

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR 7313¹**

4 COMPLAINT: Jan. 23, 2018

5 AMEND. COMPLAINT: Mar. 12, 2018

6 NOTIFICATION DATE: Jan. 30, 2018

7 LAST RESPONSE: Apr. 12, 2018

8 ACTIVATION DATE: Sept. 20, 2019

9
10 **STATUTE OF LIMITATIONS:**

11 Oct. 27, 2021 (earliest) – Dec. 8, 2021 (latest)

12 **ELECTION CYCLE:** 2016

13 **COMPLAINANTS:**

Common Cause

14 Paul S. Ryan

15 Allen J. Epstein

16 **RESPONDENTS:**

Michael D. Cohen

17 Donald J. Trump

18 Donald J. Trump for President, Inc., and Bradley T.

19 Crate in his official capacity as treasurer

20 Trump Organization, LLC

21 Essential Consultants, LLC

¹ The complaint in MUR 7637 (NRA-ILA, *et al.*) included the allegation that Donald J. Trump, Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer, and Michael Cohen violated the Act due to Cohen paying a woman not to disclose information about Trump. Because this allegation is the subject of MUR 7313, and in order to consider the totality of that allegation, we have administratively severed that allegation from MUR 7637 and joined it with MUR 7313. *See* First Gen. Counsel's Report at 1 n.1, MUR 7637 (NRA-ILA, *et al.*) Consequently, the complainant in MUR 7637, Allen J. Epstein, is now a complainant in MUR 7313; the respondents from MUR 7637 with respect to this allegation were already respondents in MUR 7313.

1 **MUR 7319**
 2 COMPLAINT: Feb. 14, 2018
 3 AMEND. COMPLAINT: Feb. 20, 2018
 4 SECOND AMEND. COMPLAINT: Mar. 13, 2018
 5 NOTIFICATION DATE: Feb. 21, 2018
 6 LAST RESPONSE: Apr. 12, 2018
 7 ACTIVATION DATE: Sept. 20, 2019
 8
 9 STATUTE OF LIMITATIONS:
 10 Oct. 27, 2021 (earliest) – Dec. 8, 2021 (latest)
 11 ELECTION CYCLE: 2016

12 COMPLAINANTS: Bradley Beychok
 13 American Bridge 21st Century Foundation

14 RESPONDENTS: Michael D. Cohen
 15 Donald J. Trump
 16 Donald J. Trump for President, Inc., and Bradley T.
 17 Crate in his official capacity as treasurer
 18 Trump Organization, LLC
 19 Trump Tower Commercial, LLC
 20 Timothy Jost
 21 Essential Consultants, LLC
 22

23 **MUR 7379**
 24 COMPLAINT: May 4, 2018
 25 NOTIFICATION DATE: May 10, 2018
 26 LAST RESPONSE: June 26, 2018
 27 ACTIVATION DATE: Sept. 20, 2019
 28
 29 STATUTE OF LIMITATIONS:
 30 October 26, 2022 (earliest) – April 17, 2023 (latest)
 31 ELECTION CYCLE: 2016

32 COMPLAINANTS: Brad Woodhouse
 33 American Democracy Legal Fund

34 RESPONDENTS: Michael D. Cohen
 35 Donald J. Trump
 36 Donald J. Trump for President, Inc., and Bradley T.
 37 Crate in his official capacity as treasurer

38 RELEVANT STATUTES AND
 39 REGULATIONS:
 40 52 U.S.C. § 30101(8), (9)
 41 52 U.S.C. § 30104(a), (b)
 52 U.S.C. § 30114

1 52 U.S.C. § 30116(a)(1)(A), (a)(7)(B)(i), (f)
 2 52 U.S.C. § 30118(a)
 3 52 U.S.C. § 30122
 4 11 C.F.R. § 100.52(b)
 5 11 C.F.R. § 104.3(a), (b)
 6 11 C.F.R. § 109.20
 7 11 C.F.R. § 110.1(g)
 8 11 C.F.R. § 110.4

9 INTERNAL REPORTS CHECKED: Disclosure Reports

10 FEDERAL AGENCIES CHECKED:

11 **I. INTRODUCTION**

12 This report addresses three complaints alleging violations of the Federal Election
 13 Campaign Act of 1971, as amended (the “Act”), in connection with the payment of \$130,000 to
 14 Stephanie Clifford, a/k/a Stormy Daniels, shortly before the 2016 presidential election, as part of
 15 an agreement to prevent Clifford from publicizing her claim that she and 2016 presidential
 16 candidate Donald J. Trump had a sexual relationship in 2006, while Trump was married. Two of
 17 the complaints allege that Michael D. Cohen, who served as Trump’s personal attorney and an
 18 attorney for Trump’s business, the Trump Organization, LLC (“Trump Organization”),
 19 coordinated with Trump to make the payment to Clifford and thereby made an in-kind
 20 contribution to Trump and his authorized presidential campaign committee, Donald J. Trump for
 21 President, Inc., and Bradley T. Crate in his official capacity as treasurer (the “Trump
 22 Committee”), which, in turn, violated the contribution limits and reporting requirements of the
 23 Act.³ The third complaint alleges that the Trump Committee converted campaign funds to
 24 personal use when it paid Cohen’s legal fees in connection with the U.S. Department of Justice

³ MUR 7313 Compl. (Jan. 23, 2018); MUR 7319 Compl. (Feb. 14, 2018); *see also* MUR 7637 Compl. (Aug. 16, 2019). The Trump Committee’s treasurer during the 2016 election cycle was Timothy Jost; its current treasurer is Bradley T. Crate.

1 (“DOJ”) investigation and prosecution of Cohen for, among other things, his role in making the
2 Clifford payment.⁴

3 Cohen filed responses denying the allegations in the complaints⁵ but subsequently
4 reversed his position and pleaded guilty to an eight-count criminal information, in which Cohen
5 admitted, among other things, to making an excessive contribution in violation of the Act by
6 making the Clifford payment.⁶ During his sworn allocution in federal court, Cohen
7 acknowledged that he made the Clifford payment in coordination with, and at the direction of,
8 Trump, for the “primary purpose of influencing the [2016] election.”⁷ Cohen later provided
9 sworn congressional testimony regarding the Clifford payment, in which he testified that he
10 made the payments at Trump’s direction.⁸ Prior to Cohen’s plea, the Trump Committee filed
11 responses in these matters, denying the allegations.⁹ Trump has publicly denied the allegations
12 but has not filed a response with the Commission.

⁴ MUR 7379 Compl. (May 4, 2018).

⁵ *See* Michael Cohen Resp., MUR 7313 (Feb. 8, 2018); Michael Cohen Resp., MURs 7313 and 7319 (Apr. 6, 2018); Michael Cohen Resp., MUR 7379 (June 26, 2018).

⁶ *See* Trans. of Proceedings before Hon. William H. Pauley III at 27–28, No. 1:18-cr-00602-WHP, 18-CR-602 (S.D.N.Y. Aug. 21, 2018), <https://assets.documentcloud.org/documents/4780185/Cohen-Court-Proceeding-Transcript.pdf> (“Cohen Plea Hearing”) (pleading guilty to eight counts, including one count of making excessive contributions in violation of 52 U.S.C. § 30116(a)(1)(A) in relation to Clifford payment); *see also* Information ¶¶ 32–36, *United States v. Cohen*, No. 1:18-cr-00602-WHP, 18-CRIM-602 (S.D.N.Y. Aug. 21, 2018), <https://www.justice.gov/usao-sdny/press-release/file/1088966/download> (“SDNY Information”).

⁷ Cohen Plea Hearing at 23.

⁸ *Hearing with Michael Cohen, Former Attorney to President Donald Trump Before the H. Comm. on Oversight and Reform*, 116th Cong. 116-03 (Feb. 27, 2019), <https://docs.house.gov/meetings/GO/GO00/20190227/108969/HHRG-116-GO00-20190227-SD003.pdf> (“House Oversight Testimony”); *Deposition of Michael Cohen Before the H. Permanent Select Comm. on Intelligence* (Feb. 28, 2019), <https://docs.house.gov/meetings/IG/IG00/20190520/109549/HMTG-116-IG00-20190520-SD002.pdf> (“House Intelligence Deposition”).

⁹ Donald J. Trump for President, Inc., Resp. at 2, MURs 7313 and 7319 (Apr. 12, 2018).

1 The available information indicates that Michael Cohen paid Stephanie Clifford \$130,000
2 at the direction of 2016 presidential candidate Donald J. Trump, with Trump's express promise
3 of repayment, for the purpose of influencing the 2016 election — by preventing Clifford from
4 publicizing an allegation, shortly before the election, that she and Trump had a sexual
5 relationship in 2006, while Trump was married — thus indicating that Cohen made, and Trump
6 and his campaign committee knowingly accepted, a contribution in excess of the Act's
7 contribution limits, and, further, that Trump's campaign committee failed to publicly disclose
8 that contribution, as required under the Act. Moreover, the available information indicates that
9 Cohen, with Trump's approval, obscured that he was the source of the payment by making it
10 through Essential Consultants, LLC ("Essential Consultants"), a shell company that Cohen
11 formed for that purpose, in violation of the Act's prohibition on contributions in the name of
12 another, and that after the election, per a prearranged plan, Cohen was reimbursed for the
13 Clifford payment under the pretense of providing legal services to the Trump Organization, such
14 that the Trump Organization made prohibited contributions to Trump's campaign committee.

15 Accordingly, we recommend that the Commission find reason to believe that Cohen
16 violated 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions; that Trump and the
17 Trump Committee violated 52 U.S.C. § 30116(f) by knowingly accepting excessive
18 contributions; that the Trump Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a)
19 and (b) by not reporting those contributions; that Cohen, Essential Consultants, and Trump and
20 the Trump Committee violated 52 U.S.C. § 30122 by respectively making, knowingly
21 transmitting in its name, and knowingly accepting contributions in the name of another; and that
22 the Trump Organization violated 52 U.S.C. § 30118(a) or 52 U.S.C. § 30116(a)(1)(A) by making
23 — and Trump and the Trump Committee violated 52 U.S.C. § 30118(a) or 52 U.S.C. § 30116(f)

1 by knowingly accepting — prohibited corporate or excessive contributions in connection with
2 the payment to Clifford. We further recommend that the Commission find reason to believe that
3 the foregoing violations with respect to Cohen, Trump, the Trump Committee, the Trump
4 Organization, and Essential Consultants were knowing and willful.

5 Additionally, in light of information supporting the above recommendations, we
6 recommend dismissing the allegation that Trump Tower Commercial, LLC, violated the Act by
7 paying Clifford through disbursements disguised as rent payments on the Trump Committee's
8 reports. Finally, because it appears that Cohen's legal expenses in connection with the Clifford
9 payment scheme would not exist irrespective of campaign activities, the Trump Committee's
10 payment of those expenses did not constitute the personal use of campaign funds; accordingly,
11 we recommend that the Commission dismiss the allegation that Cohen, Trump, and the Trump
12 Committee violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use.

13 **II. FACTUAL BACKGROUND**

14 As detailed below, the available information indicates that at the end of October 2016,
15 days before the 2016 presidential election, Cohen, in coordination with Trump and after
16 receiving Trump's express promise to later repay Cohen, paid Clifford \$130,000 through
17 Essential Consultants, an entity he formed for this purpose, to induce Clifford not to publicize
18 her claim that she and Trump had engaged in a sexual relationship in 2006. Cohen's sworn
19 allocution and testimony indicate that Cohen paid the funds for the "principal purpose" of
20 influencing the 2016 presidential election¹⁰ and that, after the election, Cohen presented the

¹⁰ Cohen Plea Hearing at 23 ("[O]n or about October of 2016, in coordination with, and at the direction of, [a federal] candidate, I arranged to make a payment to a second individual with information that would be harmful to the candidate and to the campaign to keep the individual from disclosing the information. To accomplish this, I used a company that was under my control to make a payment in the sum of \$130,000. The monies I advanced through

1 Trump Organization with false monthly invoices for nonexistent legal services so that Trump
 2 and the Trump Organization could appear to be paying Cohen for his legal services, when they
 3 were actually reimbursing Cohen for the payment to Clifford.

4 **A. Events Preceding Trump's 2016 Presidential Candidacy**

5 Cohen was an attorney for Trump and the Trump Organization from 2007 through
 6 January 2017; Cohen asserts that as Executive Vice President and Special Counsel to Trump, he
 7 addressed a wide variety of matters for both Trump personally and the Trump Organization.¹¹

8 Clifford claims that she met Trump in July 2006 at a celebrity golf tournament in Utah
 9 and that Trump, who was married to Melania Trump, invited her to his hotel suite, where they
 10 then began a sexual relationship that lasted for nearly a year.¹² At the time, Clifford was a well-
 11 known adult-film actress and director who used the professional name Stormy Daniels; Trump

my company were later repaid to me by the candidate. I participated in this conduct, which on my part took place in Manhattan, for the principal purpose of influencing the election.”).

¹¹ House Oversight Testimony at 10–13, 55. The Trump Organization is a limited liability company (“LLC”) organized under the laws of New York on August 4, 1999. NYS Dept. of State, Div. of Corps., Entity Information, “Trump Organization LLC,” https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_token=7B13CDE85663536AE47E01557ACDCE0CE19A7F1330B762CF3DEF2283335300D4320FDB3D6C082F89830B19ADDC3D5EA4&p_nameid=C41142364E1ECA78&p_corpid=E8EB48F78472048A&p_captcha=16592&p_captcha_check=7B13CDE85663536AE47E01557ACDCE0CE19A7F1330B762CF3DEF2283335300D474BD29CC67C0A36E2CE4E93F2B39FEB1&p_entity_name=%54%72%75%6D%70%20%4F%72%67%61%6E%69%7A%61%74%69%6F%6E&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0 (last visited Oct. 21, 2019). However, the name “Trump Organization” generally refers to hundreds of entities whose exact relationship is not publicly known. *See infra* Section III.D (discussing Trump Organization). The Trump Organization’s registered agent is National Registered Agents, Inc., and the available information does not reveal its tax election status for federal tax purposes. *See id.*

¹² *See* MUR 7313 Compl. ¶ 8; MUR 7319 Compl. at 2; MUR 7379 Compl. at 3 (each citing Michael Rothfeld and Joe Palazzolo, *Trump Lawyer Arranged \$130,000 Payment for Adult-Film Star’s Silence*, WALL ST. J. (Jan. 12, 2018), <https://www.wsj.com/articles/trump-lawyer-arranged-130-000-payment-for-adult-film-stars-silence-1515787678> (“WSJ Jan. 12 Article”)); MUR 7319 Compl. at 2 (citing Jacob Weisberg, *Stormy’s Story: Did Donald Trump Pay a Porn Star to Keep Quiet About an Affair?*, SLATE (Jan. 16, 2018), <https://slate.com/news-and-politics/2018/01/did-donald-trump-pay-porn-star-stormy-daniels-to-keep-quiet-about-an-affair.html> (“Slate Article”)); *see also* MUR 7319 Compl. at 2 (citing In Touch Staff, *Stormy Daniels’s Explosive Full Interview on Donald Trump Affair*, IN TOUCH WEEKLY (Jan. 19, 2018), <https://www.intouchweekly.com/posts/stormy-daniels-full-interview-151788/> (“In Touch Weekly Article”) (detailing Clifford’s account of contacts with Trump)).

1 was both the star of a widely known reality television show, “The Apprentice,” and the President
2 and Chief Executive of the Trump Organization. Clifford claims that the alleged affair ended in
3 July 2007.¹³

4 According to news reports, Clifford attempted to sell the story of her affair with Trump in
5 2011, detailing her story in a May 2011 interview with a reporter from “Life & Style”
6 magazine.¹⁴ However, Bauer Publishing, which owned *Life & Style*, declined to publish the
7 interview after Cohen threatened to take legal action.¹⁵ In October 2011, word of the alleged
8 affair was obtained by a tabloid website, “The Dirty,” which published a piece claiming that
9 Clifford “had sex with Donald [Trump] after one of his golfing events.”¹⁶ Trump and Clifford
10 denied the story, and the website reportedly took down the piece after Clifford’s attorney, Keith
11 Davidson, threatened to take legal action — purportedly in conjunction with Cohen.¹⁷ In
12 response to the story being published on “The Dirty,” *Life & Style* allegedly published a short

¹³ See In Touch Weekly Article.

¹⁴ Joe Palazzolo and Michael Rothfeld, *Trump’s Stormy History: The Seven-Year Battle Between the President and the Porn Star*, WALL ST. J. (Mar. 20, 2018), <https://www.wsj.com/articles/trumps-stormy-history-the-seven-year-battle-between-the-president-and-the-porn-star-1521561532> (“WSJ Mar. 20 Article”). The Clifford interview was later published by *In Touch Weekly*, another magazine owned by *Life & Style*’s parent company, Bauer Publishing, after the initial reports about Clifford’s alleged affair were published on January 12, 2018. See In Touch Weekly Article.

¹⁵ WSJ Mar. 20 Article.

¹⁶ *Id.*

¹⁷ Jim Rutenberg, Megan Twohey, *et al.*, *Tools of Trump’s Fixer: Payouts, Intimidation and the Tabloids*, N.Y. TIMES (Feb. 18, 2018), <https://www.nytimes.com/2018/02/18/us/politics/michael-cohen-trump.html> (“NYT Feb. 18 Article”); see House Oversight Testimony at 99 (“With the Stormy Daniels, it started in 2011, when she wanted to have something removed from a website, and that was the first time I met Keith — I spoke with Keith Davidson, her then-acting attorney, and we were successful in having it taken down from the website.”); see also Michael Cohen, DISLOYAL 138–44 (2020) (“Cohen Book”) (discussing cooperation with Davidson to have Trump and Clifford issue parallel denials of the alleged affair and effort to have the story removed from thedirty.com); *id.* at 339 (“Trump and I had been talking about the alleged [Clifford] affair since October of 2011, when the story about Daniels first surfaced in a blog called thedirty.com and a magazine called *Life & Style*.”).

1 piece suggesting that Clifford and Trump had engaged in an affair,¹⁸ although it did not publish
 2 the Clifford interview.¹⁹

3 **B. Events Leading Up to the Clifford Payment**

4 Trump declared his presidential candidacy on June 16, 2015, and registered the Trump
 5 Committee, his authorized campaign committee, with the Commission on June 29, 2015.²⁰
 6 Cohen did not have a formal title or position with Trump's presidential campaign, but he had a
 7 campaign email address, advised the campaign, and made media appearances on the campaign's
 8 behalf.²¹ In August 2015, Trump and Cohen met with David Pecker, Trump's friend and the
 9 President and Chief Executive Officer of American Media, Inc. ("AMI"), a media company that
 10 owned numerous publications, including the *National Enquirer*.²² At that meeting, Trump asked

¹⁸ See Cohen Book at 140–141 ("I was correct about the media [picking up the story]. I quickly did an online search and discovered that there were a bunch of articles picking up on thedirty.com's lead, including a feature in a publication called *Life & Style* with the heading 'Did Donald Cheat' and two pages of photographs of Trump, Melania, and [Clifford].").

¹⁹ WSJ Mar. 20 Article ("The post [on *thedirty.com*] prompted *Life & Style* to publish a two-page spread about Mr. Trump's alleged affairs with Ms. Clifford and other women — although it didn't include the interview with Ms. Clifford."); see Agent Affidavit in Support of Application for Search and Seizure Warrant Before the United States District Court for the Southern District of New York ¶ 30.a (Apr. 8, 2018) ("Warrant Aff."). This sworn affidavit was provided by an FBI Special Agent in support of a search warrant that was executed on April 9, 2018, for Cohen's apartment, law office, and a hotel suite where he and his family had been staying while renovating their apartment.

²⁰ See MUR 7319 Compl. at 3 (citing Alex Altman and Charlotte Alter, *Trump Launches Presidential Campaign With Empty Flair*, TIME (June 16, 2015), <https://time.com/3922770/donald-trump-campaign-launch/>); Trump Comm. Statement of Org., FEC Form 1 (June 29, 2015).

²¹ SDNY Information ¶ 25. Although the SDNY Information and Warrant Affidavit do not identify Trump or the Trump Organization by name, referring instead to "Individual-1" and the "Company," news reports and Cohen's testimony have identified Trump as "Individual-1" and the Trump Organization as the "Company." See, e.g., NYT Feb. 18 Article; House Oversight Testimony at 11, 30, 100, 136, 151.

²² Letter from Robert Khuzami, Acting U.S. Attorney, S.D.N.Y., U.S. Dep't of Justice, to Charles A. Stillman and James A. Mitchell, counsel for American Media, Inc., Ex. A ¶¶ 1, 3 (Sept. 20, 2018) (non-prosecution agreement between DOJ and AMI on September 21, 2018, including statement of admitted facts) ("AMI Non-Prosecution Agreement"); SDNY Information ¶¶ 27–28; Joe Palazzolo, *et al.*, *Donald Trump Played Central Role in Hush Payoffs to Stormy Daniels and Karen McDougal*, WALL. ST. J. (Nov. 9, 2018), https://www.wsj.com/article/s/donald-trump-played-central-role-in-hush-payo_s-to-stormy-daniels-and-karen-mcdougal-1541786601 ("WSJ Nov. 9 Article") ("As a presidential candidate in August 2015, Donald Trump huddled with a longtime friend, media

1 what Pecker could do to help his campaign, and Pecker allegedly agreed that he would keep
 2 Cohen informed of any negative stories about Trump's relationships with women and seek to
 3 "catch and kill" such stories.²³

4 In June 2016, Clifford's attorney, Davidson, contacted AMI on behalf of a different
 5 woman, Karen McDougal, who wanted to sell the rights to her story that she and Trump had a
 6 sexual relationship in 2006.²⁴ According to a non-prosecution agreement between AMI and the
 7 DOJ, "[a]t Cohen's urging and subject to Cohen's promise that AMI would be reimbursed," AMI
 8 purchased McDougal's story on August 5, 2016, for a payment of \$150,000.²⁵ AMI
 9 acknowledges in the non-prosecution agreement that its "principal purpose in entering into the
 10 agreement was to suppress [McDougal's] story so as to prevent it from influencing the

executive David Pecker, in his cluttered 26th floor Trump Tower office and made a request. What can you do to help my campaign? he asked, according to people familiar with the meeting. Mr. Pecker, chief executive of American Media Inc., offered to use his *National Enquirer* tabloid to buy the silence of women if they tried to publicize alleged sexual encounters with Mr. Trump.").

²³ See AMI Non-Prosecution Agreement, Ex. A ¶ 3; SDNY Information ¶¶ 27–28; WSJ Nov. 9 Article ("[Pecker] promised Mr. Trump he would flag to Mr. Cohen any negative stories about women that came to the *Enquirer's* attention."). Cohen has explained that "catch and kill" is a practice of purchasing the rights to a potentially negative story intending to prevent its publication, to protect the person who would be potentially harmed by the story. See House Oversight Testimony at 30 ("So catch and kill is a method that exists when you are working with a news outlet — in this specific case it was AMI, *National Enquirer*, David Pecker, Dylan Howard, and others — where they would contact me or Mr. Trump or someone and state that there's a story that's percolating out there that you may be interested in. And then what you do is you contact that individual and you purchase the rights to that story from them."); *id.* at 99–100; see also Jeffrey Toobin, *Michael Cohen's Last Days of Freedom*, NEW YORKER (Apr. 29, 2019), <https://www.newyorker.com/magazine/2019/05/06/michael-cohens-last-days-of-freedom> ("New Yorker Article").

²⁴ See AMI Non-Prosecution Agreement, Ex. A ¶ 4.

²⁵ AMI Non-Prosecution Agreement, Ex. A ¶¶ 4–5 (also indicating that AMI promised to feature McDougal on the covers of two AMI-owned publications and publish over 100 magazine articles authored by McDougal); SDNY Information ¶¶ 29–30; see New Yorker Article ("In June [2016], when McDougal began attempting to sell the story of her months-long relationship with Trump, which had taken place a decade earlier, Cohen urged Pecker to buy her account and then bury it — a practice, in the argot of tabloids, known as 'catch and kill.' Cohen promised Pecker that Trump would reimburse A.M.I. for the cost of McDougal's silence.").

1 election.”²⁶ Trump was allegedly briefed on the details of the arrangement and agreed to pay
 2 AMI back.²⁷ The AMI deal was finalized on August 5, 2016 — shortly after Trump became the
 3 Republican Party’s nominee for President.²⁸

4 A few months later, Davidson approached Cohen about Clifford’s account of her affair
 5 with Trump. Cohen appears to have learned of Clifford’s interest in selling her account of the
 6 affair on October 8, 2016, the day after the *Washington Post* published a video recording of
 7 Trump appearing on the television show “Access Hollywood” in 2005, in which Trump
 8 reportedly “bragged in vulgar terms about kissing, groping and trying to have sex with
 9 women.”²⁹ Cohen discussed a possible deal to prevent the publication of Clifford’s account with
 10 Davidson on October 10, 2016.³⁰ Cohen testified that Davidson explained that Clifford wanted
 11 \$130,000 to remain silent about her alleged affair with Trump.³¹ Publicly available information

²⁶ AMI Non-Prosecution Agreement, Ex. A ¶ 5.

²⁷ New Yorker Article (“As Cohen told me, ‘Trump was supposed to pay them back.’ In August, 2016, A.M.I. bought McDougal’s story for a hundred and fifty thousand dollars, with the understanding that the *Enquirer* would never publish it.”).

²⁸ AMI Non-Prosecution Agreement, Ex. A ¶ 5.

²⁹ David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, WASH. POST (Oct. 8, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eed4_story.html (“Fahrenthold Article”); *see also* Warrant Aff. ¶ 32; Cohen Book at 291 (“The *Access Hollywood* tape had another ripple effect . . . With Trump’s campaign teetering, the Stormy [Daniels] story became far more marketable, but also far more dangerous politically, or at least that was the calculation Daniels and her advisors apparently made.”).

³⁰ *See* Warrant Aff. ¶ 34.c; SDNY Information ¶ 32.

³¹ House Oversight Testimony at 21 (“In 2016, prior to the election, I was contacted by Keith Davidson, who is the attorney — or was the attorney for Ms. Clifford, or Stormy Daniels.”); *id.* at 34 (“The \$130,000 number was not a number that was actually negotiated. It was told to me by Keith Davidson that this is a number that Ms. Clifford wanted.”); *see also* Cohen Book at 295 (“[Clifford] wanted to clear \$100,000 from the deal, so with Davidson’s fee and the cut for her representative, Gina Rodriguez, that meant a total of \$130,000. I had my number, at least and at last, a sum that seemed almost laughably low. Daniels had a presidential candidate with a gun to his head days before the election, so to speak, and that was all she wanted?”).

1 indicates that Davidson contacted Cohen after being directed to Cohen by Pecker or Dylan
 2 Howard, another senior AMI executive.³² By the time Davidson and Cohen spoke, Clifford had
 3 allegedly been negotiating a deal with ABC's "Good Morning America" and *Slate* magazine to
 4 detail her account of the alleged affair with Trump, but had not finalized any arrangement.³³

5 In his congressional testimony given under oath, Cohen stated that, after the "Access
 6 Hollywood" video became public, he received a phone call from Hope Hicks, the Trump
 7 Committee's press secretary, in which Hicks explained that she had spoken to Trump and wanted
 8 Cohen to start "making phone calls" to news outlets "to spin this [and] claim that this was men
 9 [sic] locker room talk."³⁴ Cohen testified that he and "more importantly, Mr. Trump[,] was
 10 concerned" about the impact to the campaign that Clifford's allegations might have if they were
 11 publicized soon after the release of the "Access Hollywood" tape, and that Trump was
 12 specifically "concerned with the effect that [the Access Hollywood tape] had had on the
 13 campaign, on how women were seeing him, and ultimately whether or not he would have a shot
 14 in the general election."³⁵

³² See SDNY Information ¶ 32; Ronan Farrow, CATCH AND KILL: LIES, SPIES, AND A CONSPIRACY TO PROTECT PREDATORS 345 (2019) ("[Stormy] Daniels's lawyer, Keith Davidson . . . had called Dylan Howard about the story first. Howard told Davidson that AMI was passing on the Daniels matter . . . [b]ut Howard directed Davidson to Michael Cohen, who established a shell company to pay Daniels \$130,000 in exchange for her silence."); see also Cohen Book at 291 ("[I]t was like [Pecker] and I were engaged in a parallel campaign, with the outcome of the 2016 election being decided in secret. That was really how it felt, on the inside: everything that I knew had to remain far from the public's knowledge or Trump would lose in a landslide. . . . [A]ll I was focused on was accomplishing my goal: helping Trump to win the Presidency."); see Complaint for Declaratory Relief ¶¶ 12, 39, *McDougal v. American Media, Inc.*, Case No. BC698956 (Cal. Super. Ct. Los Angeles, Mar. 20, 2018) (alleging that Howard was a senior AMI executive and AMI's "Chief Content Officer").

³³ Warrant Aff. ¶ 33; see *Slate* Article.

³⁴ House Oversight Testimony at 33.

³⁵ House Oversight Testimony at 34; see also Cohen Book at 296 ("'How bad do you think this could hurt me with the campaign?' Trump asked [Pecker]. 'Look, I don't know the answer, but it can't be good,' Pecker said."); *id.* at 297–98 ("The reality was that another scandal, after . . . the Access Hollywood tape scandal, would likely kill Trump. I knew it. He knew it. He was already very likely to lose in a landslide, as he knew perfectly well, but

1 **C. The Clifford Payment**

2 According to Cohen, he regularly apprised Trump about the negotiations with
 3 Davidson,³⁶ and Trump agreed that Clifford should be paid \$130,000 to enter into a
 4 nondisclosure agreement that would prevent her from talking about the alleged affair.³⁷ At his
 5 plea hearing in federal court, Cohen testified under oath that Trump not only knew about the
 6 payment but directed him to make it.³⁸ Cohen later testified before Congress that Trump agreed
 7 to make the payment during a meeting with Cohen and Allen Weisselberg, the Trump

another scandal could turn a loss into a historical embarrassment he would carry for the rest of his life; one more sex revelation and the evangelicals and suburban women he needed to have any chance [in the election] would completely abandon him, we figured[.]”).

³⁶ House Oversight Testimony at 22. Phone records indicate that Cohen was exchanging calls, text messages, and emails with Davidson, Pecker, and Howard, as well as Hicks and Trump, throughout the period of the negotiation: On October 8, 2016, Cohen appears to have received a call from Hicks at 7:20 PM, and sixteen seconds into the call, Trump appears to have joined the call, which lasted for over four minutes. Warrant Aff. ¶ 34.a. After a second call with Hicks that lasted for two minutes, Cohen and Pecker had two short phone calls at 7:39 PM and 7:44 PM, and then Cohen received a minute-long call from Howard. *Id.* ¶ 34.b, c. Cohen appears to have called Hicks again at 7:56 PM, for two minutes, received a call from Pecker at about 7:58 PM, and then called Trump at 8:03 PM; Cohen and Trump apparently spoke for over eight minutes on that call. *Id.* ¶ 34.d. Cohen and Howard exchanged several text messages later that night; Howard texted Cohen, “Keith will do it. Let’s reconvene tomorrow,” and Cohen replied “Thank you.” *Id.* ¶ 34.e. Cohen also texted Howard, “Resolution Consultants LLC is the name of the entity I formed a week ago.” *Id.* ¶ 34.e. “Resolution Consultants LLC” appears to be a reference to an LLC that Cohen formed on September 30, 2016, but he did not ultimately use that entity to make the payment to Clifford; for unknown reasons, Cohen never completed the process of opening a bank account under that entity’s name, and he dissolved it on October 17, 2016, the same day that he formed Essential Consultants. *See id.* ¶ 35.b, c. Cohen and Davidson connected on October 10, 2016, after Howard served as an intermediary, writing to them via text: “Keith/Michael: connecting you both in regards to that business opportunity. Spoke to the client this AM and they’re confirmed to proceed with the opportunity.” *Id.* ¶ 34.f.

³⁷ House Oversight Testimony at 22 (“And after several rounds of conversations with [Davidson] about purchasing [Clifford’s] life rights for \$130,000, what I did, each and every time, is go straight into Mr. Trump’s office and discuss the issue with him, when it was ultimately determined, and this was days before the election, that Mr. Trump was going to pay the \$130,000, in the office with me was Allen Weisselberg, the chief financial officer of the Trump Organization. He acknowledged to Allen that he was going to pay the 130,000, and that Allen and I should go back to his office and figure out how to do it.”).

³⁸ Cohen Plea Hearing at 23; *see* House Oversight Testimony at 13 (“Mr. Trump . . . asked me to pay off an adult film star with whom he had an affair, and to lie about it to his wife, which I did. . . . Mr. Trump directed me to use my own personal funds from a home equity line of credit to avoid any money being traced back to him that could negatively impact his campaign.”).

1 Organization's Chief Financial Officer, and asked Cohen and Weisselberg to "figure out how" to
2 make the payment.³⁹

3 Cohen reportedly asserted that he and Weisselberg considered a number of options to
4 make the payment, including putting up the money themselves or finding a third party to do so in
5 exchange for a favor from Trump,⁴⁰ and Cohen later testified that ultimately they "got to the
6 point where it was down to the wire, it was either somebody wire the funds and purchase the life
7 rights to the story from Ms. Clifford or it was going to end up being sold to television, and that
8 would have embarrassed the President and it would have interfered with the election."⁴¹ Cohen
9 asserts that he and Weisselberg ultimately agreed that Cohen would make the payment from his
10 own funds and would later be reimbursed in installments.⁴² Cohen and Weisselberg then
11 allegedly met with and explained the proposed payment process to Trump, who allegedly
12 approved it.⁴³

³⁹ House Oversight Testimony at 22, 34 ("I had gone into Mr. Trump's office, as I did after each and every conversation, and he had told me that he had spoken to a couple of friends, and it is 130,000, it is not a lot of money, and we should just do it, so go ahead and do it. And I was at the time with Allen Weisselberg, where he directed us to go back to Mr. Weisselberg's office and figure this all out.").

⁴⁰ See New Yorker Article ("Cohen took charge of the negotiations, protecting Trump from making a direct payment to [Stormy] Daniels. Cohen told me that he worked through a series of possible scenarios with Weisselberg.").

⁴¹ House Oversight Testimony at 30.

⁴² New Yorker Article ("Cohen said that Trump promised to reimburse him for the payment to Daniels, and that Weisselberg would take care of the logistics: 'The amount of money that they were going to pay back was created by him. How they were going to pay me the money back was created by him. And then the two of us went, as we did throughout the entire process, to Trump's office, and he approved it.'").

⁴³ New Yorker Article; see House Oversight Testimony at 135–36 ("Ms. KELLY. Did Mr. Trump know you were going through this process to hide the payment? Mr. COHEN. Yes. . . . Ms. KELLY. And did Mr. Trump know about this reimbursement method? Mr. COHEN. Oh, he knew about everything, yes. Ms. KELLY. Well, thank you, Mr. Cohen. So the President not only knew about the payments, he knew and helped to hide the payments and the reimbursements to you. Mr. COHEN. We discussed it. Everything had to go through Mr. Trump, and it had to be approved by Mr. Trump."); see also Cohen Book at 305 ("Weisselberg and I went to Trump's office to report our solution. I told [Trump] that I would make the payment personally and we'd figure out the repayment in a couple of months — after you've lost the election, I could have said. 'Wow, Michael,' Trump

1 After Cohen agreed to the principal terms of the nondisclosure agreement — *i.e.*, the
2 payment of \$130,000 to prevent the publication of Clifford's account of an alleged affair with
3 Trump — Clifford and Davidson signed a side letter agreement that provided the true identities
4 of the parties to the main agreement, which used the pseudonyms "Peggy Peterson" for Clifford
5 and "David Dennison" for Trump.⁴⁴ This document was apparently sent to Cohen on October
6 10, 2016, to "facilitate" the finalization of the nondisclosure agreement.⁴⁵ Cohen did not
7 immediately send Clifford the promised payment,⁴⁶ but he took further steps to do so, including,
8 on October 17, 2016, forming a limited liability company in Delaware, Essential Consultants.⁴⁷
9 Because of the perceived delay in receiving payment, however, Davidson emailed Cohen
10 threatening to cancel the agreement on October 17, 2016, claiming that Clifford was still
11 preparing to go public with her story if the payment was not finalized.⁴⁸

said. 'That's great. Perfect. Right after the election, when things calm down, we'll figure this all out.' So there is your answer: Did Donald J. Trump know that I paid off Stormy Daniels to catch and kill her story? Of course he did.'").

⁴⁴ Warrant Aff. ¶ 34.g.

⁴⁵ *Id.*

⁴⁶ SDNY Information ¶ 33; *see also* Cohen Book at 301 ("Davidson wasn't patiently awaiting the payment. He was convinced, correctly, that we were dragging our feet because the election was only a matter of weeks away. If we could play for time, [Davidson] told me, and Trump lost, as the entire universe now agreed was going to happen, including the candidate himself, then the value of Ms. Daniels's salacious story would go to zero. Texting and calling my cell, [Davidson] was pressing for the deal to close.").

⁴⁷ Delaware Div. of Corps, Entity Search Result, "Essential Consultants, LLC," <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (viewed Oct. 14, 2020); House Oversight Testimony at 135.

⁴⁸ Warrant Aff. ¶ 36.a. AMI's Howard also texted Cohen that day regarding a rumor that Clifford had decided to sell her story to the *Daily Mail*, another publication. *Id.* ¶ 36.b.i. Although it does not appear that Clifford provided information to any publisher at that time, information indicates that on October 18, 2016, an account of the alleged affair, for which Clifford did not provide any comment, was published on a website, "TheSmokingGun.com." *Id.* ¶ 36.c.

1 On October 25, 2016, Davidson allegedly informed Howard and Pecker at AMI that
2 because the nondisclosure agreement was still not finalized, Clifford was close to making a deal
3 with another media outlet to publicize her story.⁴⁹ In response, Howard texted Cohen: “Keith
4 [Davidson] calling you urgently. We have to coordinate something on the matter [Davidson] is
5 calling you about or it could look awfully bad for everyone.”⁵⁰ Pecker and Howard then called
6 Cohen, who in turn called Davidson to finalize the deal in two phone calls made that evening.⁵¹

7 On October 26, 2016, Cohen called Trump twice, at 8:26 and 8:34 AM,⁵² and Cohen
8 opened an account in the name of Essential Consultants at First Republic Bank later that
9 morning.⁵³ Cohen took out \$131,000 from a home equity line of credit on his personal residence
10 to provide funds for the new Essential Consultants bank account.⁵⁴ That afternoon, at 1:47 PM,
11 Davidson called Cohen and emailed him wiring instructions for an attorney-client trust account
12 at City National Bank.⁵⁵ The next day, October 27, 2016, Cohen wired \$130,000 from the
13 Essential Consultants account to Davidson’s client trust account, for the funds to be held in

⁴⁹ SDNY Information ¶ 33; Warrant Aff. ¶ 37.

⁵⁰ SDNY Information ¶ 33; Warrant Aff. ¶ 37.a.

⁵¹ SDNY Information ¶ 33; Warrant Aff. ¶ 37.a.

⁵² Warrant Aff. ¶ 37.b.

⁵³ *Id.* ¶ 37.c, d.

⁵⁴ House Oversight Testimony at 135; MUR 7313 Amend. Compl. at 8 (Mar. 12, 2018) (citing Joe Palazzolo and Michael Rothfeld, *Trump Lawyer’s Payment to Stormy Daniels Was Reported as Suspicious by Bank*, WALL ST. J. (Mar. 5, 2018), <https://www.wsj.com/articles/trump-lawyers-payment-to-porn-star-was-reported-as-suspicious-by-bank-1520273701> (“WSJ Mar. 5 Article”)); *see* House Oversight Testimony, Ex. 4 (documenting withdrawal from home equity line of credit); SDNY Information ¶ 34. *See* MUR 7313 Amend. Compl., Appx. 2 (showing an October 26, 2016, email that Cohen forwarded to Davidson that same day, in which a First Republic Bank employee wrote to Cohen: “The funds have been deposited into your checking account”).

⁵⁵ Warrant Aff. ¶ 37.e.

1 escrow until Cohen received the executed nondisclosure agreement.⁵⁶ Under “purpose” of the
2 wire transfer, Cohen wrote “retainer,” which he later acknowledged was a false statement to the
3 bank.⁵⁷ Cohen emailed Davidson that morning to confirm the wire transfer funds would be held
4 in trust until the agreement was completed, and Davidson wrote back to confirm that
5 understanding.⁵⁸

6 Cohen testified that Trump knew about this payment structure before Cohen made the
7 payment, and that he and Trump had determined not to have Trump make the payment to avoid
8 connecting the transaction to Trump.⁵⁹ Cohen appears to have signed the agreements on behalf
9 of Essential Consultants on October 28, 2016, and sent them to Davidson.⁶⁰ Cohen spoke to
10 Trump on the phone for approximately five minutes at 11:48 AM that day.⁶¹ Clifford signed the
11 documents that day, Davidson signed them on October 30, 2016, and Cohen received the final,
12 signed agreement on November 1, 2016.⁶² Davidson transferred \$96,645 from his attorney-

⁵⁶ House Oversight Testimony at 135; *see* House Oversight Testimony at 13 (“I am giving the committee today a copy of the \$130,000 wire transfer from me to Ms. Clifford’s attorney during the closing days of the Presidential campaign that was demanded by Ms. Clifford to maintain her silence about her affair with Mr. Trump.”); SDNY Information ¶ 34.

⁵⁷ SDNY Information ¶ 34.

⁵⁸ Warrant Aff. ¶ 38.

⁵⁹ House Oversight Testimony at 135 (“[T]he goal was to keep [Trump] as far away from it as possible.”); *see also* Cohen Book at 300 (“‘We definitely don’t want any paper trail leading back to [Trump],’ Allen [Weisselberg] said. ‘If the Boss pays it and signs the check, it’s like disclosing it to the world. It’s the same if it’s a wire from one of his accounts. It needs to come from a third-party to ensure secrecy.’”).

⁶⁰ SDNY Information ¶ 34; MUR 7313 Amend. Compl., Appx. 1.

⁶¹ Warrant Aff. ¶ 39.a.

⁶² SDNY Information ¶ 34; MUR 7313 Amend. Compl., Appx. 1. Trump apparently did not sign either the confidential nondisclosure agreement or the side letter agreement.

1 client trust account at City National Bank to Clifford's bank account on November 1, 2016; the
2 wire was annotated "net settlement."⁶³

3 Clifford did not publicize her alleged affair with Trump prior to the 2016 presidential
4 election on November 8, 2016.

5 **D. Reimbursement of Cohen**

6 Cohen testified that after the election, he presented the Trump Organization with a copy
7 of the bank statement reflecting the wire transfer from his home equity line of credit of the
8 \$130,000 he used to pay Clifford.⁶⁴ Cohen further testified that Trump thereafter agreed to
9 reimburse him for the \$130,000 Clifford payment and an unrelated \$50,000 provision of "tech
10 services," for a subtotal of \$180,000, "grossed up"⁶⁵ for tax purposes to \$360,000, with an
11 additional \$60,000 bonus, for a total reimbursement of \$420,000.⁶⁶ Weisselberg allegedly
12 decided that to avoid the improper appearance of making a large reimbursement payment to
13 Cohen, the reimbursement would be paid to Cohen in twelve monthly installments,⁶⁷ which
14 Cohen contends was done "to hide what the payment was . . . so that it would look like a

⁶³ Warrant Aff. ¶ 39.e; *see supra* note 31 (indicating that Clifford sought \$130,000 in order to receive \$100,000 after paying fees to her agent, Gina Rodriguez, and Davidson).

⁶⁴ House Oversight Testimony at 136.

⁶⁵ Cohen has explained that the reimbursement was "grossed up" to cover the tax consequences of the payment: "[The purpose of grossing up the amount is] [b]ecause if you pay \$130,000 and you live in New York where you have a 50 percent tax bracket, in order to get you 130 back, you have to have 260. Otherwise, if he gave me back 130, I would only — then I'd be out 65,000." *Id.*

⁶⁶ *Id.*; SDNY Information ¶ 37.

⁶⁷ SDNY Information ¶ 37; *see also* Cohen Book at 319 ("Trump was going to pay me for my services with my own money. . . . The payments would be spread out over twelve months and look like a perfectly ordinary arrangement for a sitting president devolving the management of his business interests to his two sons, but still in need of an experienced lawyer who knows his affairs . . . and who could advise him confidentially.").

1 retainer” for legal services provided by Cohen.⁶⁸ Cohen testified that, per their prearranged plan
 2 to cover up the true purpose of the payments, each month he presented Weisselberg with a
 3 fraudulent invoice for legal services and received a check for \$35,000, paid either from Trump’s
 4 personal account or from the Donald J. Trump Revocable Trust (“Trump Trust”) account.⁶⁹
 5 Cohen attested that there was, in fact, no retainer agreement for legal services and that the
 6 payments were to reimburse him for the \$130,000 payment to Clifford.⁷⁰ Cohen testified that
 7 Trump knew about these payments and was aware that they were, in fact, reimbursement to
 8 Cohen for the \$130,000 payment to Clifford.⁷¹ In a note on his 2017 Financial Disclosure filed
 9 with the U.S. Office of Government Ethics (“OGE”), Trump acknowledged reimbursing Cohen,

⁶⁸ House Oversight Testimony at 136:

Ms. KELLY: What was the purpose of spreading the reimbursements to you over the 12 monthly installments?

Mr. COHEN: That was in order to hide what the payment was. I obviously wanted the money in one shot. I would have preferred it that way. But in order to be able to put it onto the books, Allen Weisselberg made the decision that it should be paid over the 12 months so that it would look like a retainer.

Ms. KELLY: And did Mr. Trump know about this reimbursement method?

Mr. COHEN: Oh, he knew about everything, yes.

⁶⁹ House Oversight Testimony at 14, 22, 120–121, 151; *see id.*, Ex. 5a (\$35,000 check dated August 1, 2017, payable to Michael D. Cohen, Esq., from Donald J. Trump); *id.*, Ex. 5b (\$35,000 check dated March 17, 2017, payable to Michael D. Cohen, Esq., from the Donald J. Trump Revocable Trust Account); *id.* at 10 (“I am providing the committee today with several documents, and these include a copy of a check Mr. Trump wrote from his personal bank account, after he became President, to reimburse me for the hush money payments I made to cover up his affair with an adult film star, and to prevent damage to his campaign.”); SDNY Information ¶ 38.

⁷⁰ House Oversight Testimony at 22; *see also* SDNY Information ¶ 39.

⁷¹ House Oversight Testimony at 22–23; *see* House Intelligence Deposition at 196 (“I get a phone call from Mr. Trump — President Trump. And the First Lady is on the phone at the same time. And that was right after the announcement about the \$130,000 payment. Now, obviously, he knows that I paid it. We’d had months’ worth of conversation about it, not to mention he’s already started to pay me back.”); *see also* Cohen Book at 318 (“‘So here’s what we’ll do,’ [Trump] said. ‘We’ll use the number Allen [Weisselberg] came up with. What’s the number again?’ ‘Four hundred and twenty thousand,’ I said. ‘Wow, that’s a lot [of money],’ he said. ‘We can use this as a retainer for the work you will be doing for me privately. Allen, you can pay Michael \$35,000 for each month of the year. Michael, you will send Allen an invoice each month.’”).

1 representing that “in 2016 expenses were incurred by one of Donald J. Trump’s attorneys,
 2 Michael Cohen. Mr. Cohen sought reimbursement of those expenses and Mr. Trump fully
 3 reimbursed Mr. Cohen in 2017” in an amount between \$100,001 and \$250,000 and with no
 4 interest.⁷²

5 **E. Public Statements By Trump and Cohen**

6 On January 12, 2018, the *Wall Street Journal* reported that Cohen had arranged the
 7 nondisclosure agreement with Clifford to prevent her from publicizing her alleged affair with
 8 Trump prior to the 2016 presidential election.⁷³ On February 13, 2018, Cohen issued a statement
 9 addressing the payment to Clifford: “I used my own personal funds to facilitate a payment of
 10 \$130,000 to Ms. Stephanie Clifford, and neither The Trump Organization nor the Trump
 11 campaign was party to the transaction with Ms. Clifford and neither reimbursed me for the
 12 payment either directly or indirectly.”⁷⁴ At the time, Cohen declined to answer questions about
 13 his statement, including whether Trump was aware of, or directed him to make, the payment to
 14 Clifford.⁷⁵

⁷² OGE Form 278e, Donald J. Trump Executive Branch Personnel Public Financial Disclosure Report at 45 (May 16, 2018), <https://www.documentcloud.org/documents/4464412-Trump-Donald-J-2018Annual278.html> (“Trump 2017 Financial Disclosure Report”). For its part, OGE “concluded that the information related to the payment made by Mr. Cohen is required to be reported and that the information provided meets the disclosure requirement for a reportable liability.” *Id.* at 1.

⁷³ WSJ Jan. 12 Article.

⁷⁴ House Oversight Testimony at 120; *see also* Warrant Aff. ¶ 42.b, c; Maggie Haberman, *Michael D. Cohen, Trump’s Longtime Lawyer, Says He Paid Stormy Daniels Out of His Own Pocket*, N.Y. TIMES (Feb. 13, 2018), <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html> (“NYT Feb. 13 Article”); Cohen Book at 335–36 (“Maggie [Haberman] and I often exchanged information and gossip and tips, but this latest conversation verged on the absurd. Was I really expecting the world to believe I’d spent \$130,000 of my own money to hide the sexual past of Donald Trump? . . . [T]he premise of my explanation left obvious questions: why would a lawyer, any lawyer, pay a client’s expenses, without their knowledge? Was that legal? Ethical? Rational?”).

⁷⁵ Warrant Aff. ¶ 42.b.

1 In his later congressional testimony, Cohen asserted that after the initial news reports
2 regarding the Clifford payment were published, he, Trump, and Weisselberg coordinated a
3 public denial of the allegations, and that Trump asked Cohen to publicly say that Trump “was
4 not knowledgeable of these reimbursements, and he wasn’t knowledgeable of [Cohen’s]
5 actions.”⁷⁶ Cohen also later admitted under oath that his public statement addressing the news
6 reports about the Clifford payment, while accurate, was “purposefully” worded to avoid referring
7 to Trump personally, because, according to Cohen, Trump was a party to the arrangement with
8 Clifford and personally reimbursed Cohen for the Clifford payment.⁷⁷ An earlier draft of the
9 statement, which Cohen had emailed to himself on January 23, 2018, contemplated issuing a
10 broader denial by including Trump in his personal capacity and any third party: “I was not
11 reimbursed any monies from *Mr. Trump*, the Trump Organization, *any third party* or the
12 Presidential campaign. At no point did I ever advise Mr. Trump of communications or actions
13 regarding this agreement.”⁷⁸

14 In his initial public statement directly addressing the Clifford payment on April 5, 2018,
15 Trump denied any knowledge of the payment, including why Cohen made it, or where Cohen
16 obtained the funds to make it.⁷⁹ Trump issued a more detailed statement on May 3, 2018,

⁷⁶ House Oversight Testimony at 120.

⁷⁷ *Id.* at 120–21.

⁷⁸ Warrant Aff. ¶ 42.a (emphasis added).

⁷⁹ Remarks by President Trump in Press Gaggle en route [to] Washington, D.C. (Apr. 5, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-gaggle-en-route-washington-d-c/>:

Q Mr. President, did you know about the \$130,000 payment to Stormy Daniels?

THE PRESIDENT: No. No. What else?

Q Then why did Michael Cohen make those if there was no truth to her allegations?

1 acknowledging that Cohen had made the Clifford payment as part of a nondisclosure agreement
2 and had been reimbursed for doing so, but denying that the payment was connected to his
3 presidential campaign.⁸⁰

4 The DOJ investigated Cohen for his role in making the Clifford payment, including by
5 executing a search warrant on April 9, 2018, for Cohen's apartment, law office, and a hotel suite
6 where he and his family had been staying while renovating their apartment.⁸¹ On August 21,
7 2018, Cohen pleaded guilty to a federal criminal information charging him with five counts of
8 tax evasion and one count each of making a false statement to a bank, willfully causing a
9 corporation to make a political contribution, and making an excessive political contribution.⁸²
10 Appearing in federal court, Cohen reversed his previous position that Trump had no knowledge
11 of the payment and admitted under oath that he had made the Clifford payment at Trump's
12 direction and was later reimbursed for it by Trump,⁸³ and that he made the payment "for the

THE PRESIDENT: Well, you'll have to ask Michael Cohen. Michael is my attorney.
And you'll have to ask Michael Cohen.

Q Do you know where he got the money to make that payment?

THE PRESIDENT: No, I don't know. No.

⁸⁰ Donald J. Trump (@realDonaldTrump), TWITTER (May 3, 2018, 6:46 AM), <https://twitter.com/realdonaldtrump/status/991992302267785216>; Donald J. Trump (@realDonaldTrump), TWITTER (May 3, 2018, 6:54 AM), <https://twitter.com/realdonaldtrump/status/991994433750142976>; and Donald J. Trump (@realDonaldTrump), TWITTER (May 3, 2018, 7:00 AM), <https://twitter.com/realdonaldtrump/status/991995845120753664> (stating, over three tweets: "Mr. Cohen . . . received a monthly retainer, not from the campaign and having nothing to do with the campaign, from which he entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA . . . The agreement was used to stop the false and extortionist accusations made by her about an affair . . . [T]his was a private agreement. Money from the campaign, or campaign contributions, played no roll [sic] in this transaction").

⁸¹ See Warrant Aff., *supra* note 19.

⁸² SDNY Information, *supra* note 6.

⁸³ Cohen Plea Hearing at 23.

1 principal purpose of influencing the [2016] election,” rather than to protect Trump or his family
2 personally.⁸⁴

3 After Cohen pleaded guilty and indicated that Trump had directed him to make the
4 Clifford payment, Trump publicly stated that he “never directed Michael Cohen to break the
5 law” and that Cohen “is a lawyer and he is supposed to know the law. It is called ‘advice of
6 counsel,’ and a lawyer has great liability if a mistake is made.”⁸⁵ Trump also indicated that
7 “many campaign finance lawyers” stated that he had done “nothing wrong with respect to
8 campaign finance laws, if they even apply, because this was not campaign finance.”⁸⁶

9 On February 27 and 28, 2019, Cohen appeared before Congress and testified under oath
10 — consistent with his criminal guilty plea and sworn allocution — that he had made the Clifford
11 payment in coordination with Trump and at his direction, with the express promise of being fully
12 repaid, and that he was reimbursed in installments made to look like monthly payments for legal
13 services under a nonexistent retainer agreement.⁸⁷

⁸⁴ *Id.*

⁸⁵ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:17 AM), <https://twitter.com/realdonaldtrump/status/1073205176872435713>; *see* Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:39 AM), <https://twitter.com/realdonaldtrump/status/1073210823936495617> (“As a lawyer, Michael [Cohen] has great liability to me!”).

⁸⁶ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:17 AM), <https://twitter.com/realdonaldtrump/status/1073205176872435713>; Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 13, 2018, 8:25 AM), <https://twitter.com/realdonaldtrump/status/1073207272069890049>.

⁸⁷ House Oversight Testimony and House Intelligence Deposition, *supra* note 8.

1 **F. The Complaints and Responses Filed with the Commission**

2 The complaints addressed in this report, with the exception of the portion of the
3 complaint in MUR 7637 merged into MUR 7313, were all filed before Cohen pled guilty.⁸⁸ The
4 complaint in MUR 7313 was filed on January 23, 2018, shortly after the initial news reports
5 regarding the Clifford payment were published; it alleged that the Clifford payment was an
6 unreported and excessive in-kind contribution from Essential Consultants (or the then-unknown
7 individual behind that entity) to Trump and the Trump Committee, and that the Trump
8 Organization made, and Trump and the Trump Committee received, a prohibited corporate
9 contribution.⁸⁹ Cohen filed a response to the complaint in MUR 7313 on February 8, 2018,
10 denying the allegations and claiming the payment was made for personal reasons — in line with
11 his public statements made around the same time.⁹⁰

12 The complaint in MUR 7319, which was filed on February 14, 2018, also alleged that the
13 Clifford payment was an unreported and excessive or prohibited corporate contribution from the
14 Trump Organization, Essential Consultants, or an unknown third party, to Trump and the Trump
15 Committee.⁹¹ On April 6, 2018 — after both complainants amended their filings — Cohen filed
16 a response to both MURs 7313 and 7319, again denying the allegations.⁹²

⁸⁸ The MUR 7637 complaint refers generally to “courts of law” but not, specifically, Cohen’s plea. MUR 7637 Compl. at 2.

⁸⁹ MUR 7313 Compl. ¶¶ 2–5.

⁹⁰ *See* Cohen Resp., MUR 7313; NYT Feb. 13 Article, *supra* note 74 and accompanying text. Cohen did not submit a response to the complaint in MUR 7637, which was filed after Cohen had pled guilty and testified before Congress.

⁹¹ MUR 7319 Compl. at 5–10.

⁹² Cohen Resp., MURs 7313 and 7319; *see also* MUR 7313 Amend. Compl. (Mar. 12, 2018) (providing additional information but not raising additional distinct allegations); MUR 7319 First Amend. Compl. (Feb. 20, 2018) (same); MUR 7319 Second Amend. Compl. (Mar. 13, 2018) (same).

1 The third complaint addressed in this report, in MUR 7379, was filed on May 4, 2018,
2 and alleged that Cohen, Trump, and the Trump Committee converted campaign funds to personal
3 use when the Trump Committee allegedly paid legal fees Cohen incurred in connection with the
4 Clifford payment scheme.⁹³ The allegation is based on the Trump Committee's reporting of
5 disbursements to McDermott, Will & Emery LLP ("McDermott"), a law firm that represented
6 Cohen.⁹⁴ Cohen filed a response denying those allegations on June 26, 2018.⁹⁵

7 In the three responses that he filed with the Commission, Cohen primarily contended that
8 he made the Clifford payment with his own funds for personal reasons, *i.e.*, to protect "Trump,
9 his family, and his business[.]" and that "[t]he payment was not made for the purpose of
10 influencing the [2016] election."⁹⁶ However, Cohen reversed his position when, on August 21,
11 2018, he pleaded guilty to criminally violating the Act in connection with the Clifford payment,

⁹³ MUR 7379 Compl. at 2–3.

⁹⁴ *Id.* at 3, 5–6. The Trump Committee made the four disbursements on October 26, 2017, December 11, 2017, January 25, 2018, and April 17, 2018. *See* Trump Comm. Amend. 2017 Year-End Report at 5,628–5,629 (Apr. 12, 2018); Trump Comm. Amend. 2018 April Quarterly Report at 8,634 (July 15, 2018); Trump Comm. Amend. 2018 July Quarterly Report at 27,102 (Sept. 21, 2018). The MUR 7379 complaint was filed on May 4, 2018, before the July 15, 2018, filing deadline for the 2018 July Quarterly Report, in which the Trump Committee disclosed the fourth disbursement to McDermott Will & Emery; as such, the complaint alleges that the amount that the Trump Committee improperly paid for Cohen's legal expenses was \$227,936.31 — the aggregate total of the first three disbursements.

⁹⁵ Cohen Resp., MUR 7379.

⁹⁶ Cohen Resp. at 2–3, MURs 7313 and 7319 ("In a private transaction in October 2016, Mr. Cohen used his own personal funds to facilitate a payment of \$130,000 to Ms. Clifford. At that time, Ms. Clifford had been offered payments by third parties to make public allegations of a completely personal nature that — even if untrue — could have harmed Mr. Trump, his family, and his business. Mr. Cohen, who has served as personal counsel to Mr. Trump for eleven years, facilitated this payment on behalf of his client. The payment was *not* made in connection with Mr. Trump's campaign. Mr. Cohen has never been an agent or employee of the Trump campaign. The payment was not made for the purpose of influencing the election, and Mr. Cohen would have facilitated the payment irrespective of Mr. Trump's candidacy.") (emphasis in original). In his pre-plea response, Cohen argued that the payment was not a "contribution" or "expenditure" under the Act and was, therefore, beyond the Commission's jurisdiction. Cohen Resp. at 1, MUR 7313.

1 and he provided detailed sworn congressional testimony regarding the payment scheme and his
2 role in it on February 27 and 28, 2019.⁹⁷

3 The Trump Committee filed a response in MURs 7313 and 7319 on April 12, 2018,
4 which included a sworn affidavit from its current treasurer, Bradley T. Crate, asserting that
5 Cohen was not “on the Committee’s payroll” and did not have the “authority to authorize
6 expenditures” on the Committee’s behalf.⁹⁸ The Trump Committee contends that the Clifford
7 payment was not a “campaign-related transaction made for the purpose of influencing a federal
8 election.”⁹⁹ The Trump Committee filed a response to the allegations in MUR 7379 on June 26,
9 2018, asserting that the use of Committee funds to pay for Cohen’s legal expenses was not
10 “personal use,” as defined in the Act and prior Commission decisions, because the expenses
11 arose from Cohen’s activities on behalf of the campaign — *i.e.*, the costs were for legal
12 representation arising from the Special Counsel’s investigation of alleged Russian interference in
13 the 2016 presidential election, and not, as alleged in the MUR 7379 complaint, from Cohen’s
14 alleged involvement with the Clifford payment.¹⁰⁰

⁹⁷ See Cohen Plea Hearing; House Oversight Testimony; House Intelligence Deposition. As discussed herein, Cohen initially made false public statements regarding the Clifford payment, and he pleaded guilty to criminal charges of making a false statement to a bank and making false statements to the U.S. Congress in October 2017, on a matter unrelated to the allegations discussed in this report. *Supra* notes 73–75 and accompanying text; SDNY Information ¶¶ 15–23; Information ¶¶ 8–9, *United States v. Cohen*, No. 1:18-cr-850-WHP, 18-CRIM-850 (S.D.N.Y. Nov. 29, 2018), <https://www.justice.gov/file/1115596/download>. Nevertheless, after pleading guilty to criminal charges under the Act in August 2018, Cohen has provided a consistent account of the Clifford payment in a sworn plea allocution, in sworn testimony before Congress in February 2019, and in his subsequent public statements and writings, and his account appears to be corroborated by documents, records, and independent reporting.

⁹⁸ Trump Comm. Resp., MURs 7313 and 7319, Attach. ¶ 6 (Crate Aff.); *see also* Trump Comm. Resp., MUR 7637 (referring to response in MURs 7313 and 7319).

⁹⁹ Trump Comm. Resp. at 2, MURs 7313 and 7319. The Trump Committee also argued that because the Clifford payment lacked a nexus with the campaign, it was not a “third party payment” that would, under Commission precedents, result in a contribution to the Committee. *Id.* at 2–5.

¹⁰⁰ Trump Comm. Resp. at 2, MUR 7379 (June 26, 2018).

1 Trump did not file a response to the complaints. None of the complainants or
2 respondents amended or supplemented their submissions after Cohen's guilty plea, although the
3 complaint in MUR 7637 was filed after Cohen's plea and subsequent congressional testimony.¹⁰¹

4 **III. LEGAL ANALYSIS**

5 The available information indicates that Michael Cohen paid Stephanie Clifford \$130,000
6 at the direction of presidential candidate Donald J. Trump, with Trump's express promise of
7 repayment, for the purpose of influencing the 2016 election by preventing the publication,
8 shortly before the election, of Clifford's allegations of a sexual relationship with Trump. For the
9 reasons discussed below, Cohen's payment to Clifford can be analyzed as either an
10 "expenditure" coordinated with Trump, or a "loan" of funds to Trump. In either case, the
11 available information supports the conclusion that the payment constituted a contribution to
12 Trump and the Trump Committee.

13 As such, the available information indicates that Cohen made, and Trump and the Trump
14 Committee knowingly accepted, a contribution in excess of the amount that Cohen was legally
15 permitted to contribute to Trump's campaign. Moreover, due to Trump's and Cohen's deliberate
16 concealment of the Clifford payment scheme, the available information further indicates that the
17 Trump Committee failed to publicly disclose the resulting contribution, as required under the
18 Act; because Cohen obscured the true source of the Clifford payment by making it through
19 Essential Consultants, an LLC that he created and used for that specific purpose, Cohen,
20 Essential Consultants, Trump, and the Trump Committee violated the Act's prohibition on

¹⁰¹ Although the Trump Committee's response in MUR 7637 was submitted after Cohen's guilty plea, it does not mention that plea and only refers the Commission to the Trump Committee's earlier response to MURs 7313 and 7319.

1 contributions in the name of another. In addition, the available information supports a reason to
2 believe finding that the Trump Organization, through its partial reimbursement of Cohen for the
3 Clifford payment, violated the Act by making a prohibited corporate or excessive contribution,
4 and Trump and the Trump Committee, in turn, violated the Act by knowingly accepting that
5 contribution. The available information indicates that there is reason to believe that all of these
6 violations were knowing and willful.

7 Finally, because the available information supports the conclusions above, it does not
8 indicate that Cohen, Trump, and the Trump Committee violated the Act's personal use
9 prohibition in connection with the payment to Clifford. Moreover, the available information
10 does not support the allegation that Trump Tower Commercial, LLC was reimbursed for
11 payments made to Clifford.

12 **A. Excessive Contributions**

13 1. The Act and Commission Regulations Prohibit Making or Knowingly 14 Accepting Excessive Contributions

15 Under the Act, a "contribution" includes "any gift, subscription, loan, advance, or deposit
16 of money or anything of value made by any person for the purpose of influencing any election
17 for Federal office,"¹⁰² and an "expenditure" includes "any purchase, payment, distribution, loan,
18 advance, deposit, or gift of money or anything of value, made by any person for the purpose of
19 influencing any election for Federal office."¹⁰³ Under Commission regulations, the phrase
20 "anything of value" includes all in-kind contributions.¹⁰⁴ In-kind contributions include, among

¹⁰² 52 U.S.C. § 30101(8)(A).

¹⁰³ 52 U.S.C. § 30101(9)(A).

¹⁰⁴ 11 C.F.R. § 100.52(d).

1 other things, coordinated expenditures, which are expenditures made “in cooperation,
 2 consultation, or concert, with, or at the request or suggestion of, a candidate,” the candidate’s
 3 authorized committee, or their agents.¹⁰⁵ The Act and Commission regulations prohibit any
 4 person from making aggregate contributions to a candidate’s authorized committee in excess of a
 5 specified amount — which, during the 2016 election cycle, was \$2,700 per election — and
 6 prohibits candidates and authorized committees from knowingly accepting contributions from
 7 individuals in excess of this amount.¹⁰⁶ The Clifford payment can be analyzed as either an
 8 “expenditure” coordinated with, or a “loan” to, a federal candidate, Trump. Each analysis is
 9 considered in turn below and, under either analysis, the payment was a “contribution” under the
 10 Act.

11 2. The Commission Should Find Reason to Believe that Cohen Made, and
 12 Trump and the Trump Committee Knowingly Accepted, an Excessive
 13 Contribution in the Form of a Coordinated Expenditure

14 The available information indicates that Cohen’s payment to Clifford was “coordinated”
 15 with Trump, *i.e.*, it was made “in cooperation, consultation or concert with, or at the request or
 16 suggestion of” Trump.¹⁰⁷ The Commission has consistently found that payments by a third party
 17 that are intended to influence an election and are “coordinated” with a candidate, authorized

¹⁰⁵ 52 U.S.C. § 30116(a)(7)(B)(i); *see* 11 C.F.R. § 109.20 (defining “coordination”); *see also* *Buckley v. Valeo*, 424 U.S. 1, 46–47 (1976).

¹⁰⁶ 52 U.S.C. § 30116(a)(1)(A), (f); 11 C.F.R. §§ 110.1(b), 110.9; *see* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

¹⁰⁷ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)–(b). The Commission has explained that expenditures that are not made for communications are analyzed under the Commission’s regulation at 11 C.F.R. § 109.20(b) and not under the Commission’s three-part test for “coordinated communications” under 11 C.F.R. § 109.21. Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 425 (Jan. 3, 2003).

1 committee, or agent thereof result in a contribution by the person making the expenditure to the
 2 candidate or political committee with whom the expenditure is coordinated.¹⁰⁸

3 The available information includes both direct and circumstantial indications that Cohen
 4 coordinated with Trump — *i.e.*, that he acted in cooperation, consultation, or concert with, or at
 5 the request or suggestion of Trump.¹⁰⁹ According to Cohen's sworn congressional testimony,
 6 Trump was concerned about the impact that Clifford's allegations would have on his electoral
 7 prospects if the allegations were publicized shortly after the release of the Access Hollywood
 8 recording, days before the election.¹¹⁰ Cohen's testimony that he regularly apprised Trump of
 9 his negotiations with Clifford's attorney, Davidson, regarding the Clifford payment and
 10 nondisclosure agreement — including Cohen's testimony that he went "into Mr. Trump's
 11 office . . . after each and every conversation"¹¹¹ and the corroborating records of phone calls and
 12 text messages¹¹² — demonstrates that Cohen acted in "consultation" with Trump. Cohen's

¹⁰⁸ See 11 C.F.R. § 109.20(a)–(b); *see, e.g.*, Conciliation Agreement ¶¶ IV.7–11 and V.1–2, MUR 6718 (Sen. John E. Ensign, *et al.*) (Apr. 10, 2013) (acknowledging that third parties' payment, in coordination with federal candidate, of severance to former employee of the candidate's authorized committee and leadership PAC resulted in an excessive, unreported in-kind contribution by third parties to the candidate and the two political committees); Factual & Legal Analysis at 30–33, MURs 4568, 4633, and 4634 (Triad Mgmt. Servs., Inc., *et al.*) (finding reason to believe that by offering fundraising support, campaign management consulting services, and support for advertising campaigns through "political audits," a corporation made, and multiple committees knowingly received, prohibited or excessive in-kind contributions in the form of coordinated expenditures).

¹⁰⁹ Cohen Plea Hearing at 23; *see* SDNY Information ¶ 35 ("MICHAEL COHEN, the defendant, caused and made the payments described herein in order to influence the 2016 presidential election. In so doing, he coordinated with one or more members of the campaign, including through meetings and phone calls, about the fact, nature, and timing of the payments.").

¹¹⁰ House Oversight Testimony at 34.

¹¹¹ *Id.*

¹¹² Warrant Aff. ¶¶ 34.a, d (identifying Cohen's phone communications with Trump on October 8, 2016, around the time that Cohen began negotiating the Clifford payment and nondisclosure agreement with Clifford's attorney Davidson); *id.* ¶ 37.b (indicating that Cohen spoke with Trump twice on the morning of October 26, 2016, before opening a bank account for Essential Consultants later that day and transferring the Clifford payment to Davidson the following day, October 27, 2016).

1 assertion in his sworn testimony that Trump agreed that Clifford should be paid the \$130,000 she
2 demanded, saying that it was “not a lot of money, and we should just do it, so go ahead and do
3 it,”¹¹³ directly indicates that Cohen acted “at the request or suggestion” of Trump.

4 Moreover, Cohen’s testimony establishes that Cohen acted at the “request or suggestion”
5 of, and in “concert” with, Trump: After Trump agreed to pay the \$130,000, he directed Cohen
6 and Allen Weisselberg, the Trump Organization’s Chief Financial Officer, to “figure out how” to
7 make the payment, and Trump approved Cohen and Weisselberg’s plan for Cohen to pay the
8 money and be reimbursed later.¹¹⁴

9 Trump’s coordination with Cohen extended beyond making the initial payment to
10 Clifford and included the specific details of Cohen’s reimbursement. Cohen testified that Trump
11 personally approved the plan to reimburse Cohen in monthly installments made to look like
12 payments for legal services under a retainer agreement with Cohen, when, in fact, Trump knew
13 that there was no retainer agreement and that the payments were actually reimbursements for the
14 Clifford payment.¹¹⁵ Moreover, Trump signed the reimbursement checks to Cohen that were
15 drawn on Trump’s personal account, while other reimbursement checks, which were signed by

¹¹³ House Oversight Testimony at 34.

¹¹⁴ *Id.* at 22; *see* Cohen Plea Hearing at 23; *see also* New Yorker Article (quoting Cohen as saying, “[t]he two of us [Cohen and Weisselberg] went, as we did throughout the entire process, to Trump’s office, and he approved it”); *cf.* Coordinated and Independent Expenditures, 68 Fed. Reg. at 432 (explaining that, in the context of the “request or suggest” conduct standard for coordinated communications at 11 C.F.R. § 109.21(d)(1), there is no legal or functional difference between a request from the candidate and a suggestion from the payor to which the candidate assents, stating that “[a]ssent to a suggestion is merely one form of a request”).

¹¹⁵ Cohen Plea Hearing at 23 (“The monies I advanced through my company were later repaid to me by the candidate.”); House Oversight Testimony at 136 (indicating that Cohen and Trump discussed, and Trump personally approved, the payment and reimbursements to Cohen); *see* House Intelligence Deposition at 196 (“I get a phone call from Mr. Trump — President Trump. And the First Lady is on the phone at the same time. And that was right after the announcement [in the January 2018 Wall Street Journal Article] about the \$130,000 payment. Now, obviously, he knows that I paid it. We’d had months’ worth of conversation about it, not to mention he’s already started to pay me back.”).

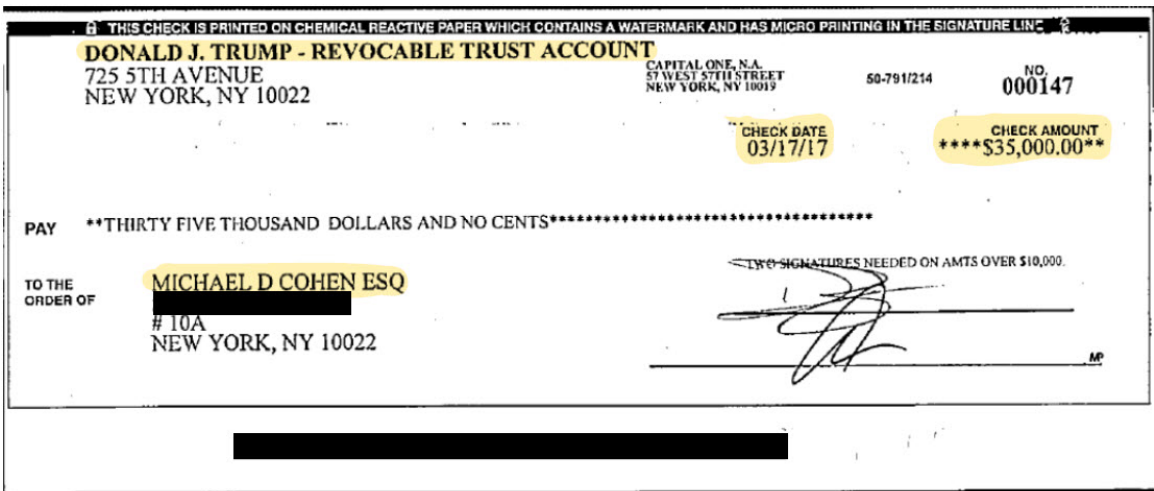
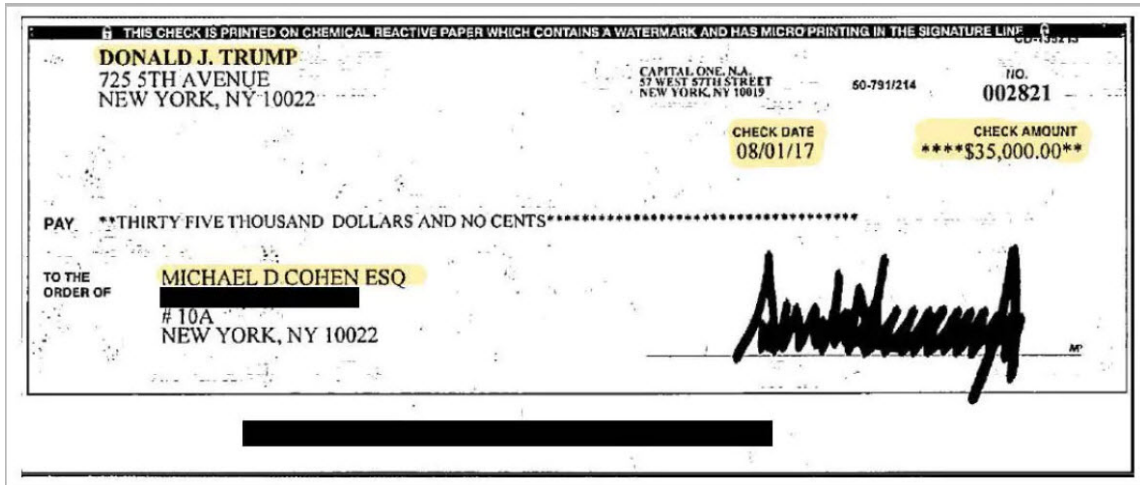
MURs 7313, 7319, and 7379 (Michael D. Cohen, *et al.*)

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1 Weisselberg and Donald Trump, Jr., were drawn on the account of the Trump Trust, which was
2 apparently organized to hold his assets, including the Trump Organization.¹¹⁶

3 Below are images of two reimbursement checks that Cohen received, copies of which
4 Cohen later submitted as exhibits to his congressional testimony:¹¹⁷



¹¹⁶ House Oversight Testimony at 14, 22, 120–21, 151.

¹¹⁷ *Id.*, Exs. 5a and 5b (copies of reimbursement checks to Cohen from Donald J. Trump and the Donald J. Trump Trust Account, respectively).

1 The checks corroborate Cohen's testimony that he acted in concert with Trump when
2 making the payment to Clifford in anticipation of receiving reimbursements in installments, and
3 that he received reimbursements for the Clifford payment under the guise of payments for legal
4 services under a retainer agreement that he and Trump both knew did not exist.¹¹⁸ Accordingly,
5 the information indicates that Cohen's payment to Clifford was "coordinated," as defined in
6 11 C.F.R. § 109.20(a), because it was made in cooperation, consultation, or concert with, or at
7 the request or suggestion of, Trump. The coordinated payment would therefore constitute an in-
8 kind contribution from Cohen to Trump and the Trump Committee,¹¹⁹ if it were an
9 "expenditure" — *i.e.*, if it was made for the purpose of influencing the 2016 election.¹²⁰

10 Cohen and the Trump Committee argue in their responses that the Clifford payment was
11 not a "contribution" because the payment was made with personal funds, for personal reasons.¹²¹
12 Cohen previously asserted — prior to entering his guilty plea — that the payment was made to
13 prevent harm to "Trump, his family, and his business" and not for the purpose of influencing the

¹¹⁸ 11 C.F.R. § 109.20(a); House Oversight Testimony at 136, 142; *see also* Cohen Plea Hearing at 23.

¹¹⁹ This report imputes to the Trump Committee all of Trump's actions that resulted in the receipt of a "contribution" or "loan," or the making of an "expenditure," because, as provided in the Act, when a federal candidate receives a contribution or loan, or makes a disbursement, "for use in connection with" his or her campaign, the candidate is considered to have acted as an agent of his or her authorized campaign committee. *See* 52 U.S.C. § 30102(e)(2); 11 C.F.R. § 101.2; *see, e.g.*, Factual & Legal Analysis at 12, MUR 6824 (Eugene Yu for Congress, *et al.*) (Mar. 29, 2019) ("Eugene Yu F&LA"); Factual & Legal Analysis at 6, MUR 6566 (Lisa Wilson-Foley for Congress, *et al.*) (July 22, 2015).

¹²⁰ The fact that Cohen made the Clifford payment through Essential Consultants would not alter the conclusion that Cohen made the expenditure in coordination with Trump and the Trump Committee, since, as explained in Section III.C, *infra*, Cohen was the true contributor, though he made that contribution in the name of Essential Consultants. *See United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011) (determining that the provider of funds is considered the true source of a political contribution, not the "intermediary who simply conveys the gift from the donor to the donee").

¹²¹ Cohen Supp. Resp. at 2–3, MURs 7313 and 7319; *see* Cohen Resp. at 1, MUR 7313; Trump Comm. Resp. at 2, MURs 7313 and 7319.

1 2016 election.¹²² Although Trump did not file a response with the Commission, he effectively
 2 raised this same argument in statements and tweets addressing the Clifford payment.¹²³

3 In analyzing whether a payment made by a third party to a candidate is a “contribution”
 4 or “expenditure,”¹²⁴ the Commission has concluded that “the question under the Act is whether”
 5 the donation, payment, or service was “provided for the purpose of influencing a federal election,
 6 not whether [it] provided a benefit to [a federal candidate’s] campaign.”¹²⁵ The electoral purpose
 7 of a payment may be clear on its face, as in payments to solicit contributions or for
 8 communications that expressly advocate for the election or defeat of a specific candidate, or
 9 inferred from the surrounding circumstances.¹²⁶

¹²² Cohen Supp. Resp. at 2–3, MURs 7313 and 7319; *see* Cohen Resp. at 1, MUR 7313.

¹²³ *See, e.g.*, Donald J. Trump Tweets, *supra* notes 80, 85–86 and accompanying text (discussing Trump tweets reading, in part, that Cohen “entered into, through reimbursement, a private contract” and that “this was a private agreement”). A federal appellate court has recognized Trump’s tweets as constituting official government records. *Knight First Amend. Inst. at Colum. Univ. v. Trump*, 928 F.3d 226, 232 (2d Cir. 2019) (noting that “[t]he President and his aides have characterized tweets from [President Trump’s Twitter account] as official statements of the President [and] . . . the National Archives, the agency of government responsible for maintaining the government’s records, has concluded that the President’s tweets are official records”).

¹²⁴ 52 U.S.C. §§ 30101(8)(A)(i); 30101(9)(A)(i).

¹²⁵ Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate, *et al.*).

¹²⁶ *See, e.g.*, Advisory Op. 2000-08 at 1, 3 (Harvey) (concluding private individual’s \$10,000 “gift” to federal candidate would be a contribution because “the proposed gift would not be made but for the recipient’s status as a Federal candidate”); Advisory Op. 1990-05 at 4 (Mueller) (explaining that solicitations and express advocacy communications are for the purpose of influencing an election and concluding, after examining circumstances of the proposed activity, that because federal candidate’s company newsletter featured discussion of campaign, publication expenses would be contributions); Advisory Op. 1988-22 at 5 (San Joaquin Valley Republican Associates) (concluding that a third-party newspaper publishing comments regarding federal candidates, coordinated with those candidates or their agents, thereby made contributions because “the financing of a communication to the general public, not within the “press exemption,” that discusses or mentions a candidate in an election-related context and is undertaken in coordination with the candidate or his campaign is ‘for the purpose of influencing a federal election’”); Factual & Legal Analysis at 17–20, MURs 4568, 4633, and 4634 (Triad Mgmt. Servs., Inc.) (finding reason to believe corporation and related nonprofit organizations made contributions by providing federal candidates with “uncompensated fundraising and campaign management assistance” and “advertising assistance,” including spending “several million dollars” on coordinated advertisements). A federal court, in the context of a criminal case, has articulated that a third party’s payment to a candidate is a “contribution” if the person behind it has the *principal* purpose of influencing a federal election, even if that is not their *only* purpose — acknowledging that

1 When electoral purpose is not apparent on its face, the Commission has concluded that
2 payments would result in a contribution or expenditure if they were made to potentially advance
3 a candidacy, if they were made because of the beneficiary's status as a federal candidate, or if the
4 payment was coordinated with the candidate or his campaign. For example, in Advisory Opinion
5 1990-05, the Commission concluded that the publication expenses of a newsletter published by a
6 candidate-owned company would be expenditures if the newsletter referred to the candidate's
7 campaign or qualifications for office, referred to issues or policy positions raised in the campaign
8 (by the candidate or her opponents), or if the distribution of the newsletter significantly expanded
9 or otherwise indicated that it was being used as a campaign communication.¹²⁷ The Commission
10 indicated that any discussion of issues or policies "closely associated" with the candidate's
11 federal campaign "would be inevitably perceived by readers as promoting your candidacy," and
12 the newsletter would therefore be "viewed by the Commission as election-related and subject to
13 the Act."¹²⁸

14 Similarly, in Advisory Opinion 2000-08, the Commission concluded that a donor's
15 provision of a monetary "gift" to a federal candidate to express "gratitude" and "deep
16 appreciation" to him for running for office would be made to influence a federal election —
17 notwithstanding the donor's statements that he intended that the gift be used solely for personal
18 expenses and did not "wish to directly support [the candidate's] campaign" — because "the

"[p]eople rarely act with a single purpose in mind." Jury Instrs., *United States v. Edwards*, No. 1:11-CR-161, 2012 WL 1856481 (M.D.N.C. May 18, 2012).

¹²⁷ Advisory Op. 1990-05 at 4.

¹²⁸ *Id.* at 2, 4.

1 proposed gift would not be made but for the recipient's status as a Federal candidate; it is,
 2 therefore, linked to the Federal election" and "would be considered a contribution."¹²⁹

3 Conversely, the Commission has previously found that activity by or in connection with a
 4 federal candidate that is undertaken for any number of non-electoral purposes — including, *e.g.*,
 5 activity to advance a commercial interest,¹³⁰ fulfill the obligations of holding federal office,¹³¹ or
 6 engage in non-candidate oriented election litigation¹³² — does not necessarily result in a
 7 "contribution" or "expenditure," even if such activity confers a benefit on a federal candidate or
 8 otherwise impacts a federal election.

¹²⁹ Advisory Op. 2000-08 at 2–3.

¹³⁰ *E.g.*, Advisory Op. 2012-31 at 4 (AT&T) (wireless carrier charging a reduced fee to process text message-based donations to federal candidates did not thereby make "contributions" to the candidates because the reduced fee "reflects commercial considerations and does not reflect considerations outside of a business relationship"); Advisory Op. 2004-06 at 4 (Meetup) (commercial web service provider that can be used to arrange meetings and events based on shared interests did not make contributions by featuring federal candidates in its list of "event topics" or by offering its services to federal candidates and committees because "any similarly situated member of the general public" could use these services); *see* First Gen. Counsel's Report at 13–17, MURs 5474 and 5539 (Dog Eat Dog Films, *et al.*) (recommending finding no reason to believe with respect to allegation that producers and distributors of a film criticizing a federal candidate made "contributions" or "expenditures," because the record established that the film was made and distributed "for genuinely commercial purposes rather than to influence a federal election"); Certification ¶¶ A.1–2, B.1, MURs 5474 and 5539 (approving recommendations); Advisory Op. 1994-30 at 4–8 (Conservative Concepts/Pence) (identifying factors used to determine whether "entrepreneurial activity" referencing a federal candidate will result in a "contribution," including "whether the activity" is "for genuinely commercial purposes");

¹³¹ *E.g.*, Advisory Op. 1981-37 at 2 (Gephardt) (federal candidate did not receive a contribution by appearing at a series of "public affairs forums" paid for by a corporation because "the purpose of the activity is not to influence the nomination or election of a candidate for Federal office but rather in connection with the duties of a Federal officeholder" regardless of indirect benefit to future campaigns).

¹³² *E.g.*, Factual & Legal Analysis at 8, MUR 7024 (free legal services provided to a federal candidate challenging FEC disclosure regulations were not contributions because the services were provided "for the purpose of challenging a rule of general application, not to influence a particular election"); *cf.* Advisory Op. 1980-57 at 3 (Bexar County Democratic Party) (funds raised for federal candidate's lawsuit seeking removal of a potential opponent from the ballot *were* contributions because litigation "to force an election opponent off the ballot . . . is as much an effort to influence an election as is a campaign advertisement derogating that opponent").

1 With respect to the Clifford payment, it is unnecessary to infer the circumstances behind
2 the payment because Cohen has expressly acknowledged, in a sworn statement admitting to
3 criminally violating the Act, that he paid Clifford “in coordination with, and at the direction of”
4 Trump “for the principal purpose of influencing the [2016 presidential] election.”¹³³ In addition
5 to Cohen’s sworn admission, the overall record in these matters — including the coordination
6 between Trump and Cohen and the circumstances and timing of the payment immediately before
7 the election and immediately following media reports about the Access Hollywood tape —
8 indicates that Cohen’s payment to Clifford was made to advance Trump’s candidacy and would
9 not have been made absent Trump’s status as a presidential candidate. As with the facts the
10 Commission considered in Advisory Opinions 1990-05 and 2000-08, the available information in
11 this matter supports the conclusion that the purpose of the Clifford payment was to influence the
12 2016 election, regardless of any incidental effect it may have had on Trump personally.¹³⁴

¹³³ Cohen Plea Hearing at 23.

¹³⁴ See Advisory Op. 1990-05 at 4; Advisory Op. 2000-08 at 2–3. In Advisory Opinion 2000-08, the Commission also concluded that the donor’s payment of the candidate’s personal expenses would be treated as a contribution under the “personal use” provision governing third-party payments at 11 C.F.R. § 113.1(g)(6), because the payment would not have been made “irrespective of the candidacy.” *Id.* at 3; see also 52 U.S.C. § 30114(b) (prohibiting use of campaign “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office”); 11 C.F.R. § 113.1(g)(6) (describing circumstances in which a third-party’s payment of expenses that would constitute personal use if paid by the campaign will be deemed a contribution, under the general definition of “contribution” in 11 C.F.R. part 100, from the third party to the candidate); Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7871 (“Personal Use E&J”) (“If a third party pays for the candidate’s personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy. As such, it is appropriate to treat such a payment as a contribution under the Act.”). Cohen and the Trump Committee assert that Cohen’s payment cannot be considered a “contribution” under 11 C.F.R. § 113.1(g)(6). See Cohen Supp. Resp. at 2–3, MURs 7313 and 7319; Trump Comm. Resp. at 3–5, MURs 7313 and 7319. In evaluating whether a third party’s payments of a candidate’s personal expenses are contributions under Section 113.1(g)(6), the Commission has stated that it asks “would the third party pay the expense if the candidate was not running for Federal office? If the answer is yes, then the payment does not constitute a contribution.” Advisory Op. 2008-17 at 4 (KITPAC); see also Statement of Reasons of Chairman David M. Mason, Vice Chairman Karl J. Sandstrom, and Comm’rs Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Darryl R. Wold at 4, MUR 5141 (Moran) (Mar. 11, 2002) (considering such factors as: (1) whether the payments “would free up other funds of the candidate for campaign purposes,” (2) whether the payments would provide the candidate “more time to spend on the campaign instead of

1 The Trump Committee appears to suggest that the temporal proximity between the
2 payment and the election was attributable to Clifford, asserting that even if Clifford used the
3 election “as a means to leverage a personal payment from another, that does not change the
4 analysis or make the payment in connection with an election.”¹³⁵ On the contrary, however, not
5 only do Cohen’s sworn statements expressly tie the payment to the election,¹³⁶ the circumstances
6 surrounding the negotiation of the non-disclosure agreement and payment indicate that Cohen
7 and Trump themselves contemporaneously treated the matter as connected to the election and
8 support the conclusion that they made the payment to prevent damage to Trump’s campaign
9 should Clifford’s story become public in the last days before the election.¹³⁷ Neither Cohen nor
10 Trump attempted to buy the rights to Clifford’s story in 2007, when Clifford alleged that her
11 affair with Trump ended, or in 2011, when Cohen sought to prevent the publication of Clifford’s
12 story.¹³⁸ Although Trump was already a well-known businessman and reality television
13 personality in 2011, he and Cohen did not offer to pay Clifford anything, much less a six-figure

pursuing his or her usual employment,” and (3) whether the payments would not have been made “but for the candidacy”) (“Moran SOR”). Because the available information indicates that the Clifford payment was made for the purpose of influencing the 2016 presidential election under the general definition of “contribution” in 11 C.F.R. part 100, this report assesses the payment as a contribution as that term is incorporated in Section 113.1(g)(6) but need not also analyze whether the payment would constitute personal use if paid by the Trump Committee.

¹³⁵ Trump Comm. Resp. at 6, MURs 7313 and 7319.

¹³⁶ Cohen Plea Hearing at 23.

¹³⁷ Cf. Factual & Legal Analysis at 6–7, MUR 7025 (Friends of Mike Lee, *et al.*) (“[A] finding of reason to believe that a candidate’s personal transaction resulted in a contribution to his or her campaign requires specific information demonstrating a nexus between the transactions and the campaign[,] . . . [and the] basis for this determination is the context of the transaction’s surrounding factual circumstances.”) (internal quotation marks omitted); Moran SOR at 3–4 (finding that a personal loan to a federal candidate, from a longtime friend who asserted that the loan was not related to the election, to pay for legal representation in a divorce proceeding was not “for use in connection with the candidate’s campaign”).

¹³⁸ WSJ Mar. 20 Article (indicating that Cohen threatened to sue if Clifford’s interview with *Life & Style* was published, but not that he or Trump sought to buy the rights to Clifford’s story).

1 sum, to remain silent about her allegations until Trump became a presidential candidate and after
2 Trump's personal interactions with women became a campaign issue just weeks before the
3 election.¹³⁹

4 It was only after Trump became a presidential candidate, in August 2015, that Cohen
5 allegedly arranged, with AMI's help, to "catch and kill" negative stories about Trump, and
6 Cohen was actively involved in coordinating the AMI payment to Karen McDougal that
7 prevented her from publicizing her alleged affair with Trump.¹⁴⁰ Cohen has also testified that
8 the publication of the "Access Hollywood" video featuring Trump's "vulgar" statements about
9 "kissing, groping, and trying to have sex with women"¹⁴¹ specifically caused Trump and Trump
10 Committee staffers, including Hope Hicks, to be concerned about how women in the electorate
11 were viewing Trump as a candidate in the final days before the 2016 election.¹⁴² Moreover,
12 according to Cohen, the final steps to complete the nondisclosure agreement with Clifford were
13 driven by threats from Davidson, Clifford's attorney, that Clifford was still considering
14 publishing her allegations as late as October 25, 2016, just days before the 2016 election.¹⁴³

15 Based on Trump's and Cohen's collective effort to protect Trump's candidacy from
16 negative press articles, the specific initiative to blunt the damage from the Access Hollywood
17 recording to Trump's electoral prospects, and the temporal proximity between the Clifford
18 payment negotiations and the election, the Clifford payment was undoubtedly and specifically

¹³⁹ See *supra* notes 17, 37 and accompanying text.

¹⁴⁰ See *supra* notes 22–27 and accompanying text.

¹⁴¹ Fahrenthold Article.

¹⁴² House Oversight Testimony at 33–34.

¹⁴³ SDNY Information ¶ 33; Warrant Aff. ¶ 37; see *supra* note 36.

1 aimed at improving Trump's chances of winning the presidency. Indeed, Cohen's sworn
2 testimony admitting these violations in connection with his guilty plea supports this
3 conclusion.¹⁴⁴

4 Conversely, the record provides little basis to conclude that the Clifford payment was
5 made for personal reasons — *i.e.*, to protect Trump and his family — as Cohen claimed before
6 his guilty plea,¹⁴⁵ and as Trump has publicly asserted.¹⁴⁶ The available information provides no
7 support for the argument that the Clifford payment was made to preserve Trump's marriage or
8 personal relationships.¹⁴⁷ Moreover, neither Trump nor Cohen previously attempted to buy
9 Clifford's rights to the story before Trump became a presidential candidate; despite becoming
10 aware of Clifford's interest in selling those rights as early as 2011, when Bauer Publishing paid
11 Clifford \$15,000 for an exclusive interview, Trump and Cohen did not offer to pay Clifford to
12 remain silent — *i.e.*, “catch and kill” the story — until Trump became a presidential
13 candidate.¹⁴⁸ While preventing the publication of Clifford's allegations may have provided a
14 personal benefit to Trump by protecting him and his family from a salacious story, any such
15 personal benefit was incidental to the election-influencing purpose of the payment.

16 Because the available information supports a conclusion that Cohen's payment to
17 Clifford was coordinated with Trump and made for the purpose of influencing Trump's election,

¹⁴⁴ Cohen Plea Hearing at 23.

¹⁴⁵ *Supra* note 121.

¹⁴⁶ *Supra* note 80.

¹⁴⁷ The Trump Committee has not raised any specific references to protecting Trump's family or business in its responses. *See* Trump Comm. Resp., MURs 7313 and 7319; Trump Comm. Resp., MUR 7379.

¹⁴⁸ *See supra* notes 14–17 and accompanying text. As noted above, Bauer Publishing ultimately did not publish the Clifford interview in 2011.

1 it is a “coordinated expenditure” under the Act resulting in a \$130,000 in-kind contribution by
 2 Cohen to Trump and the Trump Committee. Under the Act and Commission regulations,
 3 therefore, Cohen made, and Trump and the Trump Committee knowingly accepted, a
 4 contribution in excess of the then-applicable \$2,700 per-election individual contribution limit.¹⁴⁹
 5 Accordingly, we recommend that the Commission find reason to believe that Cohen violated
 6 52 U.S.C. § 30116(a)(1)(A),¹⁵⁰ and Trump and the Trump Committee violated 52 U.S.C.
 7 § 30116(f).¹⁵¹

8 3. The Commission Should Find Reason to Believe that Cohen Made, and
 9 Trump and the Trump Committee Knowingly Accepted, an Excessive
 10 Contribution in the Form of a Prohibited Loan

11 Alternatively, Cohen’s payment to Clifford was a “loan” of funds to Trump and the
 12 Trump Committee that constituted a “contribution” under the Act and Commission regulations.

¹⁴⁹ For purposes of calculating the amount in violation, Cohen was permitted to contribute up to \$2,700 to the Trump Committee for the general election; he could not make a contribution to the Committee for the primary election because the primary was over at the time he made the contribution on October 27, 2016. The amount of Cohen’s contribution in excess of the statutory limit is, therefore, \$127,300.

¹⁵⁰ In prior matters, a respondent’s guilty plea or conviction for criminal charges under the Act has not precluded the Commission from finding reason to believe that the respondent knowingly and willfully violated the Act based on the same conduct underlying the plea or conviction. *See, e.g.*, Certification ¶ 1, MUR 6865 (Jose Susumo Azano Matsura, *et al.*) (July 17, 2018); Second Gen. Counsel’s Report at 11 n. 32 and accompanying text, MUR 6865 (Jose Susumo Azano Matsura, *et al.*) (discussing prior matters where the Commission took “further action, notwithstanding a criminal conviction” or plea, because “the criminal conviction or plea did not specifically vindicate the Act’s discrete enforcement interests”). In that regard, Cohen’s guilty plea clearly did not vindicate all of the Act’s discrete enforcement interests in this matter as it relates to this respondent: Cohen pleaded guilty only to making an excessive contribution in connection with his role in making the Clifford payment, but was not criminally charged with willfully making a contribution in the name of another. *See* Cohen Plea Hearing at 23; SDNY Information ¶ 44.

¹⁵¹ *See* 52 U.S.C. § 30109(a)(2); Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007) (“Reason to Believe Standard”) (“The Commission will find ‘reason to believe’ in cases where the available evidence in the matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. . . . A ‘reason to believe’ finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.”).

1 A loan to a federal candidate or committee broadly includes a “guarantee, endorsement, and any
2 other form of security.”¹⁵² A loan “is a contribution at the time it is made,” and remains a
3 contribution as long as, and to the extent that, it remains unpaid; conversely, to the extent that a
4 loan is repaid, it is no longer a contribution.¹⁵³ Because a loan is a contribution at the time it is
5 made, the aggregate amount of the loan and any other contributions from the person making the
6 loan cannot exceed the Act’s contribution limits.¹⁵⁴ Any loan that exceeds the Act’s contribution
7 limits is prohibited whether or not it is repaid.¹⁵⁵

8 The Commission has interpreted these regulations to recognize that for a loan to be a
9 “contribution” under the Act, it must be made in connection with a federal election.¹⁵⁶ For
10 example, in MUR 6824, the Commission found that a candidate’s purported real property sale
11 was effectively a third-party contribution in the form of a campaign-related loan, and that “the
12 campaign purpose” of the loan was “supported by the timing of [the third party’s] payments,
13 virtually all of which were made when the campaign account balance was very low, and most of
14 which were made when [the third party] was the campaign chairman and acting in the manner of

¹⁵² 11 C.F.R. § 100.52(b).

¹⁵³ *Id.* § 100.52(b)(2). The Act and Commission regulations allow some bank or commercial credit loans to a federal candidate for use in connection with his or her campaign without treatment of such loans as contributions. *See* 52 U.S.C. § 30101(8)(B)(vii), (xiv); 11 C.F.R. §§ 100.82, 100.83. Any such loans must be reported by the recipient as an outstanding debt or obligation unless and until repaid. 11 C.F.R. §§ 100.82(b), 100.83(e); *see also id.* § 104.3(a) and (d).

¹⁵⁴ *See* 52 U.S.C. § 30116.

¹⁵⁵ 11 C.F.R. § 100.52(b)(1)–(2); *see* 52 U.S.C. § 30116(a) (setting contribution limits); *see, e.g.*, Factual & Legal Analysis at 3–5, MUR 7053 (Flemming for Congress, *et al.*) (May 11, 2016) (finding reason to believe a candidate’s authorized committee knowingly accepted excessive contributions resulting from \$200,700 in loans provided to it by an LLC).

¹⁵⁶ *See, e.g.*, Eugene Yu F&LA at 12.

1 a treasurer, handling the Committee's finances and signing its checks."¹⁵⁷ The Commission
 2 explained that, in examining whether a financial transaction between a candidate and an
 3 individual or entity constitutes a loan that violates the Act, it "typically examines the facts and
 4 circumstances involved" in that transaction, including whether payments are disguised as
 5 legitimate payments for work not performed.¹⁵⁸

6 Conversely, the Commission has identified circumstances in which a loan that was not
 7 made in connection with a federal election was not a contribution.¹⁵⁹ In MUR 5141, for
 8 instance, the Commission unanimously determined that a personal loan to a federal candidate
 9 from his long-time personal friend, made more than a year before the election — to pay legal
 10 fees in connection with a divorce proceeding, and with only one equivocal press report
 11 connecting the loan to the campaign — was not a "contribution" under the Act.¹⁶⁰ More

¹⁵⁷ *Id.* at 15. The Commission concluded that the purported real estate sale was in effect a loan based on information indicating that two of the payment checks had "loan" written in the memo line, the candidate failed to obtain an independent appraisal of the property or convey an ownership interest to the purported purchaser, and the candidate attempted to list the property at a lower price than provided in the sale contract. *Id.* at 12–15. The candidate had originally falsely reported the funds as personal loans to his campaign committee. *Id.* at 1.

¹⁵⁸ *Id.* at 8 n.12 (citing *inter alia* Conciliation Agreement ¶¶ 22, 30–35, MURs 4818 and 4933 (Walter L. Roberts and Walt Roberts for Congress)); *see also id.* at 12 (noting that Yu's transaction was "was structured" to assist his campaign's financial needs).

¹⁵⁹ *See, e.g.*, Factual & Legal Analysis at 5, MUR 6035 (Northern Trust Co.) ("There is no factual information . . . that funds from the mortgage [loan] were used 'in connection with any election to any political office,' a nexus required for a corporate contribution or expenditure to be prohibited under the Act."); Statement of Reasons of Chairman Danny L. McDonald, Vice Chairman David M. Mason, and Comm'rs Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas at 2, MUR 4944 (Hillary Rodham Clinton, *et al.*) (Aug. 28, 2001) ("Clinton SOR") ("We conclude that in order for a loan that is made directly to a candidate to be considered 'for use in connection with the [candidate's] campaign,' there must be a greater nexus between the loan and the campaign than what the facts have presented here.").

¹⁶⁰ Moran SOR at 2–4 (rejecting this Office's recommendation to dismiss in favor of a no-reason-to-believe finding). The loan took the form of a personal check to the candidate that was immediately endorsed as payable to his divorce counsel, and was subject to a promissory note carrying an 8% annual interest rate and an option for additional funds to be loaned on the same terms; the loan was reportedly repaid with 12.8% interest within 16 months. *Id.* The Commission also drew on its precedents in the context of third-party payments for personal expenses, determining that the loan did not appear to free up other funds for the candidate to use to campaign, free

1 recently, the Commission determined that a federal candidate did not receive a contribution from
 2 the “short sale” of his personal residence to a supporter, along with a release from personal
 3 liability on the existing mortgage held by a national bank, because the transaction was unrelated
 4 to the campaign, was driven by the financial circumstances resulting from a real estate market
 5 collapse, would have occurred irrespective of candidacy, and occurred five years prior to the
 6 election.¹⁶¹

7 The information in this matter indicates that Cohen’s payment constituted a loan to
 8 Trump and the Trump Committee because Cohen provided the funds with an express promise of
 9 repayment.¹⁶² And that loan was a contribution because it was provided specifically for the
 10 purpose of influencing Trump’s election to federal office: Cohen has testified that before he
 11 made the Clifford payment, Trump understood that the purpose of the payment was to prevent
 12 Clifford from publicizing her alleged affair with Trump days before the 2016 presidential
 13 election — *i.e.*, to preserve Trump’s electoral prospects and blunt the potential damage from the

up additional time for the candidate to campaign, and would likely have been made irrespective of the candidacy.
Id. at 4.

¹⁶¹ See Factual & Legal Analysis at 7–13, MUR 7025 (finding no reason to believe a federal candidate received a contribution resulting from the “short sale” of his home, based on affidavits and evidence demonstrating that the transaction was driven by financial considerations and would have taken place irrespective of the candidacy).

¹⁶² 11 C.F.R. § 100.52(b); *see, e.g.*, Advisory Op. 1985-29 at 2 (John Breaux Comm.) (determining that individuals make “loans” by providing cash to a political committee in exchange for “a non-negotiable, non-recourse, no personal liability promissory note, in an amount equal to the amount of the loan” bearing a ten percent annual interest rate); Conciliation Agreement ¶¶ 4, 6, MUR 5635 (Edward J. Adams, Jr., *et al.*) (Dec. 5, 2005) (acknowledging that an individual that provided funds to a multicandidate committee’s vendors for costs associated with fundraising solicitations thereby made a loan to the committee); Factual & Legal Analysis at 4, 7, MUR 4818 (Gene Stipe, *et al.*) (analyzing the provision of funds to a candidate reportedly by an “undisclosed friend [in a] ‘handshake deal with no paperwork and no payments for a year’” — *i.e.*, a transaction with “no documentation [or] collateral” — as a loan under the Act) (emphasis in original).

1 Access Hollywood Tape.¹⁶³ As discussed above, Trump repaid Cohen \$420,000 for the loan in
2 twelve monthly installments in 2017, which Cohen testified were made to look like payments for
3 legal services, although no such services were provided.¹⁶⁴ After Trump agreed to make the
4 payment and asked Cohen and Weisselberg to determine how to make it, Trump then approved
5 the plan wherein Cohen would make the payment and be reimbursed after the election.¹⁶⁵

6 Accordingly, when Cohen made the Clifford payment, it was an unsecured \$130,000 loan
7 from Cohen to Trump provided in connection with the 2016 election. Under the Act and
8 Commission regulations, therefore, the available information reflects that the Clifford payment
9 was a \$130,000 loan and a contribution to a federal candidate — *i.e.*, an excessive contribution
10 by Cohen to Trump and the Trump Committee. Because a loan in excess of the Act's
11 contribution limitations is prohibited whether or not it is repaid, Cohen's loan was prohibited
12 irrespective of the fact that Cohen was eventually repaid.¹⁶⁶ Therefore, under this alternative
13 analysis, we recommend that the Commission find reason to believe Cohen violated 52 U.S.C.
14 § 30116(a)(1)(A) by making, and Trump and the Trump Committee violated 52 U.S.C.
15 § 30116(f) by knowingly accepting, an excessive contribution.¹⁶⁷

¹⁶³ Cohen Plea Hearing at 23; House Oversight Testimony at 22, 34.

¹⁶⁴ See Section II.D, *supra* (discussing Cohen's reimbursement). Trump effectively treated the Clifford payment as a loan from Cohen when he reported it as a liability on his 2017 Financial Disclosure filed with OGE. See Trump 2017 Financial Disclosure Report at 45.

¹⁶⁵ See *supra* notes 42–43 and accompanying text.

¹⁶⁶ 11 C.F.R. § 100.52(b)(1)–(2).

¹⁶⁷ See Reason to Believe Standard. As with the coordinated expenditure analysis, because Cohen was legally permitted to contribute up to \$2,700 to Trump and the Trump Committee, the remaining amount of the loan above that — \$127,300 — violated the Act's contribution limit. See Factual & Legal Analysis at 5, MUR 7053.

1 **B. Disclosure**

2 The Act and Commission regulations require political committees to file periodic reports
3 accurately disclosing all of their receipts, disbursements, and debts, including loans and
4 coordinated expenditures.¹⁶⁸ These disclosure requirements serve important transparency and
5 anticorruption interests, as they “provide[] the electorate with information as to where political
6 campaign money comes from and how it is spent[,] . . . [and] deter actual corruption and avoid
7 the appearance of corruption by exposing large contributions and expenditures to the light of
8 publicity.”¹⁶⁹ Political committees must report the total amount of all receipts and disbursements
9 for the reporting period and, for a committee authorized by a candidate, the election cycle;¹⁷⁰
10 itemize the name and address of each person from whom the committee received contributions
11 aggregating in excess of \$200 in an election cycle, along with the dates and amounts of the
12 contributions;¹⁷¹ and itemize the name and address of each person to whom the committee made
13 expenditures exceeding, in aggregate amount or value, \$200 per election cycle, as well as the
14 date, amount, and purpose of the expenditures.¹⁷²

15 The available information indicates that the Trump Committee violated its disclosure
16 obligations under the Act when it failed to provide required contribution information in
17 connection with the payment to Clifford, either as a “coordinated expenditure” or a “loan.”

¹⁶⁸ 52 U.S.C. § 30104; 11 C.F.R. § 104.3.

¹⁶⁹ *Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976) (internal quotation marks omitted); *see Citizens United v. FEC*, 558 U.S. 310, 369–71 (2010) (describing importance of disclosure requirements because “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages”).

¹⁷⁰ 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a)(3), (b)(2).

¹⁷¹ 52 U.S.C. § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).

¹⁷² 52 U.S.C. § 30104(b)(5)(A); 11 C.F.R. § 104.3(b)(4)(i).

1 A coordinated expenditure must be reported as both a contribution received by, and an
2 expenditure made by, the authorized committee of the candidate with whom the expenditure was
3 coordinated.¹⁷³ If the Clifford payment was a contribution in the form of a coordinated
4 expenditure, then the Trump Committee would have had to report it as both a \$130,000 receipt
5 from Cohen and an off-setting \$130,000 disbursement to Clifford, including the date, amount,
6 and purpose of the in-kind contribution.¹⁷⁴

7 Alternatively, if the Clifford payment was a contribution in the form of a loan, the Trump
8 Committee would have had to report it as a debt or obligation on its disclosure reports.
9 Committees must disclose all debts exceeding \$500 in the report that covers the date on which
10 the debt was incurred, and have a continuing obligation to report all outstanding debts or
11 obligations until they are paid off or otherwise extinguished.¹⁷⁵ For all outstanding debts and
12 obligations, committees must explain “the circumstances and conditions under which each debt
13 and obligation was incurred or extinguished.”¹⁷⁶ Because Cohen made the Clifford payment on
14 October 27, 2016, and Trump appears to have continued repaying Cohen until the end of
15 2017,¹⁷⁷ during the crucial period immediately preceding the 2016 election and for the entirety of

¹⁷³ 11 C.F.R. § 104.13(a)(1)–(2); *see* Coordinated and Independent Expenditures, 68 Fed. Reg. at 422 (explaining that committees must report coordinated expenditures in this manner in order to not overstate cash-on-hand balances).

¹⁷⁴ 52 U.S.C. § 30104(b)(3)(A), (b)(5)(A); 11 C.F.R. § 104.3(a)(4)(i), (b)(4)(i); *see, e.g.*, Conciliation Agreement ¶ IV.4–5, 7, 11–12, MUR 7073 (Alexander Meluskey for U.S. Senate) (June 20, 2019) (acknowledging that when a candidate used a radio broadcast to solicit contributions and engage in express advocacy relating to his campaign, *i.e.*, to influence a federal election, the candidate’s authorized committee violated the Act by failing to disclose as “contributions” the \$16,235.29 that paid for that broadcast).

¹⁷⁵ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11.

¹⁷⁶ 11 C.F.R. § 104.11(a).

¹⁷⁷ House Oversight Testimony at 14, 120–21. Cohen received twelve monthly payments of \$35,000 during the 2017 calendar year, totaling \$420,000.

1 2017, the Trump Committee owed a debt or obligation to Cohen and would have been required
2 to report the loan as a debt or obligation to, and a contribution from, Cohen. The Committee
3 would also have been required to disclose the “circumstances and conditions” for its debt or
4 obligation on each of its disclosure reports covering the period from October 27, 2016, through
5 the last reimbursement payment.

6 The Trump Committee did not disclose the Clifford payment either as a coordinated
7 expenditure or a loan, though it could have reported the payment either way. The available
8 information indicates that Trump and Cohen intended for the payment to remain concealed from
9 public view. Indeed, according to Cohen, they had taken measures specifically designed to
10 obscure the true source and purpose of the payment, thereby deliberately depriving the public of
11 legally required information regarding the Trump Committee’s activity shortly before the 2016
12 election.¹⁷⁸ Accordingly, we recommend that the Commission find reason to believe that the
13 Trump Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3(a) and (b), by failing to
14 provide required disclosure information.¹⁷⁹

15 C. Contributions in the Name of Another

16 1. The Act Prohibits Making, Knowingly Transmitting, or Knowingly 17 Accepting Contributions Made Using Funds Provided by Another for that 18 Purpose

19 The Act prohibits any person from making a contribution in the name of another person,
20 knowingly permitting his or her name to be used to effect such a contribution, or knowingly

¹⁷⁸ See *supra* Sections II.C and II.D (discussing planning and execution of scheme to conceal the source, amount, and purpose of the Clifford payment).

¹⁷⁹ See 52 U.S.C. § 30109(a)(2); Reason to Believe Standard.

1 accepting such a contribution.¹⁸⁰ As discussed above, a contribution includes “any gift,
2 subscription, loan, advance, or deposit of money or anything of value made by any person for the
3 purpose of influencing any election for Federal office.”¹⁸¹ The term “person” for purposes of the
4 Act and Commission regulations includes partnerships, corporations, and “any other organization
5 or group of persons.”¹⁸²

6 The requirement that a contribution be made in the name of the true contributor — *i.e.*,
7 the true source of the funds — promotes Congress’s objective of ensuring the complete and
8 accurate disclosure by candidates and committees of the political contributions they receive.¹⁸³
9 Courts therefore have uniformly rejected the assertion that “only the person who actually
10 transmits funds . . . makes the contribution,”¹⁸⁴ recognizing that “it is implausible that Congress,
11 in seeking to promote transparency, would have understood the relevant contributor to be [an]
12 intermediary who merely transmitted the campaign gift.”¹⁸⁵ Consequently, the Act and
13 Commission regulations provide that a person who furnishes another person — including an

¹⁸⁰ 52 U.S.C. § 30122; *see* 11 C.F.R. § 110.4(b)(2).

¹⁸¹ 52 U.S.C. § 30101(8)(A).

¹⁸² *Id.* § 30101(11); 11 C.F.R. § 100.10.

¹⁸³ *United States v. O’Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind § [30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.” (emphasis added)); *Mariani v. United States*, 212 F.3d 761, 775–76 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

¹⁸⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

¹⁸⁵ *O’Donnell*, 608 F.3d at 554; *see also Citizens United*, 558 U.S. at 371 (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

1 LLC or other organized entity — with funds for the purpose of contributing to a candidate or
 2 committee “makes” the resulting contribution.¹⁸⁶

3 2. The Commission Should Find Reason to Believe that Cohen Made,
 4 Essential Consultants Knowingly Permitted Its Name to Be Used to
 5 Effect, and Trump and the Trump Committee Knowingly Accepted a
 6 Contribution in the Name of Another

7 In addition to being an excessive and undisclosed contribution, the available information
 8 also indicates that the Clifford payment violated the Act’s prohibition on contributions in the
 9 name of another because Cohen made the payment through Essential Consultants, a shell
 10 company he formed and funded for that purpose to conceal his role as the true source of funds.

11 In previous LLC matters alleging contributions in the name of another, this Office has
 12 recommended finding reason to believe a contribution was impermissibly made in the name of
 13 an LLC when, after considering all the available information — including, *e.g.*, that the
 14 contribution was made in close temporal proximity to the LLC’s formation date, that the LLC
 15 appeared to have been formed to make contributions by others, and that the LLC did not appear
 16 to have its own income from which to make contributions — the overall record supported the
 17 reasonable inference that the LLC was used to mask the identity of the true contributor.¹⁸⁷

¹⁸⁶ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee” (emphasis added)); *O’Donnell*, 608 F.3d at 550 (“[T]he person who actually transmits the money acts merely as a mechanism, whereas it is the original source who has made the gift by arranging for his money to finance the donation.”); *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent [the Act’s reporting] restrictions[.]”). Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a pass-through to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

¹⁸⁷ See, *e.g.*, First Gen. Counsel’s Report at 8–9, MURs 7014, 7017, 7019, and 7090 (DE First Holdings, *et al.*); First Gen. Counsel’s Report at 10–11, MUR 6969 (MMWP12, LLC, *et al.*); First Gen. Counsel’s Report at 9–10, MUR 6995 (Right to Rise, *et al.*); First Gen. Counsel’s Report at 9–10, MUR 6968 (Tread Standard, LLC, *et*

1 Cohen acknowledges that he used Essential Consultants to make the Clifford payment in
 2 order to keep Trump further removed from the payment.¹⁸⁸ Cohen formed Essential Consultants
 3 on October 17, 2016, opened a bank account in its name on October 26, 2016, and later that day
 4 transferred \$131,000 from a personal home equity line of credit to the Essential Consultants
 5 account.¹⁸⁹ The following day, October 27, 2016, Cohen directed a \$130,000 transfer from the
 6 Essential Consultants account to Keith Davidson's attorney-client trust account for Clifford.¹⁹⁰
 7 As such, in light of the stated purpose of the LLC's formation; the close temporal proximity of
 8 the LLC's formation to the election; and the timing and circumstances of the LLC's receipt of
 9 funds and payment, even if Essential Consultants was the last "person" to transmit the funds,
 10 Cohen was, in fact, the true source of the funds and used Essential Consultants to make the
 11 payment, which was a contribution, in the name of another.¹⁹¹ Furthermore, Cohen's use of the

al.); First Gen. Counsel's Report at 10–11, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*). In each of these cases, the Commission split 2-2 on the recommendation to find reason to believe under 52 U.S.C. § 30122. Certification, MURs 7014, 7017, 7019, and 7090 (DE First Holdings, *et al.*) (May 10, 2018); Certification, MUR 6969 (MMWP12, LLC, *et al.*) (June 7, 2018); Certification, MUR 6995 (Right to Rise, *et al.*) (May 8, 2018); Certification, MUR 6968 (Tread Standard, LLC, *et al.*) (May 8, 2018); Certification, MURs 7031 and 7034 (Children of Israel, LLC, *et al.*) (June 7, 2018).

¹⁸⁸ House Oversight Testimony at 135.

¹⁸⁹ Warrant Aff. ¶¶ 35.c, 37.d–f; House Oversight Testimony at 135; WSJ Mar. 5 Article; *see* House Oversight Testimony, Ex. 4 (documenting withdrawal from home equity line of credit); SDNY Information ¶ 34. *See* MUR 7313 Amend. Compl., Appx. 2 (showing an October 26, 2016, email that Cohen forwarded to Davidson that same day, in which a First Republic Bank employee wrote to Cohen: "The funds have been deposited into your checking account").

¹⁹⁰ Warrant Aff. ¶ 38.a–b; House Oversight Testimony at 135; SDNY Information ¶ 34.

¹⁹¹ *See O'Donnell*, 608 F.3d at 555; *Boender*, 649 F.3d at 660; *Whittemore*, 776 F.3d at 1080; *see also* Statement of Reasons of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman at 12, MURs 6485, 6487, 6488, 6711, and 6930 (W Spann LLC, *et al.*) (stating the position that when funds are deliberately funneled through a closely held corporation or corporate LLC for the purpose of making a contribution, "the true source of the funds is the person who funneled them through the corporate entity for this purpose").

1 Essential Consultants account to make the payment indicates that Essential Consultants
2 knowingly permitted its name to be used to effect Cohen's payment.

3 Moreover, Cohen has testified that Trump knew that the payment would be made through
4 a shell company.¹⁹² Phone records support Cohen's testimony: Cohen called Trump twice on
5 the morning of October 26, 2016, the day he opened the Essential Consultants bank account, and
6 called Trump on October 28, 2016, the day that Cohen signed the nondisclosure agreement with
7 Clifford on behalf of Essential Consultants.¹⁹³ According to the available information, therefore,
8 Trump appears to have known that Cohen would use a shell company to make the Clifford
9 payment for the purpose of influencing the 2016 election, thus indicating that Trump and the
10 Trump Committee knowingly accepted a contribution in the name of another. The Trump
11 Committee's failure to report the contribution on its disclosure reports filed with the Commission
12 does not alter that conclusion.

13 Trump's actions subsequent to the Clifford payment also support the conclusion that
14 Cohen was the true source of the payment and that Trump knew this fact. On his 2017 personal
15 financial disclosure report, Trump listed a loan — of an amount between \$100,000 and \$250,000
16 and bearing a zero percent interest rate — from Cohen, not Essential Consultants.¹⁹⁴

¹⁹² See House Oversight Testimony at 135–136 (setting forth Cohen's testimony confirming that Trump knew about the payment process, *i.e.*, that Cohen created Essential Consultants, opened a bank account in its name, disbursed \$131,000 from Cohen's home equity line of credit to the Essential Consultants account, and then transferred \$130,000 from that account to an account held by Clifford's attorney, Davidson).

¹⁹³ Warrant Aff. ¶¶ 37.b, 39.a.

¹⁹⁴ See *supra* note 164 (discussing Trump's 2017 financial disclosure report). Although the personal financial disclosure report does not specify the exact amount, date, or purpose of the loan, the approximate amount of the loan, the zero percent interest rate, and the absence of any other loans to Cohen all support the conclusion that this loan was the result of Cohen making the Clifford payment in coordination with Trump. See Letter from David J. Apol, Acting Director, OGE, to Rod J. Rosenstein, Deputy Atty. Gen., DOJ (May 16, 2018) (indicating that the DOJ may find the liability to Cohen disclosed on Trump's 2017 financial disclosure report "relevant to any inquiry" regarding "whether a payment made by Mr. Michael Cohen to a third party constituted a loan to President Trump

1 Additionally, the repayment checks that are publicly available are from Trump or the Trump
 2 Trust, and are made out to Cohen personally, not to Essential Consultants.¹⁹⁵

3 Accordingly, we recommend that the Commission find reason to believe that Cohen,
 4 Essential Consultants, Trump, and the Trump Committee violated 52 U.S.C. § 30122.¹⁹⁶

5 **D. The Trump Organization**

6 The entire relationship between Trump, the Trump Organization, and the Trump Trust is
 7 not completely clear — largely because the name “Trump Organization” refers not only to a
 8 particular LLC but to a group of over five hundred entities whose exact relationship to Trump
 9 and to each other is not publicly known¹⁹⁷ — but the available information supports a finding of
 10 reason to believe that the Trump Organization made prohibited contributions to Trump and the
 11 Trump Committee by reimbursing Cohen, through the Trump Trust account, for a portion of the
 12 Clifford payment.

13 1. The Treatment of LLC Contributions

14 While “Trump Organization” is a term often used to refer to a group of over five hundred
 15 entities, the Trump Organization is a New York LLC, and its election for tax purposes under

that should have been reported as a liability on his public financial disclosure report signed on June 14, 2017 (for calendar year 2016”).

¹⁹⁵ See House Oversight Testimony, Exs. 5a and 5b.

¹⁹⁶ See 52 U.S.C. § 30109(a)(2); Reason to Believe Standard.

¹⁹⁷ See Russ Buettner, *et al.*, *Long-Concealed Records Show Trump's Chronic Losses and Years of Tax Avoidance*, N.Y. TIMES (Sept. 27, 2020), <https://www.nytimes.com/interactive/2020/09/27/us/donald-trump-taxes.html> (“To delve into [Trump’s tax] records is to see up close the complex structure of the president’s business interests — and the depth of his entanglements. What is popularly known as the Trump Organization is in fact a collection of more than 500 entities, virtually all of them wholly owned by Mr. Trump, many carrying his name. For example, 105 of them are a variation of the name Trump Marks, which he uses for licensing deals.”).

1 federal law, which would inform the treatment of its contributions to Trump and the Trump
 2 Committee under the Act, is not clear from the current record.¹⁹⁸

3 Contributions by an LLC that elects to be treated as a corporation for federal tax
 4 purposes, or that has publicly-traded shares, are treated as contributions from a corporation, and
 5 are therefore prohibited contributions to a candidate committee under the Act.¹⁹⁹ Contributions
 6 by an LLC that does not have a sole natural-person member, and that elects to be treated as a
 7 partnership or does not make any election under federal tax law, are treated as partnership
 8 contributions under the Act, and must therefore be attributed to both the LLC and each of the
 9 LLC's members.²⁰⁰ Contributions by single-member LLCs with a natural person member (that
 10 do not elect treatment as a corporation) are attributable only to that member, not to the LLC.²⁰¹
 11 All LLC contributions, as thus attributed, must abide by the Act's contribution prohibitions and
 12 limitations.²⁰²

13 2. The Commission Should Find Reason to Believe that the Trump
 14 Organization Made, and Trump and the Trump Committee Knowingly
 15 Accepted, Prohibited Corporate or Excessive Contributions

16 The available information indicates that the Trump Trust held the Trump Organization's
 17 assets during the period that the Trump Trust partially reimbursed Cohen for the Clifford
 18 payment. Both in a public news conference held shortly before his presidential inauguration and

¹⁹⁸ See *supra* note 11.

¹⁹⁹ 11 C.F.R. § 110.1(g)(3); see also 52 U.S.C. § 30118(a) (prohibiting corporate contributions to candidate committees).

²⁰⁰ 11 C.F.R. § 110.1(g)(2); see *id.* § 110.1(e).

²⁰¹ *Id.* § 110.1(g)(4).

²⁰² See 52 U.S.C. §§ 30116(a)(1)(A), 30118(a).

1 in his 2017 Financial Disclosure, which was filed with OGE in May 2018, Trump has
2 represented that the Trump Trust holds the Trump Organization and all of its assets.²⁰³ A
3 January 2017 letter filing by the Trump International Hotel, which appears to be one of the
4 Trump Organization's businesses, indicates that Trump had been the trustee of the Trump Trust
5 but that Donald Trump, Jr., and Allen Weisselberg were appointed sole trustees as of January 19,
6 2017.²⁰⁴ The filing also includes a "Certification of Trustee" signed by Trump Jr. and
7 Weisselberg, which provides that the "purpose of the Trust is to hold assets for the exclusive
8 benefit of Donald J. Trump," and that Trump alone "has the power to revoke the Trust."²⁰⁵ The
9 available information also indicates that the Trump Organization used the Trump Trust to pay its
10 expenses, and that the Trump Organization accounted for the Cohen reimbursement payments as
11 legal expenses from Cohen.²⁰⁶

²⁰³ Trump 2017 Financial Disclosure Report at 47 (reporting all "assets over \$1,000 or which produced income over \$200 . . . which were formerly held by Donald J. Trump, directly or indirectly, are now held by The Donald J. Trump Revocable Trust"); *id.* at 50, 80 (specifically disclosing that Trump Organization LLC, d/b/a The Trump Organization, is wholly owned by DJT Holdings LLC; that 99% of DJT Holdings LLC is owned by Trump Trust and 1% is owned by DJT Holdings Managing Member LLC; and that DJT Holdings Managing Member LLC is wholly owned by Trump Trust); Donald Trump's News Conference: Full Transcript and Video, N.Y. TIMES (Jan. 11, 2017), <https://www.nytimes.com/2017/01/11/us/politics/trump-press-conference-transcript.html> ("Trump Jan. 11 News Conference") (showing Trump's legal counsel, Sheri Dillon, stating that the "investments and business assets commonly known as the Trump Organization, comprising hundreds of entities . . . have all been or will be conveyed to a trust").

²⁰⁴ See Letter from Stephen J. Brian to Dist. of Colum. Alcoholic Beverage Control Bd. at 1 (Jan. 27, 2017), <https://assets.documentcloud.org/documents/3442581/Trump-International-Hotel-Liquor-License-Filings.pdf>.

²⁰⁵ *Id.* at 7. See also Susanne Craig & Eric Lipton, *Trust Records Show Trump Is Still Closely Tied to His Empire*, N.Y. TIMES (Feb. 3, 2017), <https://www.nytimes.com/2017/02/03/us/politics/donald-trump-business.html> ("While the president says he has walked away from the day-to-day operations of his business, two people close to him are the named trustees and have broad legal authority over his assets: [H]is eldest son, Donald Jr., and Allen H. Weisselberg, the Trump Organization's chief financial officer. Mr. Trump, who will receive reports on any profit, or loss, on his company as a whole, can revoke their authority at any time. What's more, the purpose of the Donald J. Trump Revocable Trust is to hold assets for the 'exclusive benefit' of the president.").

²⁰⁶ SDNY Information ¶¶ 38–39 ("[Weisselberg] forwarded [Cohen's] email to another employee at the [Trump Organization], stating: 'Please pay from the Trust. Post to legal expenses. Put "retainer for the months of January and February 2017" in the description.' . . . The [Trump Organization] accounted for these payments as legal expenses."). It is possible that Cohen was paid from funds in the Trump Trust's account that were allocated

1 In view of the foregoing, the available information indicates that the Trump Organization
2 made prohibited or excessive contributions when it knowingly used funds held by the Trump
3 Trust to reimburse Cohen for part of the Clifford payment. Cohen asserts that each month in
4 2017, he presented a false invoice for legal services to Weisselberg, who would approve the
5 payment of a \$35,000 check to Cohen.²⁰⁷ The reimbursement payments were each approved by
6 Trump Organization executives — Weisselberg or Trump Jr. — and some of the payments,
7 which were all billed as legal expenses, were made from the account of the Trump Trust, which
8 Trump has asserted holds the Trump Organization,²⁰⁸ and which is managed by Weisselberg and
9 Trump Jr.²⁰⁹ Both Weisselberg and Trump Jr. signed a reimbursement check drawn on the
10 Trump Trust's account that Cohen submitted to Congress.²¹⁰ Accordingly, the available
11 information indicates that the Trump Organization used funds held in the Trump Trust account to
12 partially reimburse Cohen for the Clifford payment.

13 By paying part of the reimbursement of Cohen's in-kind contribution to Trump and the
14 Trump Committee, the Trump Organization appears to have made a prohibited contribution to

for another Trump Trust-held entity. *See* Trump 2017 Financial Disclosure Report at 48–92 (listing over one hundred entities held, in whole or in part, by DJT Holdings LLC and, thus, the Trump Trust). Should our investigation uncover such a fact, we would update our recommendations accordingly.

²⁰⁷ SDNY Information ¶¶ 38–39 (indicating that Cohen sent Weisselberg an invoice for January 2017 and February 2017, listing a \$35,000 charge for each month, and that Weisselberg forwarded the invoice to Donald Trump, Jr., who approved it, and further indicating that these payments under the nonexistent legal services retainer agreement continued throughout 2017); House Oversight Testimony at 136.

²⁰⁸ Trump Jan. 11 News Conference.

²⁰⁹ SDNY Information ¶ 38 (indicating that after Trump, Jr. approved the payment of an invoice for the January 2017 and February 2017 payments, Weisselberg forwarded the approval email to a Trump Organization employee and directed that it be paid from “the Trust” and posted to “legal expenses”); *see* House Oversight Testimony at 120–21, 150–51.

²¹⁰ House Oversight Testimony, Ex. 5b.

1 Trump and the Trump Committee. The specific violation would depend on its tax election status
2 and its owners or members.²¹¹ If the Trump Organization is taxed as a corporation, then it
3 appears that the Trump Organization would have violated 52 U.S.C. § 30118(a) by making, and
4 Trump and the Trump Committee would have violated 52 U.S.C. § 30118(a) by knowingly
5 accepting, a prohibited corporate contribution. If the Trump Organization is not taxed as a
6 corporation and does not have a single, natural-person member, then it appears that the Trump
7 Organization would have violated 52 U.S.C. § 30116(a)(1)(A) by making, and Trump and the
8 Trump Committee would have violated 52 U.S.C. § 30116(f) by knowingly accepting, an
9 excessive contribution. Because the Trump Organization's tax status is not known, we
10 recommend that the Commission make these findings in the alternative.²¹²

²¹¹ While Trump's representative's public statements asserted that Trump had "relinquished leadership and management of the Trump Organization" to his sons, Donald Trump, Jr., and Eric Trump, and Trump Organization CFO Allen Weisselberg, and Trump's financial disclosures indicate that the assets of the Trump Organization are now held by the Trump Trust, Trump has not specifically indicated that he has relinquished *ownership* of the Trump Organization and its constituent assets, and there is some indication that Trump retains such ownership: A federal district court noted in March 2018, in an unrelated civil case, that Trump "is the sole owner of both the Trump Organization LLC and The Trump Organization, Inc. (collectively, the Trump Organization), an umbrella organization under which many, if not all, of his corporations, limited-liability companies, limited partnerships, and other entities are loosely organized" and Trump, despite not managing the Trump Organization, may "continue[] to own and know about the activities of the Trump Organization." *District of Columbia v. Trump*, No. 8:17-cv-01596-PJM at 3–4 (D. Md. Mar. 28, 2018); *see also* Trump 2017 Financial Disclosure Report at 47, 80 (indicating both assets "held" by Trump Trust and Trump's continuing role as "member" of underlying LLCs); Letter from Stephen J. Brian to Dist. of Colum. Alcoholic Beverage Control Bd. at 7 (indicating Trump's beneficial ownership). If Trump was a member of the Trump Organization at the time of the reimbursement payments, and if the Trump Organization did not elect to be taxed as a corporation, then his member's share of the reimbursements paid to Cohen would not be subject to amount limitations because Trump was a federal candidate at the time and, as such, could contribute unlimited amounts to his own campaign committee, though all candidate contributions must still be reported by the candidate's committee in its disclosure reports. *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 110.10.

²¹² *See* Reason to Believe Standard. If an investigation results in a revised understanding of the relationship of the above-discussed Trump entities, we will provide updated recommendations.

1 **E. The Commission Should Find Reason to Believe that the Foregoing**
 2 **Violations Were All Knowing and Willful**

3 The available information supports a finding that there is reason to believe that the
 4 violations of the Act and Commission regulations by Cohen, Trump, the Trump Committee, the
 5 Trump Organization, and Essential Consultants were knowing and willful. The Act prescribes
 6 additional penalties for “knowing and willful” violations,²¹³ which are defined as “actions taken
 7 with full knowledge of all the facts and a recognition that the action is prohibited by law.”²¹⁴
 8 This standard does not require knowledge of the specific statute or regulation that the respondent
 9 allegedly violated; it is sufficient to demonstrate that a respondent “acted voluntarily and was
 10 aware that his conduct was unlawful.”²¹⁵ Such awareness may be shown through circumstantial
 11 evidence from which the respondents’ unlawful intent may be reasonably inferred,²¹⁶ including,
 12 *e.g.*, an “elaborate scheme for disguising” unlawful acts.²¹⁷

13 The available information directly establishes that Cohen acted knowingly and willfully
 14 in connection with the Clifford payment, as he has acknowledged in a sworn allocution pleading

²¹³ *See* 52 U.S.C. § 30109(a)(5)(B), (d).

²¹⁴ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976) (statement of Rep. Hays); *see, e.g.*, Factual & Legal Analysis at 3–4, MUR 6920 (Now or Never PAC, *et al.*) (applying “knowing and willful” standard); Factual & Legal Analysis at 17–18, MUR 6766 (Jesse Jackson, Jr., *et al.*) (same).

²¹⁵ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 (1998) (holding that government needs to show only that the defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated, to establish a willful violation)).

²¹⁶ *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)). *Hopkins* involved a conduit contribution scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

²¹⁷ *Id.* at 214–215 (“It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959))).

1 guilty to criminal violations of the Act resulting from the payment.²¹⁸ The information also
2 sufficiently indicates that Trump, the Trump Committee, acting through Trump as its agent,²¹⁹
3 and the Trump Organization, acting through its agents Trump and Weisselberg, acted knowingly
4 and willfully. The available information supports the conclusion that, at each stage of the
5 process, Trump, Cohen, and Weisselberg crafted and executed an “elaborate scheme for
6 disguising”²²⁰ their actions in connection with the Clifford payment.

7 Cohen asserts that he apprised Trump at each step of the process involved in planning
8 and making the Clifford payment, and that Trump understood the purpose of the plan and
9 approved it.²²¹ According to Cohen’s testimony, Trump directed Cohen to make the Clifford
10 payment knowing that its purpose was to prevent Clifford’s claims from having a negative
11 impact on Trump’s presidential campaign, and Trump asked Cohen and Weisselberg to “figure
12 out how” to make the payment.²²² Cohen and Weisselberg then determined how they would
13 structure the payment and Cohen’s reimbursement to avoid linking anything to Trump — *i.e.*,
14 Cohen would make the payment using his own funds, and would later be reimbursed in
15 installments after the election — and Trump approved that plan.²²³ Cohen then made the
16 payment through a shell company, Essential Consultants, formed and used for the purpose of

²¹⁸ Cohen Plea Hearing at 24.

²¹⁹ *See* 52 U.S.C. § 30102(e)(2).

²²⁰ *Hopkins*, 916 F.2d at 214.

²²¹ *See* House Oversight Testimony at 22, 34, 120, and 136; *see also* Cohen Plea Hearing at 23; SDNY Information ¶ 35.

²²² House Oversight Testimony at 22; *see also* Trump Tweets, *supra* notes 80, 85–86.

²²³ *See* SDNY Information ¶ 37; House Oversight Testimony at 136.

1 making the payment in a manner that would further conceal the true source and purpose of the
2 payment.²²⁴

3 After the election, per the plan that Trump had approved, Cohen presented the Trump
4 Organization, through Weisselberg, with fraudulent invoices for payment under a nonexistent
5 legal services retainer and thereby received reimbursement for the Clifford payment.²²⁵ Trump
6 personally signed at least one of the \$35,000 reimbursement checks payable against his personal
7 account, and Weisselberg and Trump Jr. signed at least one other on behalf of the Trump
8 Organization from the Trump Trust account.²²⁶ After the initial news reports about the Clifford
9 payment were published, Cohen, Trump, and Weisselberg coordinated a public denial of the
10 plan: Trump directed Cohen to cover up Trump's involvement by denying that Clifford had
11 been paid to remain silent about the alleged affair and asserting that Trump had no knowledge of
12 any such payment.²²⁷

13 The available information thus indicates that Cohen, Trump, the Trump Committee, the
14 Trump Organization, and Essential Consultants were aware that their conduct was unlawful.
15 Accordingly, we recommend that the Commission find reason to believe that these respondents'
16 violations of the Act and Commission regulations, as set forth above, were knowing and
17 willful.²²⁸

²²⁴ See Warrant Aff. ¶¶ 37.b–e; House Oversight Testimony at 135.

²²⁵ See SDNY Information ¶ 37; House Oversight Testimony at 136.

²²⁶ House Oversight Testimony, Exs. 5a and 5b.

²²⁷ *Id.* at 120.

²²⁸ See 52 U.S.C. § 30109(a)(5)(B), (d).

F. The Commission Should Take No Action at this Time as to Timothy Jost and Dismiss the Allegations as to Trump Tower Commercial, LLC

With respect to the remaining two respondents, Timothy Jost and Trump Tower Commercial, LLC (“Trump Tower”), who were notified in connection with the allegations in MUR 7319, the Commission should take no action at this time as to Jost and dismiss the allegations as to Trump Tower.

Jost was the Trump Committee’s treasurer at the time it filed its initial disclosure reports that failed to disclose the Clifford payment.²²⁹ Although the available record does not indicate that Jost “knowingly and willfully” violated the Act or “recklessly failed to fulfill” his obligations as the Trump Committee’s treasurer in connection with the inaccurate disclosure reports that the Trump Committee filed with the Commission,²³⁰ an investigation of the Trump Committee may provide additional relevant information. As such, we recommend that the Commission take no action at this time as to Jost pending an investigation.

The available information does not support a finding that Trump Tower, which is an LLC organized under New York law in December 1997,²³¹ violated the Act or Commission

²²⁹ Jost was the Trump Committee’s treasurer from when it registered with the Commission on June 29, 2015, until January 20, 2017, when Bradley T. Crate was named its treasurer. *See* FEC Form 1, Trump Comm. Statement of Org. (June 29, 2015); FEC Form 1, Trump Comm. Amend. Statement of Org. (Jan. 20, 2017).

²³⁰ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 3–4 (Jan. 3, 2005) (“[T]he Commission will consider treasurers parties to enforcement proceedings in their personal capacities where information indicates that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation.”).

²³¹ NYS Dept. of State, Div. of Corps., Entity Information, “Trump Tower Commercial, LLC” (Oct. 21, 2019), https://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_token=758BD6A1F0E9AF89CAA9E69233D5D211336B2B8A8FC93AF1451A9D9A0ADF4D38B530F67D2CA5B95E1F8747DF45748390&p_nameid=A1C14D5E720B2BBB&p_corpid=0FAE45D81599D856&p_captcha=12423&p_captcha_check=758BD6A1F0E9AF89CAA9E69233D5D211336B2B8A8FC93AF1451A9D9A0ADF4D383AEB87BE74D27964EFAA262CE88E548D&p_entity_name=%54%72%75%6D%70%20%54%6F%77%65%72%20%43%6F%6D%6D%65%7

1 regulations in connection with the Clifford payment scheme. Based on the fact that the Trump
 2 Committee reported disbursing \$130,888.33 to Trump Tower for the purpose of “rent” on
 3 December 21, 2016, the MUR 7319 complaint speculates that Trump Tower may have been the
 4 source of the \$130,000 paid to Clifford, and that this “rent” payment may have been a
 5 reimbursement.²³² Additional information provided after the MUR 7319 complaint was filed —
 6 namely, Cohen’s sworn testimony that he was the source of the Clifford payment — directly
 7 undermines these assertions.²³³ As such, we recommend that the Commission dismiss these
 8 allegations regarding the payment to Trump Tower.

9 **G. Personal Use**

10 The complaint in MUR 7379 alleges that payments totaling \$227,936.31 that the Trump
 11 Committee reported paying to McDermott for legal expenses were for Cohen’s legal
 12 representation with respect to the Clifford payment — and thus that the Trump Committee’s
 13 payment of those expenses violated the Act’s prohibition on the personal use of campaign funds
 14 because the payments were unconnected to Trump’s campaign activities or his duties as a federal
 15 officeholder.²³⁴ The Trump Committee contends that it was appropriate to use campaign funds
 16 to pay Cohen’s legal expenses because the expenses arose “in connection with the investigations
 17 into alleged Russian interference in the 2016 presidential election.”²³⁵ As discussed below, even

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 esults_page=0.

²³² MUR 7319 Compl. at 4, 7.

²³³ House Oversight Testimony at 22, 33–34; *see also* Trump Comm. Resp., MURs 7313 and 7319, Attach. ¶ 8 (Crate Aff.) (averring that disbursement to Trump Tower was for lease arrangement). The Trump Committee did not attach the lease agreement.

²³⁴ MUR 7379 Compl. at 3, 5–6; *see supra* note 94.

²³⁵ Trump Comm. Resp. at 2, MUR 7379.

1 assuming *arguendo* that campaign funds were used to pay for Cohen's legal representation in
2 connection with the Clifford payment scheme, the available information indicates that such
3 payments were not "personal use" because legal expenses incurred in legal proceedings and
4 investigations of the Clifford payment would not exist irrespective of Trump's 2016 presidential
5 campaign.

6 1. The Personal Use Prohibition

7 Under the Act, a contribution accepted by a candidate may be used for, *inter alia*,
8 "otherwise authorized expenditures in connection with the campaign for Federal office of the
9 candidate" as well as for "any other lawful purpose" not otherwise prohibited under the Act.²³⁶
10 However, the Act prohibits the conversion of campaign funds by any person to "personal use."²³⁷
11 "Personal use" is the use of funds in a campaign account "to fulfill a commitment, obligation or
12 expense of any person that would exist irrespective of the candidate's campaign or duties as a
13 Federal officeholder."²³⁸ The Act and Commission regulations list certain uses of campaign
14 funds that constitute *per se* conversion to personal use.²³⁹ For other payments, the "Commission
15 will determine, on a case-by-case basis, whether other uses" of campaign funds constitute
16 personal use by applying the "irrespective test," that is, whether the payment fulfills a
17 commitment, obligation, or expense that would exist irrespective of the candidate's campaign or

²³⁶ 52 U.S.C. § 30114(a).

²³⁷ *Id.* § 30114(b).

²³⁸ 11 C.F.R. § 113.1(g).

²³⁹ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i).

1 duties as a federal officeholder.²⁴⁰ Commission regulations specify that “[l]egal expenses” are
2 subject to such a case-by-case determination.²⁴¹

3 The Commission has previously determined that campaign funds may be used to pay the
4 legal expenses of individuals other than a federal candidate or officeholder, provided that the
5 “legal proceedings involve allegations directly relating to the candidate’s campaign or duties as a
6 Federal officeholder.”²⁴² In Advisory Opinion 2011-07, for instance, the Commission concluded
7 that it was permissible to use campaign funds to pay for legal expenses arising from a civil
8 lawsuit against a candidate’s political consultant, based on the fact that the lawsuit arose from the
9 consultant’s actions while working for the candidate’s campaign.²⁴³ The Commission explained
10 that although the lawsuit was not against the candidate and did not arise from the candidate’s
11 own conduct, it was nevertheless “directly relating to campaign activities” of the consultant, such
12 that it “would not exist irrespective of” the campaign.²⁴⁴

²⁴⁰ 11 C.F.R. § 113.1(g)(1)(ii).

²⁴¹ *Id.* § 113.1(g)(1)(ii)(A); *see* Personal Use E&J, 60 Fed. Reg. at 7868 (“[T]he Commission has decided that issues raised by the use of campaign funds for a candidate’s or committee’s legal expenses will have to be addressed on a case by case basis. However, legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder’s status.”).

²⁴² Advisory Op. 2011-07 at 3 (Fleischmann for Congress).

²⁴³ *Id.* at 3–4.

²⁴⁴ *Id.* at 4; *see also* Advisory Op. 2009-20 at 4 (Visclosky for Congress) (approving the use of campaign funds to pay legal expenses of federal officeholder’s current and former staff members, where such expenses arose from a federal investigation of the officeholder’s alleged acceptance of illegal campaign contributions); *cf.* Advisory Op. 1998-01 at 3, 6 n.4 (Hilliard for Congress) (cautioning that campaign funds “may not [be used to] pay for legal expenses for responding to the press or to an agency that are primarily for the purposes of representing persons other than” the candidate, with respect to “improper activities by [the candidate or his] businesses and charities, that may have occurred while [he] was a candidate or Federal officeholder but that, by themselves, were not directly related to his campaign or officeholder duties”); Advisory Op. 2003-17 at 7 (Treffinger) (determining that nine out of twenty counts in a federal candidate’s indictment “relate directly to the Federal campaign” . . . [and thus the candidate] may pay up to 45% (9/20) of the legal expenses incurred in his defense of this indictment using campaign funds”).

1 2. The Commission Should Dismiss the Allegation that Respondents
2 Violated the Act's Personal Use Prohibition as Alleged

3 The available information is insufficient to determine the particular purposes of the
4 Trump Committee's payments to McDermott — *i.e.*, whether the payments were for Cohen's
5 legal expenses related to Russian election interference investigations, as asserted by the Trump
6 Committee, or Cohen's legal expenses related to the Clifford payment, as alleged by the MUR
7 7379 complaint. Nonetheless, to the extent that the Trump Committee's payments to McDermott
8 were for representation of Cohen in connection with the Clifford payment, as alleged in the
9 complaint, the overall information supports dismissing the allegation that such payments
10 constitute personal use because, for the reasons detailed above, the Clifford payment scheme *was*
11 related to Trump's 2016 presidential campaign and, accordingly, payments for legal
12 representation relating to that scheme would not exist irrespective of Trump's campaign.

13 The available information undercuts the Trump Committee's unsworn assertion that its
14 payments for Cohen's legal costs were only in connection with Russian election-interference
15 investigations. The Trump Committee reported four disbursements totaling \$276,278.06
16 between October 2017 and April 2018 to McDermott.²⁴⁵ Contrary to the June–December 2017
17 timeframe provided in the Trump Committee's response,²⁴⁶ McDermott represented Cohen
18 before the Commission in connection with the Clifford payment as of February 8, 2018, and the
19 firm presumably remained his counsel of record until at least June 2018, when Cohen reportedly
20 hired new counsel to represent him in related criminal prosecution.²⁴⁷ McDermott also filed

²⁴⁵ *See supra* note 94.

²⁴⁶ Trump Comm. Resp. at 2, MUR 7379.

²⁴⁷ *See* Cohen Resp. at 1, MUR 7313 (indicating that McDermott serves as counsel to Cohen); Designation of Counsel, MUR 7313, Michael D. Cohen (Feb. 12, 2018) (formally designating McDermott as counsel); Emily J.

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1 each of Cohen's three responses with the Commission between February 2018 and June 2018.²⁴⁸
2 During the same period, federal agents searched Cohen's residences and office on April 9, 2018,
3 in connection with the investigation of multiple criminal allegations, including the criminal fraud
4 and campaign finance violations relating to the Clifford payment.²⁴⁹ As such, the information
5 indicates that McDermott did, in fact, represent Cohen in legal proceedings arising from the
6 Clifford payment, and it suggests that the Trump Committee's disbursements to McDermott may
7 have paid some or all of the costs of that representation.

8 As explained above, the record supports a finding that the Clifford payment was an
9 expenditure coordinated with Trump, resulting in an in-kind contribution from Cohen to Trump
10 and the Trump Committee, rather than a personal expense unrelated to Trump's presidential
11 campaign.²⁵⁰ As such, even if the Trump Committee's payments defrayed Cohen's legal
12 expenses arising from the Clifford payment scheme, as alleged, such payments would not
13 constitute personal use because the expenses would not exist irrespective of the campaign.

Fox, *Michael Cohen, Holding His Cards Close to the Vest, Has Hired a New Lawyer*, VANITY FAIR (June 19, 2018), <https://www.vanityfair.com/news/2018/06/michael-cohen-has-hired-a-new-lawyer> ("Last week, [] Michael Cohen parted with his attorneys at McDermott, Will & Emery [and] . . . according to two people with knowledge of the situation, has now hired Guy Petrillo to represent him in the ongoing criminal investigation of his business dealings in the Southern District of New York."). Cohen did not file an updated Designation of Counsel in MURs 7313, 7319, or 7379.

²⁴⁸ Cohen Resp., MUR 7313; Cohen Supp. Resp., MURs 7313 and 7319; Cohen Resp., MUR 7379.

²⁴⁹ See Warrant Aff. ¶¶ 5, 7–8 (listing "subject offenses" and noting that federal agents had previously obtained warrants to search Cohen's electronic files in connection with the Special Counsel's investigation, between July 2017 and November 2017, before the Special Counsel "referred certain aspects of its investigation into Cohen" to the U.S. Attorney's Office for the Southern District of New York).

²⁵⁰ See *supra* Section III.A.

1 Accordingly, we recommend that the Commission dismiss the allegations that Cohen,
2 Trump, and the Trump Committee violated 52 U.S.C. § 30114(b) in connection with the use of
3 campaign funds to pay Cohen's legal expenses.²⁵¹

4 **IV. INVESTIGATION**

5 Our proposed investigation would seek to determine the extent to which Trump
6 coordinated with, or otherwise directed, Cohen to make the Clifford payment to help his
7 presidential campaign during the 2016 election. We would also seek to determine the level of
8 knowledge regarding details of the payment and reimbursement scheme, including any effort to
9 conceal the source of the payment or the structure of the reimbursement, of the following
10 persons: Trump, Cohen, Weisselberg, Hicks, and other employees and staff of the Trump
11 Committee and Trump Organization. In that vein, we would seek evidence regarding the
12 motivations behind the Clifford payment, including the alleged concern about Trump's electoral
13 prospects after the release of the Access Hollywood recording, as well as evidence regarding the
14 potential impact of Clifford's allegations on Trump's presidential campaign. We would also
15 seek evidence regarding the negotiation, planning, and execution of the Clifford payment,
16 including documents, communications, and financial records.

17 We would also seek any evidence regarding planning and efforts, both before and after
18 the 2016 election, to create and conceal the reimbursement scheme, as well as any evidence of a

²⁵¹ Although we would normally recommend that the Commission close the file in MUR 7379, under these specific circumstances we do not make such a recommendation. Under the Commission's disclosure policy for the release of enforcement files to the public record, 81 Fed. Reg. 50,702 (Aug. 2, 2018), files in closed enforcement matters generally must be released within thirty days. Because the rationale for dismissing the allegations in MUR 7379 is inextricably entwined with the rationale upon which we recommend finding reason to believe in MURs 7313 and 7319, closing the file could either potentially reveal confidential information pertaining to our recommended investigation in MURs 7313 and 7319, require the release of a heavily redacted version of this report that might not adequately advise the MUR 7379 complainant of the basis for the Commission's determination, or both. Although we recommend keeping MUR 7379 open, we do not anticipate that the personal use allegations would need to be revisited.

1 concerted effort to distance or insulate Trump from the Clifford payment after the initial news
 2 reports about the payment, such as drafts of statements denying knowledge of the Clifford
 3 payment. We would also investigate from where the funds used to reimburse Cohen specifically
 4 came, such as whether, and to what extent, the funds were provided by Trump, the Trump
 5 Organization, or an entity that holds or is related to the Trump Organization, such as the Trump
 6 Trust, and the tax status of any such entity.

7 We intend to seek this information voluntarily, but recommend that the Commission
 8 approve the use of compulsory process as necessary.

9 **V. RECOMMENDATIONS**

10 **MURs 7313 and 7319**

- 11 1. Find reason to believe that Michael D. Cohen knowingly and willfully violated
 12 52 U.S.C. § 30116(a)(1)(A) by making excessive contributions;
- 13 2. Find reason to believe that Michael D. Cohen knowingly and willfully violated
 14 52 U.S.C. § 30122 by making a contribution in the name of another;
- 15 3. Find reason to believe that Donald J. Trump knowingly and willfully violated
 16 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions from Michael
 17 D. Cohen;
- 18 4. Find reason to believe that Donald J. Trump knowingly and willfully violated
 19 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another;
- 20 5. Find reason to believe that Donald J. Trump knowingly and willfully violated
 21 52 U.S.C. § 30118(a) by knowingly accepting a corporate contribution from the
 22 Trump Organization OR knowingly and willfully violated 52 U.S.C. § 30116(f) by
 23 knowingly accepting an excessive contribution from the Trump Organization;
- 24 6. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T.
 25 Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C.
 26 § 30104(b) and 11 C.F.R. § 104.3(a) and (b) by filing false disclosure reports with
 27 the Commission;
- 28 7. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T.
 29 Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C.
 30 § 30116(f) by knowingly accepting excessive contributions from Michael D.
 31 Cohen;

- 1 8. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T.
2 Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C.
3 § 30122 by knowingly accepting a contribution in the name of another;
- 4 9. Find reason to believe that Donald J. Trump for President, Inc., and Bradley T.
5 Crate in his official capacity as treasurer knowingly and willfully violated 52 U.S.C.
6 § 30118(a) by knowingly accepting a corporate contribution from the Trump
7 Organization OR knowingly and willfully violated 52 U.S.C. § 30116(f) by
8 knowingly accepting an excessive contribution from the Trump Organization;
- 9 10. Find reason to believe that Trump Organization, LLC, knowingly and willfully
10 violated 52 U.S.C. § 30118(a) by making a corporate contribution OR knowingly
11 and willfully violated 52 U.S.C. § 30116(a)(1)(A) by making an excessive
12 contribution;
- 13 11. Find reason to believe that Essential Consultants, LLC, knowingly and willfully
14 violated 52 U.S.C. § 30122 by knowingly permitting its name to be used to effect a
15 contribution in the name of another;
- 16 12. Authorize the use of compulsory process;

17 **MUR 7319**

- 18 13. Take no action at this time with respect to Timothy Jost;
- 19 14. Dismiss the allegations with respect to Trump Tower Commercial, LLC;

20 **MUR 7379**

- 21 15. Dismiss the allegations that Michael D. Cohen, Donald J. Trump, and Donald J.
22 Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer
23 violated 52 U.S.C. § 30114(b) by converting campaign funds to personal use;

24 **MURs 7313, 7319, and 7379**

- 25 16. Approve the attached Factual and Legal Analyses; and

1 17. Approve the appropriate letters.

2 December 7, 2020
3 Date

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Acting General Counsel

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6 Charles Kitcher
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