FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 18, 2021

Via Electronic Mail
(lgoodman@wiley.law; awoodson@wiley.law)
Lee E. Goodman, Esq.
Andrew G. Woodson, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

RE: MURs 7324, 7332, 7364 and 7366

Dear Mr. Goodman and Mr. Woodson:

On May 17, 2021, the Federal Election Commission accepted the signed conciliation agreement submitted by American Media, Inc., through its successor in interest, A360 Media, LLC ("AMI"), in settlement of a violation of 52 U.S.C. § 30118(a), a provision of the Federal Election Campaign Act of 1971, as amended. The Commission also determined to take no further action as to David J. Pecker. Accordingly, the files in MURs 7324, 7332, 7364, and 7366 have been closed as they pertain to AMI and Mr. Pecker.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) still apply, and that these matters are still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please call me at (202) 694-1573.

Sincerely,

Adrienne C. Baranowicz

Adrienne C. Baranowicz
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 7324, 7332, 7366,
American Media, Inc.[1]	)	
	)	

CONCILIATION AGREEMENT

This matter was generated by complaints filed by Common Cause, Free Speech for People, American Bridge 21st Century Foundation, and Allen J. Epstein. The Federal Election Commission found reason to believe that American Media, Inc. through its successor in interest, A360 Media, LLC ("AMI") ("Respondent") knowingly and willfully violated 52 U.S.C. § 30118(a) by making a prohibited corporate in-kind contribution by purchasing a story right from Karen McDougal in August 2016 and thereafter not publishing the story in consultation with an agent of Donald J. Trump.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 52 U.S.C § 30109 (a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent voluntarily enters into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

[1] Through its successor in interest A360 Media, LLC.

1. In 2016, at the time of the events giving rise to this matter, AMI was a *bona fide* media corporation headquartered in New York, New York, that published health, fitness, celebrity and investigative print and online magazines, tabloids and books. Among AMI's publications were the *National Enquirer* (the "*Enquirer*"), a weekly print and online tabloid publication in print since 1926, *Muscle & Fitness*, *Muscle & Fitness Hers, Men's Journal*, *Star Magazine*, *Radar Online*, *OK!*, and *US Weekly*. AMI has never been owned or controlled by a candidate or political party. It has a decades-long newsgathering practice of purchasing story rights.

2. David Pecker was the President and Chief Executive Officer of AMI until 2020 when AMI merged with another company to form a new company.

3. Dylan Howard was AMI's Vice President and Chief Content Officer. From 2013 to 2017, Howard was the Editor in Chief of the *Enquirer*.

4. Michael D. Cohen was an attorney for the Trump Organization.

5. Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee"), was then-presidential candidate Donald J. Trump's principal campaign committee.

6. In August 2015, David Pecker met with at least one member of the Trump Committee and Michael Cohen. At that meeting, Mr. Pecker offered to help deal with negative stories about Trump by, among other things, assisting the campaign in identifying such stories so they could be purchased and their publication avoided. Mr. Pecker agreed to keep Cohen apprised of any such stories.

7. In June 2016, an attorney representing Karen McDougal, who was attempting to sell her story of her alleged extramarital affair with Trump, contacted Dylan Howard at the

Enquirer. David Pecker and Dylan Howard then informed Michael Cohen about the story. At Mr. Cohen's urging and subject to his promise that AMI would be reimbursed, AMI began negotiations to obtain the rights to her story. On June 20, 2016, Dylan Howard interviewed Karen McDougal about her story. Following the interview, AMI communicated to Mr. Cohen that it would acquire the story but not publish it, pursuant to an expectation of reimbursement by Michael Cohen.

8. AMI and Karen McDougal entered into a contract on August 6, 2016, whereby AMI purchased the "Limited Life Story Rights" to the story of Ms. McDougal's relationship with "any then-married man" in exchange for the payment of $150,000. In addition, Ms. McDougal agreed to be featured on two AMI-owned magazine covers and work with a ghostwriter to author monthly columns for AMI publications; however, AMI was not obligated to publish her columns.

9. On August 10, 2016, AMI sent a $150,000 payment to Karen McDougal's attorney Keith Davidson for the rights to Ms. McDougal's story, modeling services for magazine covers, and articles.

10. In late August and September 2016, consistent with prior conversations between them, Mr. Cohen called David Pecker and stated that he wanted to be assigned the limited life rights portion of AMI's agreement with Karen McDougal. Mr. Pecker agreed to assign the rights to Cohen for $125,000. The assignment agreement was drawn up, and on September 30, 2016, prior to receiving payment, Mr. Pecker signed the agreement, which contemplated the transfer of the limited life rights portion of AMI's agreement to an entity that had been set up by Michael Cohen in return for a payment of $125,000.

11. However, in or about early October 2016, Mr. Pecker contacted Mr. Cohen and told him that the deal was off and that Mr. Cohen should tear up the assignment agreement. Thus, the sale was never consummated and AMI continued to own the story right until April 2018, when AMI renegotiated the limited life story right with Ms. McDougal, re-assigning the story right to her while retaining a financial interest in the story in the event she were to sell the story.

12. In addition to the sale of the limited life story right, Karen McDougal ultimately did perform journalistic services for AMI. AMI published articles written by Ms. McDougal in *OK! Magazine* and *Star Magazine* and featured her on the cover of *Muscle & Fitness Hers* (Spring 2017) and *Men's Journal* (September 2018). She modeled for photo shoots which were featured in print magazines and online. The publication of these articles was intended, at least in part, to keep Ms. McDougal from commenting publicly about her story and her agreement with AMI.

13. In 2018, AMI entered into a non-prosecution agreement with the Department of Justice ("AMI Non-Prosecution Agreement") that related to AMI's general agreement to identify stories that were damaging to Donald J. Trump's presidential campaign so that they could be purchased and their publication avoided, including AMI's subsequent $150,000 payment to Karen McDougal.

14. In the AMI Non-Prosecution Agreement, AMI acknowledged that the payment of $150,000 was "substantially more than AMI otherwise would have paid to acquire the story" because of Michael Cohen's assurances that AMI would ultimately be reimbursed for the payment. Further, AMI admitted that its "principal purpose in entering into the agreement was to suppress [McDougal's] story so as to prevent it from influencing the election" and that "[a]t no

time during the negotiation for or acquisition of [McDougal's] story did AMI intend to publish the story or disseminate information about it publicly." As part of the Non-Prosecution Agreement, AMI admitted that, "[a]t all relevant times, [it] 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."

15. Under the Federal Election Campaign Act of 1971, as amended (the "Act"), a "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office," and an "expenditure" includes "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A), (9)(A).

16. Under Commission regulations, the phrase "anything of value" includes all in-kind contributions, which includes, among other things, coordinated expenditures. 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 100.52(d)(1).

17. An expenditure is coordinated when it is made "in cooperation, consultation or concert with, or at the request or suggestion" a candidate or a candidate's authorized committee and is considered an in-kind contribution to the candidate or candidate's authorized committee with whom it was coordinated. 11 C.F.R. § 109.20.

18. Although the Act's definition of "expenditure" does not include "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper magazine, or other periodical publication, unless such facilities are owned or controlled by any

political party, political committee, or candidate," the Commission has concluded that this exemption, known as the "Press Exemption," does not apply to AMI's payment to Karen McDougal because, as stated in the AMI Non-Prosecution Agreement, "[a]t no time during the negotiation for or acquisition of [Karen McDougal's] story did AMI intend to publish the story or disseminate information about it publicly," it acquired the story "in consultation cooperation and concert with and at request or suggestion of one or more agents of [Trump's] 2016 presidential campaign," and AMI's "principal purpose in entering into the agreement was to suppress [Karen McDougal's] story so as to prevent it from influencing the election." *See* 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

19. The Act and Commission regulations prohibit corporations from making contributions to candidate committees in connection with a federal election. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

20. The Act and Commission regulations also prohibit candidates, candidate committees, or other persons from knowingly accepting or receiving such a prohibited contribution and for any officer or director of a corporate to consent to making any such contribution. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d)-(e).

21. AMI contends that, like all publishers, it has a well-established First Amendment and statutory right, which it has often practiced, to decline to publish stories, even after spending significant resources to develop those stories. AMI further contends that it believed its purchase of McDougal's story right in 2016 and the decision not to publish the story were fully protected by the Press Exemption and the First Amendment because AMI is a well-established press entity regularly publishing magazines in print and online for decades. AMI further contends that the

choice of an individual to sell their story right and of AMI to purchase that right and not publish the story would not necessarily result in a contribution under the Act.

V. Solely for the purpose of settling this matter expeditiously and avoiding litigation, with no admission as to the merit of the Commission's legal conclusions:

1. Respondent agrees not to contest that AMI's payment to Karen McDougal to purchase a limited life story right combined with its decision not to publish the story, in consultation with an agent of Donald J. Trump and for the purpose of influencing the election, constituted a prohibited corporate in-kind contribution in violation of 52 U.S.C. § 30118(a).

2. Respondent acknowledges the Commission's reason-to-believe finding that these violations were knowing and willful, but Respondent does not admit to the knowing and willful aspect of these violations.

VI. Respondent will take the following actions:

1. Respondent will cease and desist from violating 52 U.S.C. §§ 30118(a).

2. Respondent will pay a civil penalty to the Commission in the amount of One Hundred Eighty-Seven Thousand Five Hundred Dollars ($187,500) pursuant to 52 U.S.C. § 30109(a)(5)(B).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed the same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Charles Kitcher — 5/18/21

Charles Kitcher
Acting Associate General Counsel
for Enforcement

Date

FOR THE RESPONDENT:

2021-05-13 | 10:40

James Pascoe
Chief Legal Officer

Date