



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 13, 2021

Via Electronic Mail

**Email: lgoodman@wiley.law
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Lee E. Goodman
Andrew G. Woodson
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

RE: MURs 7324, 7332, and 7366
A360 Media, LLC, formerly
American Media, Inc.
David J. Pecker

Dear Mr. Goodman and Mr. Woodson:

On February 27, March 1, April 20, May 10, and August 9, 2018, the Federal Election Commission notified your clients, A360 Media, LLC, formerly American Media, Inc., (“AMI”) and David J. Pecker, of complaints alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and provided your clients with copies of those complaints. After reviewing the allegations contained in the complaints, your clients’ responses, and publicly available information, the Commission, on March 11, 2021, found reason to believe that your clients knowingly and willfully violated 52 U.S.C. §§ 30118(a) by making and consenting to prohibited corporate in-kind contributions with regard to payments related to Karen McDougal. The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.

Pre-probable cause conciliation is not mandated by the Act or the Commission’s regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether

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or not the Commission should find probable cause to believe that your clients violated the law. Enclosed is a conciliation agreement for your clients' consideration

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

If your clients are interested in engaging in pre-probable cause conciliation, please contact Adrienne C. Baranowicz, the attorney assigned to this matter, at (202) 694-1573 within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached

See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,



Shana M. Broussard
Chair

Attachments:

- 1) Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENTS: A360 Media, LLC f/k/a American Media, Inc. MURs 7324, 7332, and
6 David J. Pecker 7366

7
8 **I. INTRODUCTION**

9 The Complaints in these matters allege that American Media, Inc., which is now A360
10 Media, LLC¹ (“AMI”) violated the Federal Election Campaign Act of 1971, as amended (the
11 “Act”), in connection with payments AMI made to two individuals in advance of the 2016
12 presidential election to suppress negative stories about then-presidential candidate Donald J.
13 Trump’s relationships with several women. Specifically, the Complaints allege that then-AMI
14 corporate officers David J. Pecker and Dylan Howard worked to negotiate a payment of
15 \$150,000 to Karen McDougal in August 2016 for the purpose of influencing Trump’s election by
16 suppressing her story of an alleged personal relationship with Trump.²

17 In its Responses, AMI asserts that the press exemption and the First Amendment preclude
18 investigation of the allegations and further contends that the payment to McDougal was a *bona*
19 *fide* payment.³ After AMI’s Responses were filed, however, AMI entered into a non-prosecution
20 agreement with the Department of Justice (“DOJ”) regarding the payment to McDougal.⁴

¹ See *infra* note 9 and accompanying text.

² MUR 7324 Compl. at 2 (Feb. 20, 2018); MUR 7332 Compl. at 1-2 (Feb. 27, 2018); MUR 7366 Compl. at 2 (Apr. 17, 2018).

³ MURs 7324/7332 AMI Resp. (Apr. 13, 2018); MUR 7366 AMI Resp. (June 8, 2018); MUR 7332 AMI Supp. Resp. (June 8, 2018); see also MURs 7324/7332 AMI Resp. at 1-2, nn.1-2 (noting that Pecker chose not to file a separate response and that AMI’s Response addresses his potential liability as an officer of AMI).

⁴ 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. (Sept. 20, 2018) (non-prosecution agreement between DOJ and AMI on September 21, 2018, including statement of admitted facts) (“AMI Non-Prosecution Agreement”).

1 As discussed below, the available information indicates that Pecker, Howard, and AMI
2 paid McDougal \$150,000 to suppress her story from becoming public before the 2016
3 presidential election for the purpose of influencing that election. Accordingly, the Commission
4 finds reason to believe that AMI and Pecker knowingly and willfully violated 52 U.S.C.
5 § 30118(a) by making and consenting to make prohibited corporate in-kind contributions.

6 **II. FACTUAL BACKGROUND**

7 Trump declared his presidential candidacy on June 16, 2015, and registered Donald J.
8 Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the “Trump
9 Committee”), his principal campaign committee, with the Commission on June 29, 2015.⁵
10 Michael D. Cohen was an attorney for the Trump Organization.⁶ AMI was a publishing
11 company headquartered in New York, New York.⁷ In 2016, one of AMI’s publications was the
12 *National Enquirer* (the “*Enquirer*”), which is a weekly print and online tabloid publication.⁸ In
13 August 2020, AMI reportedly was renamed A360 Media, LLC and plans were announced to

⁵ Alex Altman and Charlotte Alter, *Trump Launches Presidential Campaign with Empty Flair*, TIME (June 16, 2015), <https://time.com/3922770/donald-trump-campaign-launch/> (cited by MUR 7366 Compl. at 4); Trump Committee, Statement of Organization, FEC Form 1 (June 29, 2015).

⁶ MUR 7324 Compl. at 8 (referring to Cohen as a “top attorney” at the Trump Organization and as Trump’s “fix-it guy”).

⁷ See AMI, *About Us*, <https://web.archive.org/web/20200721110029/https://www.americanmediainc.com/about-us/overview> (last visited Oct. 22, 2020); AMI, *Contact Us*, <https://web.archive.org/web/20200830111333/https://www.americanmediainc.com/contact-us> (last visited Oct. 22, 2020); Del. Dept. of State, Div. of Corps., *General Information Name Search*, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx> (search entity name: American Media, Inc.) (last visited Oct. 22, 2020).

⁸ MURs 7324/7332 AMI Resp., Aff. of Dylan Howard ¶ 11. Publicly available information indicates that AMI announced on April 18, 2019, that it planned to sell the *Enquirer* to an individual named James Cohen; however, that sale reportedly was not finalized. See National Enquirer to Be Sold to Owner of Magazine Distributor, REUTERS (Apr. 18, 2019), <https://www.reuters.com/article/us-national-enquirer-m-a/national-enquirer-to-be-sold-to-owner-of-magazine-distributor-idUSKCN1RU25I>; Sarah Ellison and Jonathan O’Connell, *As a Sale of the National Enquirer Collapses, Some Wonder if the Tabloid is Too Hot to Handle*, THE WASHINGTON POST (Aug. 25, 2020), https://www.washingtonpost.com/lifestyle/media/as-a-sale-of-the-national-enquirer-collapses-some-wonder-if-the-tabloid-is-too-hot-to-handle/2020/08/25/0777e954-e6e3-11ea-97e0-94d2e46e759b_story.html.

1 merge it with Accelerate 360, a logistics firm.⁹ Pecker was the President and Chief Executive
 2 Officer of AMI until the merger and reportedly became an executive advisor to the new
 3 company.¹⁰ Howard was AMI's Vice President and Chief Content Officer and reportedly left
 4 the company on March 31, 2020.¹¹ From 2013 to 2017, Howard was the Editor in Chief of the
 5 *Enquirer*.¹² Karen McDougal is a model and actress.¹³

6 The available information indicates that during Trump's 2016 presidential campaign,
 7 AMI and its executives, Pecker and Howard, paid \$150,000 to Karen McDougal to purchase the
 8 rights to her claim that she engaged in a relationship with Trump beginning in 2006. AMI entered
 9 into a Non-Prosecution Agreement with DOJ on September 21, 2018.¹⁴ In that Non-Prosecution
 10 Agreement, AMI admitted that it made the payments to McDougal to ensure that she did not
 11 publicize her allegations and "thereby influence [the 2016 presidential] election."¹⁵

12 **A. Pecker Enters into Agreement with Trump Committee Representatives**

13 According to AMI's Non-Prosecution Agreement, in August 2015, Pecker met with
 14 members of the Trump Committee and Michael Cohen.¹⁶ AMI admitted that, at that meeting,

⁹ Ben Smith, National Enquirer *Chief David Pecker Loses Top Job in Company Merger*, N.Y. TIMES (Aug. 21, 2020), <https://www.nytimes.com/2020/08/21/business/media/david-pecker-ami-ceo.html> ("NY Times Aug. 21 Article").

¹⁰ MURs 7324/7332 AMI Resp. at 1, n.1.

¹¹ MURs 7324/7332 AMI Resp. at 1, n.1; Lukas I. Alpert, National Enquirer *Parent Parts Ways with Dylan Howard*, WALL ST. J. (Apr. 6, 2020), <https://www.wsj.com/articles/national-enquirer-parent-parts-ways-with-dylan-howard-11586229089>.

¹² MURs 7324/7332 AMI Resp., Aff. of Dylan Howard ¶ 2.

¹³ MUR 7366 Compl. at 3 (citing Compl. for Declaratory Relief, *McDougal v. American Media, Inc.*, No. BC698956 (Cal. Super. Ct. Los Angeles Cnty. Mar. 20, 2018) ("McDougal Complaint").

¹⁴ AMI Non-Prosecution Agreement at 3.

¹⁵ See AMI Non-Prosecution Agreement, Ex. A ¶ 3.

¹⁶ AMI Non-Prosecution Agreement, Ex. A ¶ 3.

1 “Pecker offered to help deal with negative stories about [Trump’s] relationships with women by,
 2 among other things, assisting the campaign in identifying such stories so they could be purchased
 3 and their publication avoided.”¹⁷ Further, “Pecker agreed to keep Cohen apprised of any such
 4 negative stories.”¹⁸

5 **B. AMI Payment to Karen McDougal**

6 In June 2016, an attorney representing a model believed to be McDougal, reportedly
 7 contacted an editor at the *Enquirer* about the potential sale of the rights to a story about the
 8 model’s alleged relationship with Trump.¹⁹ According to AMI, Pecker and the editor then
 9 informed Cohen about the model’s story and the editor began negotiations to obtain the rights to
 10 her story “[a]t Cohen’s urging and subject to Cohen’s promise that AMI would be reimbursed.”²⁰

11 On July 19, 2016, Trump became the Republican presidential nominee.²¹ AMI and
 12 McDougal entered into a contract on August 6, 2016,²² whereby AMI purchased the “Limited
 13 Life Story Rights” to the story of McDougal’s relationship with “any then-married man” in
 14 exchange for the payment of \$150,000.²³ In addition, McDougal agreed to be featured on two
 15 AMI-owned magazine covers and work with a ghostwriter to author monthly columns for AMI

¹⁷ AMI Non-Prosecution Agreement, Ex. A ¶ 3.

¹⁸ AMI Non-Prosecution Agreement, Ex. A ¶ 3.

¹⁹ AMI Non-Prosecution Agreement, Ex. A ¶ 4; MUR 7366 Compl. at 4-5.

²⁰ AMI Non-Prosecution Agreement, Ex. A ¶ 4; MUR 7332 Compl. at 3-4; MUR 7366 Compl. at 4-5.

²¹ Alexander Burns and Jonathan Martin, *Donald Trump Claims Nomination, with Discord Clear but Family Cheering*, N.Y. TIMES (July 19, 2016), <https://www.nytimes.com/2016/07/20/us/politics/donald-trump-rnc.html>.

²² The contract was allegedly sent to McDougal on August 5, 2016, and she signed the contract the next morning. McDougal Complaint ¶¶ 48-55.

²³ MURs 7324/7332 AMI Resp., Aff. of Dylan Howard, Ex. A; *id.*, Ex. B (amending McDougal’s agreement with AMI so that she could “respond to legitimate press inquiries regarding the facts of her alleged relationship with Donald Trump”).

1 publications; however, AMI was not obligated to publish her columns.²⁴ Davidson allegedly
2 told McDougal that AMI would purchase her story with the purpose of not publishing it because
3 of Pecker's friendship with Trump.²⁵ On August 10, 2016, AMI sent a \$150,000 payment to
4 Davidson for the rights to McDougal's story.²⁶ McDougal alleges that as early as October 2016,
5 AMI staff appeared to lack interest in the columns that McDougal agreed to have published in
6 her name.²⁷ However, it does appear that AMI ultimately published several columns under
7 McDougal's name.²⁸ In late August and September 2016, Cohen requested to Pecker that AMI
8 assign Cohen the "limited life rights portion" of AMI's agreement, which "included the
9 requirement that the model not otherwise disclose her story."²⁹ Pecker agreed to assign the life
10 rights to an entity Cohen created for a payment of \$125,000.³⁰ The assignment agreement was
11 drawn up, and on September 30, 2016, Pecker signed the agreement, which transferred the
12 limited life rights to McDougal's story to an entity set up by Cohen.³¹

13 AMI acknowledges in the DOJ Non-Prosecution Agreement that the payment of
14 \$150,000 was substantially more than AMI would normally have agreed to pay because it relied

²⁴ MURs 7324/7332 AMI Resp., Aff. of Dylan Howard, Ex. A at 1; *see also* MUR 7332 First Amend. Compl. at 6 (citing McDougal Complaint ¶ 59).

²⁵ MUR 7332 First Amend. Compl. at 5 (citing McDougal Complaint ¶ 47); MUR 7366 Compl. at 5 (same).

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

²⁷ McDougal Complaint ¶¶ 57-60.

²⁸ MURs 7324/7332 AMI Resp. at 8 ("To date, AMI's publications have published approximately twenty-five (25) columns and articles either bylined or featuring Ms. McDougal across its publications, and AMI has requested additional columns from her.").

²⁹ *See* AMI Non-Prosecution Agreement, Ex. A ¶ 6.

³⁰ AMI Non-Prosecution Agreement, Ex. A ¶ 6.

³¹ AMI Non-Prosecution Agreement, Ex. A ¶ 6.

1 upon Cohen’s commitment that AMI would be reimbursed.³² Further, AMI admits that its
2 “principal purpose in entering into the agreement was to suppress the model’s story so as to
3 prevent it from influencing the election” and that “[a]t no time during the negotiation for or
4 acquisition of [McDougal’s] story did AMI intend to publish the story or disseminate
5 information about it publicly.”³³ AMI has admitted that, “[a]t all relevant times, [it] knew that
6 corporations such as AMI are subject to federal campaign finance laws, and that expenditures by
7 corporations, made for purposes of influencing an election and in coordination with or at the
8 request of a candidate or campaign, are unlawful.”³⁴

9 **C. The Complaints and Responses**

10 The Complaints in MURs 7324, 7332, and 7366 allege that there is reason to believe that,
11 by paying McDougal \$150,000, AMI made a prohibited corporate contribution because the
12 payment was not included within the scope of the press exemption and was an expenditure made
13 for the purpose of influencing the 2016 presidential election that was coordinated with an agent
14 of Trump.³⁵ The MUR 7332 Complaint further alleges that AMI’s payment to McDougal was an

³² AMI Non-Prosecution Agreement, Ex. A ¶ 5 (“AMI agreed to pay the model \$150,000 — substantially more money than AMI otherwise would have paid to acquire the story — because of Cohen’s assurances to Pecker that AMI would ultimately be reimbursed for the payment.”).

³³ *See id.*

³⁴ *Id.*, Ex. A ¶ 8.

³⁵ MUR 7324 Compl. at 14-15; MUR 7332 Compl. at 8; MUR 7366 Compl. at 7-9.

1 excessive contribution to the Trump Committee.³⁶ Pecker is named in the Complaints in his
2 capacity as an officer of AMI at the time of the payments.

3 All but one of the Responses filed in this matter pre-date AMI's subsequent public
4 admissions and clarifications made in connection with its Non-Prosecution Agreement.³⁷
5 Generally, AMI's Responses to the Complaints in these matters assert that the payment to
6 McDougal was exempt from regulation under the press exemption.³⁸ Alternatively, AMI argues
7 that the payment to McDougal "was compensation for *bona fide* content for AMI's publications,
8 to license her name and image, and for a limited life story right, not 'for the purpose of
9 influencing an election.'"³⁹ In addition, AMI argues that payments for silence are not
10 contributions or expenditures because silence is not a "thing of value" under the Act, the
11 payment was for a legitimate business purpose,⁴⁰ and the MUR 7324 and 7332 Complaints fail to
12 show how the McDougal payment was coordinated with an agent of the Trump Committee.⁴¹

³⁶ MUR 7332 Compl. at 8.

³⁷ The two Responses filed after the Non-Prosecution Agreement, plea agreements, and congressional testimony were in response to the Complaint in MUR 7637, which has been merged in relevant part into MUR 7324. AMI's Response in MUR 7637 asserted that, "The record establishes that [AMI] purchased a story right from Karen McDougal and employed her to perform modeling and related journalistic services, which she performed." MUR 7637 AMI Resp. at 1. AMI's MUR 7637 Response does not reference its Non-Prosecution Agreement.

³⁸ MURs 7324/7332 AMI Resp. at 1-2, nn.1-2 ; MUR 7332 AMI Supp. Resp. at 3-4. In defending its payment to McDougal, AMI quotes an article in *The New Yorker* that states that the *Enquirer* has "'paid for interviews and photographs'" since its inception and that "'the tabloid has paid anywhere from a few hundred dollars to six figures for scoops.'" MURs 7324/7332 AMI Resp. at 16-17 (quoting 2017 New Yorker Article).

³⁹ MURs 7324/7332 AMI Resp. at 2; *see also* MUR 7637 AMI Resp. at 1 (asserting that it employed McDougal's performance of "journalistic services").

⁴⁰ MUR 7332 AMI Supp. Resp. at 5-7. AMI also contends that as of April 13, 2018, AMI had published 25 columns involving McDougal and had requested additional columns. MURs 7324/7332 AMI Resp. at 8.

⁴¹ MUR 7332 AMI Supp. Resp. at 7-9; MURs 7324/7332 AMI Resp. at 31-32.

1 **III. LEGAL ANALYSIS**

2 The available information indicates that AMI paid \$150,000 to McDougal for the purpose
3 of influencing the 2016 presidential election by preventing a potentially damaging story about
4 Trump from becoming public before the election. Although AMI contends in its Response that
5 its payment to McDougal concerned the business and editorial decisions of a press entity and
6 thus are not subject to Commission regulation, the available information indicates that AMI
7 subsequently disclaimed any argument that the payment to McDougal was made in connection
8 with AMI’s business or editorial functions and admitted that AMI’s payments were made to
9 benefit Trump’s campaign. The press exemption is therefore inapplicable. Thus, the available
10 information supports the conclusion that AMI’s payment constituted an in-kind contribution to
11 Trump and the Trump Committee.

12 As such, AMI and Pecker appear to have violated the Act by making and consenting to
13 making a corporate contribution in the form of a payment from AMI to McDougal. As explained
14 below, the record indicates that there is reason to believe that this violation was knowing and
15 willful.

16 **A. Press Exemption**

17 Under the Act, a “contribution” includes “any gift, subscription, loan, advance, or deposit
18 of money or anything of value made by any person for the purpose of influencing any election
19 for Federal office,”⁴² and an “expenditure” includes “any purchase, payment, distribution, loan,
20 advance, deposit, or gift of money or anything of value, made by any person for the purpose of
21 influencing any election for Federal office.”⁴³ Under Commission regulations, the phrase

⁴² 52 U.S.C. § 30101(8)(A).

⁴³ 52 U.S.C. § 30101(9)(A).

1 “anything of value” includes all in-kind contributions.⁴⁴ In-kind contributions include, among
 2 other things, coordinated expenditures.⁴⁵ The Act’s definition of “expenditure” does not include
 3 “any news story, commentary, or editorial distributed through the facilities of any broadcasting
 4 station, newspaper magazine, or other periodical publication, unless such facilities are owned or
 5 controlled by any political party, political committee, or candidate.”⁴⁶ This exemption is called
 6 the “press exemption” or “media exemption.”⁴⁷ Costs covered by the exemption are also exempt
 7 from the Act’s disclosure and reporting requirements.⁴⁸

8 AMI admitted in its Non-Prosecution Agreement with DOJ that its actions were not
 9 undertaken in connection with any press function but were rather to benefit the Trump
 10 Committee.⁴⁹ Similarly, AMI’s assertion in its Response that it developed renewed interest in
 11 McDougal’s story because she had “elevated her profile” by launching her own beauty and

⁴⁴ 11 C.F.R. § 100.52(d)(1).

⁴⁵ 52 U.S.C. § 30116(a)(7)(B)(i) (treating as contributions any expenditures made “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate,” the candidate’s authorized committee, or their agents); *see* 11 C.F.R. § 109.20 (defining “coordination”); *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

⁴⁶ 52 U.S.C. § 30101(9)(B)(i). Commission regulations further provide that neither a “contribution” nor an “expenditure” results from “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet, or electronic publication” unless the facility is “owned or controlled by any political party, political committee, or candidate.” 11 C.F.R. §§ 100.73, 100.132.

⁴⁷ Advisory Op. 2011-11 (Colbert) at 6 (“AO 2011-11”); Advisory Op. 2008-14 (Melotheé) at 3 (“AO 2008-14”).

⁴⁸ AO 2011-11 at 6, 8-10 (discussing costs that are within this exemption and also costs that are not).

⁴⁹ AMI Non-Prosecution Agreement, Ex. A ¶ 5 (“Despite the cover and article features to the agreement, AMI’s principal purpose in entering into the agreement was to suppress the model’s story so as to prevent it from influencing the election. At no time during the negotiation for or acquisition of the model’s story did AMI intend to publish the story or disseminate information about it publicly.”). *Compare* MURs 7324/7332 AMI Resp. at 20-21 with AMI Non-Prosecution Agreement at 1-3, Ex. A ¶ 3 (stating that “AMI accepts and acknowledges as true the facts” contained in Exhibit A and summarizing AMI’s obligations to provide truthful information to DOJ as part of the Non-Prosecution Agreement).

1 fragrance line⁵⁰ is directly refuted by AMI’s subsequent admission in its Non-Prosecution
 2 Agreement that its “principal purpose in entering into the agreement was to suppress
 3 [McDougal’s] story so as to prevent it from influencing the election” and that “[a]t no time
 4 during the negotiation for or acquisition of [McDougal’s] story did AMI intend to publish the
 5 story or disseminate information about it publicly.”⁵¹ As a result, the Commission need not—
 6 and does not—make any determination whether the press exemption would apply to AMI’s
 7 conduct absent these admissions disclaiming a journalistic or editorial purpose and admitting that
 8 it made or facilitated the payment to McDougal for the express purpose of assisting the Trump
 9 Committee.⁵² The press exemption does not apply to the payment at issue.

10 **B. The Commission Finds Reason to Believe that AMI’s Payment to McDougal**
 11 **Was a Prohibited Corporate Contribution**

12 1. The Commission Finds Reason to Believe that AMI’s Payment to
 13 McDougal Was a Coordinated Expenditure

14 a. Coordination

15 The Act and Commission regulations prohibit corporations from making contributions to
 16 candidate committees in connection with a federal election.⁵³ Likewise, it is unlawful for any
 17 candidate, candidate committee, or other person to knowingly accept or receive such a prohibited
 18 contribution, and for any officer or director of a corporation to consent to any such
 19 contribution.⁵⁴ The Commission has consistently found that payments by a third party that are

⁵⁰ MURs 7324/7332 AMI Resp. at 6.

⁵¹ AMI Non-Prosecution Agreement, Ex. A ¶ 5.

⁵² *Id.* at 1-3 (stating that “AMI accepts and acknowledges as true the facts” contained in Exhibit A).

⁵³ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

⁵⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

1 intended to influence an election and are “coordinated” with a candidate, authorized committee,
2 or agent thereof are “coordinated expenditures” that result in a contribution by the person making
3 the expenditure to the candidate or political committee with whom the expenditure was
4 coordinated.⁵⁵

5 The available information indicates that AMI’s payment to McDougal was “coordinated”
6 with the campaign because, according to AMI, it was made “in cooperation, consultation or
7 concert with, or at the request or suggestion” of Cohen, whom AMI believed was an agent for
8 the Trump Committee.⁵⁶ AMI has admitted in its Non-Prosecution Agreement with DOJ that it
9 made its payment to McDougal “in cooperation, consultation, and concert with, and at the
10 request and suggestion of one or more members or agents of a candidate’s 2016 presidential
11 campaign, to ensure that a woman did not publicize damaging allegations about that candidate
12 before the 2016 presidential election and thereby influence that election.”⁵⁷ Accordingly, the
13 AMI payment to McDougal meets the definition of “coordinated” in 11 C.F.R. § 109.20(a) in
14 that they were made in cooperation, consultation or concert with, or at the request or suggestion
15 of the Trump Committee. The coordinated payments would constitute in-kind contributions
16 from AMI to the Trump Committee if they were “expenditures,” that is, made for the purpose of
17 influencing Trump’s election.

⁵⁵ See 11 C.F.R. § 109.20(a)-(b); *see, e.g.*, Conciliation Agreement ¶¶ IV.7-11, V.1-2, MUR 6718 (Sen. John E. Ensign) (Apr. 18, 2013) (acknowledging that third parties’ payment, in coordination with a federal candidate, of severance to a former employee of the candidate’s authorized committee and leadership PAC resulted in an excessive, unreported in-kind contribution by the 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.) (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).

⁵⁶ 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a)-(b).

⁵⁷ AMI Non-Prosecution Agreement, Ex. A ¶ 2.

1 b. For the Purpose of Influencing an Election

2 The “purpose” of influencing a federal election is a necessary element in defining
3 whether a payment is a “contribution” or “expenditure” under the Act and Commission
4 regulations.⁵⁸ In analyzing whether a payment made by a third party is a “contribution” or
5 “expenditure,”⁵⁹ the Commission has concluded that “the question under the Act is whether” the
6 donation, payment, or service was “provided for the purpose of influencing a federal election
7 [and] not whether [it] provided a benefit to [a federal candidate’s] campaign.”⁶⁰ The electoral
8 purpose of a payment may be clear on its face, as in payments to solicit contributions or for
9 communications that expressly advocate for the election or defeat of a specific candidate, or
10 inferred from the surrounding circumstances.⁶¹

11 With respect to the McDougal payment, it is unnecessary to infer the circumstances
12 behind the payment; AMI has already acknowledged, in a sworn agreement, that the purpose of
13 paying McDougal was to prevent her story from influencing the election. In the AMI Non-
14 Prosecution Agreement, AMI explicitly admits that its “principal purpose in entering into the

⁵⁸ See 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

⁵⁹ 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

⁶⁰ Factual & Legal Analysis at 6, MUR 7024 (Van Hollen for Senate).

⁶¹ See, e.g., Advisory Op. 2000-08 (Harvey) at 1, 3 (“AO 2000-08”) (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 (Mueller) at 4 (“AO 1990-05”) (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 federal candidate’s company newsletter featuring discussion of campaign resulted in contributions); Advisory Op. 1988-22 (San Joaquin Valley Republican Associates) at 5 (concluding 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).

1 agreement [with McDougal] was to suppress the model’s story” and “to ensure that [she] did not
2 publicize damaging allegations about [Trump] before the 2016 presidential election and thereby
3 influence that election.”⁶² Further, AMI admits that the payment to McDougal was part of an
4 overarching scheme in “assisting [the] campaign” in identifying and purchasing “negative stories
5 about [his] relationships with women” to prevent their publication.⁶³

6 Thus, the available information supports the conclusion that AMI’s payment to
7 McDougal was coordinated with the Trump Committee and was made for the purpose of
8 influencing Trump’s election, resulting in AMI making “coordinated expenditures” under the
9 Act.

10 2. The Commission Finds Reason to Believe that AMI’s Payment to
11 McDougal Was a Prohibited Corporate In-Kind Contribution to the Trump
12 Committee

13 Because the available information indicates that AMI’s payment to McDougal was a
14 coordinated expenditure made for the purpose of influencing the 2016 election, the record
15 supports a reason to believe finding that the payment constituted an in-kind contribution from
16 AMI to the Trump Committee.⁶⁴ Further, because the payment was an in-kind contribution to
17 the Trump Committee, it was subject to the contribution limits and prohibitions set forth in the
18 Act and Commission regulations.⁶⁵ The Act and Commission regulations prohibit corporations

⁶² AMI Non-Prosecution Agreement, Ex. A ¶¶ 2, 5.

⁶³ *Id.* ¶ 3.

⁶⁴ *See* 11 C.F.R. § 109.20(b).

⁶⁵ Under the Act, an individual may not make a contribution to a candidate with respect to any election in excess of the legal limit, which was \$2,700 per election during the 2016 election cycle. *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). However, as detailed below, these contributions were made by a corporation, not an individual.

1 from making contributions to candidate committees.⁶⁶ The Act and Commission regulations also
2 prohibit candidates, candidate committees, or other persons from knowingly accepting or
3 receiving such a prohibited contribution, and for any officer or director of a corporation to
4 consent to making any such contribution.⁶⁷

5 The Commission has previously found violations of the Act by a corporation and its
6 officers in connection with similar payments to third parties. In MUR 7248, the Commission
7 found reason to believe that Cancer Treatment Centers of America and several of its corporate
8 officers violated 52 U.S.C. § 30118 by making and consenting to prohibited corporate
9 contributions where the corporate officers engaged in a reimbursement scheme whereby
10 executives were reimbursed via bonuses for their political contributions.⁶⁸

11 While corporate contributions to candidate committees are *per se* prohibited and do not
12 require proof of the contributor's knowledge of the violation, AMI has admitted to DOJ that it
13 knew that corporations are prohibited from contributing to candidate committees like the Trump
14 Committee.⁶⁹ The AMI Non-Prosecution Agreement states:

15 At all relevant times, AMI knew that corporations such as AMI are subject
16 to federal campaign finance laws, and that expenditures by corporations,
17 made for purposes of influencing an election and in coordination with or at
18 the request of a candidate or campaign, are unlawful. At no time did AMI

⁶⁶ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

⁶⁷ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

⁶⁸ Factual & Legal Analysis at 15-18, 21-22, MUR 7248 (Cancer Treatment Centers of America Global, Inc.); *see also* MUR 7027 (MV Transportation, Inc.) (conciliating violations of 52 U.S.C. § 30118 with a corporation and CEO that stemmed from a reimbursement scheme); MUR 6889 (Eric Byer) (finding reason to believe that a corporation and an executive violated section 30118 through a contribution reimbursement scheme) *see also* First Gen. Counsel's Rpt. at 18-19, 26, MUR 6766 (Jesse Jackson Jr.) (recommending that the Commission find reason to believe that certain unknown corporations and unknown corporate officers violated 2 U.S.C. § 441b (now 52 U.S.C. § 30118) by using corporate resources to pay down a candidate's personal credit card debt); Certification, MUR 6766 (Jesse Jackson Jr.) (Dec. 5, 2013) (finding reason to believe that the unknown corporations and corporate officers violated the Act).

⁶⁹ AMI Non-Prosecution Agreement, Ex. A ¶ 8.

1 report to the Federal Election Commission that it had made the \$150,000
 2 payment to [McDougal].⁷⁰

3 Therefore, AMI has admitted that it made the payment to McDougal while knowing that it was
 4 unlawful.⁷¹ Thus, the Commission finds reason to believe that AMI and Pecker violated
 5 52 U.S.C. § 30118(a) by making and consenting to a prohibited corporate in-kind contribution.

6 **C. The Commission Finds Reason to Believe that the Violation Set Forth Above**
 7 **Was Knowing and Willful**

8 The Act prescribes additional penalties for “knowing and willful” violations,⁷² which are
 9 defined as “acts [that] were committed with full knowledge of all the relevant facts and a
 10 recognition that the action is prohibited by law.”⁷³ This standard does not require knowledge of
 11 the specific statute or regulation that the respondent allegedly violated; it is sufficient to
 12 demonstrate that a respondent “acted voluntarily and was aware that his conduct was
 13 unlawful.”⁷⁴ Such awareness may be shown through circumstantial evidence from which the

⁷⁰ *Id.*

⁷¹ See AMI Non-Prosecution Agreement, Ex. A ¶ 8 (“At all relevant times, AMI knew that corporations such as AMI are subject to federal campaign finance laws, and that expenditures by corporations, made for purposes of influencing an election and in coordination with or at the request of a candidate or campaign, are unlawful.”).

⁷² See 52 U.S.C. § 30109(a)(5)(B), (d).

⁷³ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976); 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).

⁷⁴ *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 the government needs to show only that the defendant acted with knowledge that conduct was unlawful, not knowledge of the specific statutory provision violated, to establish a willful violation)).

1 respondent’s unlawful intent may be reasonably inferred,⁷⁵ including, for example, an “elaborate
2 scheme for disguising” unlawful acts.⁷⁶

3 The available information supports a reason to believe finding that AMI and Pecker’s
4 foregoing violation was knowing and willful because AMI, through its Non-Prosecution
5 Agreement, admitted that it knew its actions were unlawful.⁷⁷ Furthermore, Pecker’s and
6 Howard’s direct involvement in the negotiations indicate that Pecker was a party in a scheme to
7 both hide the story and the payment.⁷⁸ As such, the information indicates that AMI and Pecker
8 knew that AMI’s payment to McDougal violated the Act, and they acted voluntarily and with
9 awareness of unlawfulness when they negotiated the agreement with McDougal and made the
10 corresponding payment. Accordingly, the Commission finds reason to believe that the violation
11 of the Act by AMI and Pecker, as set forth above, was knowing and willful.

⁷⁵ 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 contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁷⁶ *Id.* at 214-15. “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

⁷⁷ AMI Non-Prosecution Agreement, Ex. A ¶ 8 (admitting that AMI “knew that corporations such as [itself] are subject to federal campaign finance laws, and that expenditures by corporations, made for purposes of influencing an election and in coordination with or at the request of a candidate or campaign, are unlawful”).

⁷⁸ AMI Non-Prosecution Agreement, Ex. A ¶ 3.