGAL ANALYSIS**

7 **A. Relevant Law**

8 A contribution includes any gift, subscription, loan, advance, or deposit of money or
9 anything of value made by any person for the purpose of influencing any election for federal
10 office.⁴⁶ The Commission has previously advised that the Act and Commission regulations
11 contain no separate provision that specifically limits or prohibits contributions by lobbyists or
12 other political consulting professionals to federal candidates or political committees.⁴⁷

13 The Act provides that "[n]o person shall make a contribution in the name of another
14 person or knowingly permit his name to be used to effect such a contribution, and no person shall
15 knowingly accept [such] a contribution."⁴⁸ Contributions in the name of another include those
16 made using a false name as well as those made using a conduit or straw donor.⁴⁹

⁴⁴ Compl. ¶ 53.

⁴⁵ *Id.* ¶ 54.

⁴⁶ 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

⁴⁷ Advisory Op. 1994-02 at 2 (Berglin); Advisory Op. 1993-25 at 2 (Welch).

⁴⁸ 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b)(1)(i)-(ii),(iv).

⁴⁹ 11 C.F.R. § 110.4(b)(2); *United States v. Whittemore*, 776 F.3d 1074, 1079 (9th Cir. 2015); *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011); *United States v. O'Donnell*, 608 F.3d 546, 550 (9th Cir. 2010).

1 Moreover, the Act provides that it “shall be unlawful for a foreign national, directly or
2 indirectly, to make a contribution or donation of money or other thing of value,”⁵⁰ and no person
3 shall knowingly solicit, accept, or receive a foreign national contribution.⁵¹ Further, no person
4 “shall knowingly provide substantial assistance in the solicitation, making, acceptance, or receipt
5 of a contribution or donation” from a foreign national.⁵²

6 **B. The Record Does Not Indicate That Respondents Engaged in the Alleged**
7 **Conduit Contribution Scheme**

8 The Complaint alleges a scheme in which foreign nationals funneled money to candidates
9 through contributions made in the names of certain American lobbyists working on their behalf.
10 The allegations are based primarily on the timing of the contributions, which occurred as the
11 lobbyists were being paid by the foreign nationals and close in time to meetings that the lobbyists
12 attended with Members of Congress on behalf of their foreign national clients.⁵³ The Complaint
13 also points out additional suspicious circumstances, such as the lobbyists’ initial failure to
14 disclose their activities to the DOJ under FARA and the alleged use of ECFMU as a front
15 organization.⁵⁴ Filings by the Special Counsel, including Manafort’s plea agreement, confirm
16 that ECFMU was a front organization and further indicate that payments from the foreign
17 nationals to the lobbyists were concealed by funneling the money through offshore accounts.

⁵⁰ 52 U.S.C. § 30121(a)(1)(A); *see also* 11 C.F.R. § 110.20(c)(1). The term “foreign national” is defined, in relevant part, as including individuals who are not citizens of the United States or nationals of the United States; partnerships, associations, corporations, organizations, or other combinations of persons organized under the laws of or having their principal place of business in a foreign country; foreign governments; and foreign political parties. 52 U.S.C. § 30121(b)(1)-(2); *see also* 11 C.F.R. § 110.20(a)(3).

⁵¹ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g); *see also id.* § 110.20(a)(4) (defining “knowingly”).

⁵² 11 C.F.R. § 110.20(h).

⁵³ Compl. ¶¶ 56-57, 59.

⁵⁴ *Id.* ¶¶ 25, 41-42, 48, 63, 68.

1 However, as described below, the available information, on balance, does not give rise to a
2 reasonable inference that Respondents engaged in the alleged conduit contribution scheme in
3 violation of the Act.

4 In prior matters involving alleged contributions in the name of another, the Commission
5 has required more specific information than what is available here to justify a reason to believe
6 finding.⁵⁵ In MUR 7091 (*Friends of Patrick Murphy, et al.*), for instance, the Commission found
7 no reason to believe with respect to allegations based primarily on relationships between the
8 named contributors and the timing of when the contributions were made.⁵⁶ In MUR 6246
9 (*Brennan, et al.*), the Commission found no reason to believe — despite circumstances that
10 “raise[d] questions” as to whether reimbursements occurred — in light of “the lack of specific
11 information” that, if true, would support the inference, as well the sworn denials from the
12 respondents and representations of counsel following an internal investigation.⁵⁷

13 In the instant matter, there is no specific information in the record before the Commission
14 indicating that the foreign nationals provided the lobbyists with funds for the purpose of making
15 political contributions. Although the lobbyists allegedly engaged in conduct designed to conceal
16 their activities, such as using ECFMU to serve as the nominal client, routing payments through
17 offshore accounts, and failing to timely register as foreign agents with the DOJ, these activities

⁵⁵ The Commission’s stated policy regarding matters at the initial stage in the enforcement process is that a reason to believe finding is appropriate “when a complaint credibly alleges that a significant violation may have occurred.” See Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007).

⁵⁶ Factual & Legal Analysis at 2, 4, MUR 7091 (*Friends of Patrick Murphy, et al.*). The Commission also found that the applicable statute of limitations had expired on all of the alleged activity. *Id.* at 4.

⁵⁷ Factual & Legal Analysis at 5-7, MUR 6246 (*Brennan, et al.*). The MUR 6246 complaint inferred that Brennan reimbursed contributions because he allegedly offered to reimburse the complainant, allegedly telling the complainant that others “were doing it as well,” and none of the purported conduits had previously made federal contributions and two lived outside of the candidate’s district. *Id.* at 1-3.

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1 may have resulted in potential liability under other criminal statutes as reflected in the filings
2 brought by the Special Counsel, but do not provide a sufficient basis here to believe there were
3 any violations of the Act.

4 Moreover, there appear to be alternate explanations for when and how the contributions
5 were made that are unrelated to a possible conduit contribution scheme.⁵⁸ Despite the temporal
6 proximity between the lobbyists' meetings with Members of Congress and their contributions to
7 the Members' re-election campaigns, there is information in the record to suggest that making
8 political contributions is customary in the lobbying industry and that the Mercury lobbyists, in
9 particular, followed an established practice of making contributions to federal candidates.⁵⁹
10 Further, based on our review of prior contributions made by Mercury lobbyists, the challenged
11 contributions do not seem to deviate from their established patterns.⁶⁰ In their sworn denials, the
12 individual Mercury lobbyists attest that they have "never been reimbursed" for making political
13 contributions "by anyone," are not aware of any other Mercury employees having been
14 reimbursed, and that they "contribute regularly" to federal candidates and committees.⁶¹

⁵⁸ Cf. Factual & Legal Analysis at 11, MURs 7005 & 7056 (Adam H. Victor, *et al.*) (finding reason to believe given the "improbability" that salient facts tending to suggest the existence of a conduit contribution scheme were "coincidental").

⁵⁹ Mercury Joint Resp. at 2. During the 2014 election cycle, we identified approximately 7,400 contributions totaling \$3.5 million with "lobbyist" listed as the occupation. Given that all but two of the challenged contributions in this matter used a term other than "lobbyist" or did not list an occupation, the \$3.5 million figure is likely an understatement of total contributions from lobbyists in the 2014 cycle. More specifically, during the 2014 cycle, we identified approximately 360 contributions from Mercury employees totaling \$280,000. In their sworn declarations, the Mercury lobbyists provided their total federal political giving from 2013 through 2016 (approximately 384 contributions totaling \$338,050).

⁶⁰ See, e.g., Friends of Mike Lee Inc., Amended 2012 Year-End Rpt. at 6-8 (Apr. 2, 2013) (four contributions made by Mercury employees on October 4, 2012, in amounts of \$250, \$500, and \$2,000).

⁶¹ E.g., Decl. of Edward Kutler ¶¶ 2-4 (Oct. 3, 2017) (attached to Mercury Joint Resp.); Decl. of John "Vin" Weber ¶¶ 2-4 (Oct. 4, 2017) (attached to Mercury Joint Resp.).

1 **IV. RECOMMENDATIONS**

- 2 1. Dismiss the allegations that the Party of Regions, European Centre for a Modern
3 Ukraine, and Ina Kirsch violated 52 U.S.C. §§ 30121, 30122 by making foreign
4 national contributions in the name of another;
5
6 2. Dismiss the allegations that Mercury Public Affairs, LLC; Mercury, LLC; DMP
7 International, LLC; and Davis, Manafort and Freedman violated 52 U.S.C.
8 § 30121 and 11 C.F.R. § 110.20(h) by providing substantial assistance in the
9 making of foreign national contributions;
10
11 3. Dismiss the allegations that Paul J. Manafort, Jr., John V. Weber, Edward S.
12 Kutler, Michael McSherry, Deirdre Stach, and Gregory M. Lankler violated
13 52 U.S.C. §§ 30121, 30122 and 11 C.F.R. § 110.20(h) by allowing their names to
14 be used to effect foreign national contributions in the name of another;
15
16 4. Dismiss the allegations that Rep. Steve Chabot, Steve Chabot for Congress and
17 James Schwartz, Sr. in his official capacity as treasurer, Dana T. Rohrabacher,
18 Rohrabacher for Congress and Jen Slater in her official capacity as treasurer,
19 Edward R. Royce, Royce Campaign Committee and Kelly Lawler in her official
20 capacity as treasurer, Sen. James E. Risch, and Jim Risch for U.S. Senate
21 Committee and R. John Insinger in his official capacity as treasurer violated
22 52 U.S.C. §§ 30121, 30122 by knowingly accepting foreign national contributions
23 made in the name of another;
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25 5. Approve the attached Factual and Legal Analysis;
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6. Approve the appropriate letters; and

1 7. Close the file.

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Lisa J. Stevenson
Acting General Counsel

4/11/2019

Date

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